

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

**AGENDA**

*October 11, 2018*

*Immediately following the Special Establishment and Project Review Committee meeting  
which is to begin immediately following the Committee on Codes, Regulations and  
Legislation meeting  
(Codes scheduled to begin at 9:30 a.m.)*

*New York State Department of Public Service Commission Offices  
90 Church Street  
4<sup>th</sup> Floor Board Room, NYC*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

June 7, 2018 Meeting Minutes

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

**Report of the Department of Health**

Howard A. Zucker, M.D., J.D., Commissioner of Health

**IV. 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**

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

**For Information**

18-12 Addition of Section 405.34 to Title 10 NYCRR (Stroke Services)

18-01 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research  
Cooperative System (SPARCS))

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

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

Peter Robinson, Chair of Establishment and Project Review Committee

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

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

**CON Applications**

**Acute Care Services - Construction**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>        | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 172101 C             | Coney Island Hospital<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

**CON Applications**

**Acute Care Services - Construction**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 181304 C             | Arnot Ogden Medical Center<br>(Chemung County)<br>Mr. Robinson – Recusal    | Contingent Approval                   |
| 2. | 181334 C             | Samaritan Hospital<br>(Rensselaer County)<br>Dr. Bennett - Interest         | Contingent Approval                   |
| 3. | 181404 C             | Albany Medical Center Hospital<br>(Albany County)<br>Dr. Bennett - Interest | 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 HSA

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**CATEGORY 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. | 181448 E             | Brooklyn Surgery Center<br>(Kings County) | Approval                              |

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 181307 E             | Ajay 28 LLC d/b/a New York<br>Preventive Health Center<br>(Queens County) | Approval                              |

**Dialysis Services – Establish/Construct**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 182012 B             | Ditmas Park Dialysis Center, LLC<br>(Kings County) | Contingent Approval                   |
| 2. | 181419 B             | Ulster Dialysis, LLC<br>(Ulster 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. | 172385 E             | Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck (Nassau County) | Contingent Approval                   |

**Certificates**

**Restated Certificate of Incorporation**

| <b><u>Applicant</u></b>                 | <b><u>E.P.R.C. Recommendation</u></b> |
|---|---------------------------------------|
| Faxton-St. Luke’s Healthcare Foundation | 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**

**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. | 181333 E             | Lynbrook Surgery Center, LLC (Nassau County)<br>Mr. Kraut – Recusal                                  | Contingent Approval                   |
| 2. | 181438 E             | North County EC, LLC d/b/a The New York Eye Surgical Center (Saratoga County)<br>Dr. Rugge – Recusal | 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. | 172387 E             | Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point (Nassau County)<br>Mr. Kraut - Interest   | Contingent Approval                   |
| 2. | 181219 E             | AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center (Monroe County)<br>Mr. Thomas - Interest | Contingent Approval                   |

|    |          |   |                     |
|----|----------|---|---------------------|
| 3. | 181050 E | Nesconset Operating LLC d/b/a<br>The Hamlet Rehabilitation<br>and Healthcare Center at<br>Nesconset<br>(Suffolk County)<br>Mr. La Rue - Recusal | Contingent Approval |
| 4. | 181366 E | Port Jefferson Operating, LLC<br>d/b/a Waters Edge Rehab &<br>Nursing<br>at Port Jefferson<br>(Suffolk County)<br>Mr. La Rue - Recusal          | Contingent Approval |
| 5. | 181367 E | Glengariff Operating, LLC d/b/a<br>Glengariff Rehabilitation<br>and Healthcare Center<br>(Nassau County)<br>Mr. La Rue - Recusal                | Contingent Approval |
| 6. | 181387 E | Verrazano Nursing Home<br>(Richmond County)<br>Ms. Carver-Cheney – Recusal  | Approval            |

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1.            | 181348 E<br>North Shore Home Care<br>(Westchester County)<br>Mr. Kraut – 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**

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

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1.            | 172420 B<br>Doral Medical and Multispecialty<br>Facility, LLC d/b/a Doral Medical<br>and Multispecialty Center<br>(Kings County)<br>Dr. Bennett – Opposed at EPRC | Contingent Approval            |

**Dialysis Services – Establish/Construct**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1. 181177 B   | Adira Dialysis, LLC d/b/a Adira Dialysis Center<br>(Westchester County)<br>Dr. Bennett – Abstained at EPRC<br>Dr. Berliner – Abstained at EPRC<br>Dr. Martin – Abstained at EPRC | Contingent Approval            |

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

- ❖ PHHPC Member Recusals
- ❖ Establishment an 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 – Establish/Construct**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u>  |
|---------------|---|---|
| 1. 172379 E   | St. Peter’s Health Partners<br>(Albany County)  | Presented at the 10/11/18<br>Special Establishment/Project<br>Review Committee<br>No Recommendation |
| 2. 181279 E   | Cortland Regional Medical<br>Center Inc.<br>(Cortland County)<br>Mr. Robinson – Recusal | Presented at the 10/11/18<br>Special Establishment/Project<br>Review Committee<br>No Recommendation |

**Dialysis Services – Establish/Construct**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 172364 E   | True North IV DC, LLC<br>(Queens County)<br>Mr. Kraut – Recusal<br>Mr. Thomas - Recusal | No Recommendation              |

|    |          |   |                   |
|----|----------|---|-------------------|
| 2. | 172411 E | True North V DC, LLC<br>(Kings County)<br>Mr. Kraut – Recusal<br>Mr. Thomas - Recusal | No Recommendation |
|----|----------|---|-------------------|

**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> |
|----------------------|---|---------------------------------------|
| 181266 E             | The Elliot at New Rochelle LLC<br>(Westchester County)      | Approval                              |
| 181436 E             | The Sentinel of Mohegan<br>Lake LLC<br>(Westchester County) | Approval                              |

**Certificates**

**Certificate of Merger**

| <b><u>Applicant</u></b>   | <b><u>E.P.R.C. Recommendation</u></b>   |
|---|---|
| Transitional Living Services of Onondaga County, Inc. and<br>United Cerebral Palsy and Handicapped Children’s<br>Association of Syracuse, Inc. into United Cerebral Palsy<br>and Handicapped Children’s Association of Syracuse, Inc. | Presented at the 10/11/18<br>Special Establishment/Project<br>Review Committee<br>No Recommendation |

**VI. NEXT MEETING**

November 29, 2018 - Albany  
December 13, 2018 – Albany

**VII. ADJOURNMENT**

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

**Minutes**  
**August 2, 2018**

The meeting of the Public Health and Health Planning Council was held on Thursday, August 2, 2018 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT**

|                      |                                |
|----------------------|--------------------------------|
| Ms. Judy Baumgartner | Mr. Harvey Lawrence            |
| Dr. John Bennett     | Dr. Glenn Martin               |
| Dr. Howard Berliner  | Mr. Peter Robinson             |
| Dr. Jo Ivey Boufford | Dr. John Ruge                  |
| Dr. Lawrence Brown   | Dr. Theodore Strange           |
| Dr. Angel Gutierrez  | Mr. Hugh Thomas                |
| Mr. Thomas Holt      | Dr. Kevin Watkins              |
| Dr. Gary Kalkut      | Dr. Patsy Yang                 |
| Mr. Jeffrey Kraut    | Ms. Sally Dreslin – Ex-officio |
| Mr. Scott La Rue     |                                |

**DEPARTMENT OF HEALTH STAFF PRESENT**

|                         |                               |
|-------------------------|-------------------------------|
| Mr. Charles Abel        | Ms. Robert Lis                |
| Ms. Suzanne Barg        | Ms. Sylvia Pirani – via phone |
| Ms. Barbara DelCogliano | Ms. Tracy Raleigh             |
| Ms. Alejandra Diaz      | Ms. Gilda Riccardi            |
| Ms. Rebecca Gray        | Mr. Daniel Sheppard           |
| Mr. Mark Furnish        | Ms. Lisa Thomson              |
| Dr. Eugene Heslin       | Ms. Lisa Ullman               |
| Ms. Colleen Leonard     | Mr. Richard Zahnleuter        |
| Mr. George Macko        |                               |
| Ms. Adrienne Mazeau     |                               |

**INTRODUCTION**

Mr. Kraut called the meeting to order and welcomed Executive Deputy Commissioner Dreslin, Council members, meeting participants and observers.

**APPOINTMENT OF HUGH THOMAS**

Mr. Kraut welcomed Mr. Hugh Thomas who had been appointed to serve on the Council. Mr. Kraut advised that Mr. Thomas will serve a member of the Establishment and Project Review Committee. Please refer to page 2 of the attached transcript.

## **CHARLES ABEL RETIREMENT**

Mr. Kraut announced that Mr. Abel will be retiring from State service. On behalf of the Council, Mr. Kraut and Dr. Boufford signed a Resolution of Appreciation and thanked Mr. Abel for his years of dedications to the Council. Please refer to pages 4 through 7 of the attached transcript.

## **APPROVAL OF THE MINUTES OF JUNE 7, 2018**

Mr. Kraut asked for a motion to approve the June 7, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Mr. Robinson. The minutes were unanimously adopted. Please refer to page 8 of the attached transcript.

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

Next, Mr. Kraut introduced Ms. Dreslin to give a report on the Department of Health report.

Ms. Dreslin updated the Council on the Department's launch of four regional cancer studies, elimination of Hepatitis C initiatives, medical marijuana, announcement of ABEL New York launch, tick and mosquito borne illness prevention and surveillance, and continued efforts to protect reproductive health services.

Ms. Dreslin concluded her report. To read the complete report and questions from the Members, please see pages 8 through 26 of the attached transcript.

## **Office of Primary Care and Health Systems Management Activities**

Mr. Kraut t introduced Mr. Sheppard to give an update on the Activities of the Office of Primary Care and Health Systems Management.

Mr. Sheppard updated the Council members on the recommendations and discussion items from the PHHPC September 2017 Retreat and provided a handout to the PHHPC members which is posted on the Department of Health's webpage.

Mr. Sheppard concluded his report. To read the complete report please see pages 26 through 52 of the attached transcript.

## **Office of Public Health Activities**

Mr. Kraut t introduced Ms. Mazeau to give the Office of Public Health report.

Ms. Mazeau reported on the Department's efforts in undertaking cancer research initiatives for areas of the State with higher than expected rates of cancer diagnosis. Ms. Mazeau also reported on the Department's efforts to reduce maternal mortality and maternal depression and discussed the Department's implementation of the PHHPC's decision to incorporate public health considerations into the Certificate of Need Process.

Ms. Mazeau concluded her report, to view the complete report, please see pages 52 through 56 of the attached transcript.

Mr. Kraut thanked Ms. Mazeau for her report and introduced Dr. Boufford to give an update on the activities of the Public Health Committee.

### **PUBLIC HEALTH SERVICES**

Dr. Boufford began her report and presented a power point presentation. Dr. Boufford gave a progress report on the revised five year plan for the Prevention Agenda as well as explaining how other New York State agencies are advancing their work for the Prevention Agenda. Dr. Boufford advised the Committee will prepare a final draft of the report and will come back to the Council in December for the Council members adoption.

Dr. Boufford concluded her report, to view the complete report, please see pages 56 through 66 of the attached transcript.

### **REGULATION**

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

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

#### **For 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)

Dr. Gutiérrez described For Adoption the proposed Amendment of 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) and motioned for adoption. Dr. Berliner seconded the motion. The motion carried. Please see page 66 of the transcript.

#### **For Information**

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

Dr. Gutiérrez described For Information the proposed Amendment of Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights). Please see pages 66 and 67 of the transcript.

Mr. Kraut then moved to the next item on the agenda and introduced Dr. Kalkut 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**

Dr. Kalkut, Vice 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**

**Hospice Services - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>           | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181260 C             | Hudson Valley Hospice<br>(Dutchess County) | Contingent Approval          |

Dr. Kalkut called application 181260 C and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 80 and 81 of the attached transcript.

**Residential Health Care Facilities - Construction**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>      | <b><u>Council Action</u></b> |
|----------------------|---------------------------------------|------------------------------|
| 181155 C             | Oxford Nursing Home<br>(Kings County) | Contingent Approval          |

Dr. Kalkut called application 181155 C and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 81 through 84 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

**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>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181206 C             | OMNI Surgery Center<br>(Oneida County) | Disapproved                  |

Dr. Kalkut introduced application 181206 C and motioned for approval, Dr. Berliner seconded the motion. The motion to approved failed. Dr. Gutiérrez motioned for disapproval which was seconded by Dr. Brown. The motion to disapprove passed. Please see pages 84 through 96 of the attached transcript for the members complete discussion.

**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> |
|----------------------|--|------------------------------|
| 172395 E             | Queens Endoscopy ASC, LLC<br>(Queens County) | Contingent Approval          |

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 181112 E      | Clinton Square Operations, LLC<br>d/b/a Bishop Rehabilitation<br>and Nursing Center<br>(Onondaga County) | Contingent Approval   |
| 181144 E      | Park Terrace Care Center<br>(Queens County)  | Approval              |
| 181165 E      | Queens Nassau Rehabilitation and<br>Nursing Center<br>(Queens County)                                    | Approval              |

Dr. Kalkut called applications 172395, 181112, 181144 and 181165 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 96 and 97 of the attached transcript.

**Certificates**

**Certificate of Dissolution**

| <u>Applicant</u>                        | <u>Council Action</u> |
|---|-----------------------|
| Genesee Valley Group Health Association | Approval              |
| Ruby Weston Manor                       | Approval              |

Dr. Kalkut called Genesee Valley Group Health Association and Ruby Weston Manor for approval for consent to file their Certificate of Dissolutions and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 97 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**

## Residential Health Care Facilities – Establish/Construct

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 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 (not<br>present at meeting) | Contingent Approval   |

Dr. Kalkut called application 172313 and noted for the record that Ms. Carver-Cheney declared a conflict of interest but was not present at the meeting. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approval carried. Please see pages 97 and 98 of the transcript.

|          |  |                     |
|----------|--|---------------------|
| 181046 E | Martine Center for Rehabilitation<br>and Nursing<br>(Westchester County)<br>Dr. Kalkut - Recusal | Contingent Approval |
|----------|--|---------------------|

Mr. Robinson called application 181046 and noted for the record that Dr. Kalkut has declared a conflict of interest and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Berliner seconded the motion. The motion to approval carried with Dr. Kalkut's recusal. Dr. Kalkut returned to the meeting room. Please see pages 99 and 100 of the transcript.

|          |  |                     |
|----------|--|---------------------|
| 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 |
|----------|--|---------------------|

Mr. Robinson called application 181182 and noted for the record that Mr. La Rue 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 Mr. La Rue's noted recusal. Mr. La Rue returned to the meeting room. Please see pages 100 and 101 of the transcript.

### Certificates

#### Restated Certificate of Incorporation

| <u>Applicant</u>   | <u>Council Action</u> |
|--|-----------------------|
| The Frederick Ferris Thompson Hospital<br>Mr. Robinson – Recusal<br>Mr. Thomas - Recusal | Approval              |

Dr. Kalkut called The Frederick Ferris Thompson Hospital request to file the Restated Certificate of Incorporation and noted for the record that Mr. Robinson and Mr. Thomas has declared conflicts of interests and have exited the meeting room. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconds the motion. The motion passes with the noted recusals. Mr. Robinson and Mr. Thomas return to the meeting room. Please see page 101 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

**CON Applications**

**Ambulatory Surgery Centers– Establish/Construct**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181152 E             | Roosevelt Surgery Center, LLC<br>d/b/a Manhattan Surgery Center<br>(New York County) | Approval                     |

Dr. Kalkut introduced application 181152 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 101 and 102 of the transcript.

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

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

**CON Applications**

**Acute Care Services – Establish/Construct**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 181251 E             | South Nassau Communities<br>Hospital<br>(Nassau County)<br>Dr. Martin – Recusal (not present)<br>Dr. Bennett – Opposed<br>Dr. Ruge - Abstained | Contingent Approval          |

Dr. Kalkut called application 181251 and noted for the record that Dr. Martin had declared a conflict of interest but was not present at the meeting. Dr. Kalkut motioned for approval and Dr. Berliner seconded the motion. The motion carried with Dr. Bennett’s opposition and Dr. Ruge’s abstention. Please see pages 102 and 103 of the transcript.

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 181084 E      | Willcare<br>(Erie County)<br>Ms. Baumgartner - Recusal<br>Dr. Gutiérrez - Abstained<br>Dr. Watkins – Recusal | Contingent Approval   |

Dr. Kalkut called application 181084 and noted for the record that Ms. Baumgartner and Dr. Watkins have conflicts and have exited the meeting room. Dr. Kalkut motioned for approval with Dr. Berliner seconding the motion. The motion carried with Dr Gutiérrez abstaining and Ms. Baumgartner and Dr. Watkins recusals. Ms. Baumgartner and Dr. Watkins returned to the meeting room. Please see page 103 of the transcript.

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

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

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 172198 E      | Leroy Operating LLC d/b/a Leroy<br>Village Green Nursing<br>and Rehabilitation Center<br>(Genesee County) | Deferred              |

Dr. Kalkut noted for the record that application 172198 has been deferred. Please see page 104 of the transcript.

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

**HOME HEALTH AGENCY LICENSURES**

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

|          |   |          |
|----------|---|----------|
| 161026 E | Foundation for the Elderly Inc<br>d/b/a Atlantis Home Care<br>(Queens County) | Approval |
|----------|---|----------|

Dr. Kalkut called application 161026 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 104 of the transcript.

|          |   |                     |
|----------|---|---------------------|
| 172165 E | Utica LHCSA, LLC d/b/a Oneida<br>Home Care<br>(Oneida County)<br>Dr. Kalkut - Recusal | Contingent Approval |
|----------|---|---------------------|

Mr. Robinson called application 172165 and noted for the record that Dr. Kalkut has declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconds the motion. The motion carried with Dr. Kalkut's noted recusal. Dr. Kalkut returned to the meeting room. See pages 104 and 105 of the transcript.

**Changes of Ownership with Consolidation**

|          |   |                     |
|----------|---|---------------------|
| 181393 E | Community Care Companions,<br>Inc. d/b/a Interim<br>Healthcare of New York<br>(Monroe County)<br>Mr. Robinson - Interest<br>Mr. Thomas – Interest | Contingent Approval |
|----------|---|---------------------|

Lastly, Mr. Robinson called application 181393 and notes for the record that he and Mr. Thomas have an interest. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 105 of the transcript.

**ADJOURNMENT:**

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.

1                   **NEW YORK STATE DEPARTMENT OF HEALTH**  
2                   **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
3                   **FULL COUNCIL MEETING**  
4                   **AUGUST 2, 2018**  
5                   **OGS MEETING ROOM 6, ALBANY, NEW YORK**

7           JEFF KRAUT:       Thank you very much Dr. Gutierrez. And  
8 welcome everybody. I'm Jeff Kraut, and I have the privilege to  
9 call to order the August 2 meeting of the Public Health and  
10 Health Planning Council, and welcome our members, Executive  
11 Deputy Commissioner Dreslin, participants, and observers. And  
12 I'm going to remind everybody that the audience is open, this  
13 and the audience that this meeting is subject to the open  
14 meeting law and is broadcast over the internet. The webcast can  
15 be accessed from the Department of Health's website at  
16 NYHEALTH.GOV. These on-demand webcasts are going to be  
17 available no later than seven days after the meeting with a  
18 minimum of 30 days and then a copy is going to be retained in  
19 the Department for up to four months. In order to make the  
20 meeting successful because we're doing synchronized captioning,  
21 it's important that we don't speak over each other. Obviously we  
22 can't caption it appropriately if two people are speaking at the  
23 same time. When you speak for the first time, please identify  
24 your name and briefly identify yourself as a council member or a

1 member of DOH staff. This will be very helpful to us. And just  
2 remember the microphones are hot, mics mean they pick up every  
3 sound and therefore try to minimize the rustling of papers. Be  
4 sensitive about any personal conversations, sidebars, snide  
5 comments. The microphones will pick that up as well and you'll  
6 be embarrassed for an eternity. As a reminder, our audience,  
7 there's a form that needs to be filled out before you enter the  
8 meeting room, and that's going to record your attendance at this  
9 meeting. It's required by the joint commission on public ethics  
10 in accordance with executive law section 166. We also post this  
11 form on the Department of Health's website at NYHEALTH.GOV under  
12 the certificate of need section, so in the future you can fill  
13 out the form prior to entering the council meeting, and we  
14 really appreciate your assistance, cooperation in fulfilling our  
15 duties as to do it.

16 Before I get into today's agenda, it's my pleasure to  
17 welcome Hugh Thomas, our newest member, and the Governor has  
18 nominated and the senate has confirmed Mr. Thomas to serve as a  
19 member of the Public Health Council. He's sitting there in the  
20 standard seat, farthest away from the dais as a new member.  
21 Please welcome Mr. Thomas. And hopefully everybody should come  
22 up when we have a break, which will mean after the meeting is  
23 over, that Mr. Thomas joins us from the Rochester Regional  
24 Health where he serves as the executive vice president, chief

1 administrative officer, and the general counsel of the  
2 organization. That perspective and the wealth of knowledge and  
3 experience we fully expect will be an asset to the council as we  
4 continue with our charge. We've appointed Mr. Thomas to the  
5 Establishment and Project Review Committee where certainly his  
6 expertise and background will add a perspective and his voice to  
7 the work that we do. We will see other committee appointments  
8 that you would like to make and will talk to you about that and  
9 we really look forward and welcome you to serving with us. So  
10 thanks Mr. Thomas. Glad that you can add to our quorum numbers.  
11 And upstate, that guarantees us at least another body in Albany  
12 under bad weather in the winter.

13       So, today this is what we're going to do; we're going to go  
14 through the Department of Health reports. We'll hear from Ms.  
15 Dreslin, then followed by Mr. Sheppard, and Ms. Mazeau that'll  
16 give us an update on the public health activities. Dr. Boufford  
17 will provide us a report on the activities of the public health  
18 committee, and then Dr. Gutierrez will present regulations for  
19 our adoption and information. Under the category of project  
20 review establishment, Dr. Kalkut, assuming he arrives, will be  
21 talking about CON applications. Just want to remind everybody  
22 before we do get to that section of the Establishment and  
23 Project Review Committee, that we have, we've organized the  
24 agenda by topics or categories which captures our roles and

1 responsibilities and we're going to be batching certificate of  
2 need applications. Please take the time now to take a look at  
3 those batches and how we've organized it in the agenda. And if  
4 you'd like a category moved out of a batch so a batch where we  
5 may be voting several applications at once, and you want to pull  
6 one out for a conversation, we'd be more than happy to do that.  
7 Some of you may have already identified to us and we will adjust  
8 it appropriately. And just come up and give Colleen and Tracy  
9 anything that you want. In addition, if you think you are in a  
10 conflict or want to declare an interest and you have not yet  
11 done so, please do so as well before we call the application.

12 Now, as we mentioned for those of you who were at the  
13 Establishment and Project Review Committee, we have heard that  
14 Charlie Abel is going to be retiring from state service. And  
15 this is going to be his last meeting with us. And Charlie, we  
16 want to take this time to more formally recognize your years of  
17 hard work and dedication that you've served in the service of  
18 the council and the service of the state and the service of the  
19 people of New York State. We're going to really wish you the  
20 best in your endeavors. Now, we have Dr. Boufford and I have  
21 signed a resolution of appreciation for you, but I'm going to  
22 read a little something from it, but how do you do justice to  
23 Charlie? And I suspect they'll have a going away party for him  
24 in October. It'll be a little more humorous than what I'm going

1 to do, but the fact is, if you think, I think Charlie, you were  
2 appointed around 2000? Right? So you've served 18 years in a  
3 variety of increasing responsibility. You've served four  
4 commissioners. You have probably overseen more applications  
5 than any other person probably who have served in the Department  
6 of Health. I tried to go through the annual reports. I lost  
7 track over 1000s. You've probably overseen hundred billion  
8 dollars or more of costs and applications. You've been a  
9 guardian over policies. You've been a guardian of our process.  
10 And you've been guardian I think of the people's interest in  
11 this state. And so it's really hard to capture that in a single  
12 document, but I'm going to try. And I'm not going to read all  
13 the therefores, and whereas, but essentially you really served  
14 the citizens of the state. You know, he joined us in 2000 but  
15 you've been working for the state for 39 years. It's an  
16 extraordinary legacy of service, and you expand the  
17 administrations as I said, of commissioner Novello, Daines, Dr.  
18 Shah, Dr. Zucker, and your immense knowledge has earned a much  
19 deserved appointment to serve as deputy director for the Center  
20 of Healthcare Facility Planning, Licensure, and Finance. Your  
21 instrumental in our certificate of need process. You've assisted  
22 in the formation of the performing provider systems, \$8 billion  
23 of investment. You've developed the interim access insurance  
24 fund and developed and coordinated over a billion, probably \$1.2

1 billion in capital restructuring programs. You've served as a  
2 voting member of the dormitory authority, and a myriad of other  
3 responsibilities and accomplishment, and we just want to  
4 recognize you during your years with the Department that you've  
5 been really committed to innovating to developing programs to  
6 create efficiency, a high level of quality and service, and  
7 that's made not only a difference to the citizens of New York  
8 State, but to all the provider communities that we've been  
9 dependent upon to be able to innovate and to move forward  
10 through a regulatory framework that at times is challenging and  
11 has a lot of friction, and we really appreciated those times  
12 where you've removed the friction and allowed us to move  
13 forward, and at times where you created the friction, I think we  
14 respected it because of the policy. I'm actually departing from  
15 the remarks as you might've gathered, but the extemporaneous  
16 issue is you've always did it for a deep belief on what the  
17 state should be doing and how we should be serving and the  
18 interest of the Department of Health and the health of the  
19 population. I think for all of that we recognize the content of  
20 your character and the integrity with which you've brought to  
21 our system. So we really appreciate that resourcefulness, your  
22 integrity, your work ethic, your professional demeanor, and we  
23 are on behalf of the council, the citizen of New York, the State  
24 of New York, we hold you in the highest esteem as both friend

1 and colleague. We offer you wishes for your future health,  
2 happiness and professional achievement, and I would ask  
3 everybody to join us in thanking you for those 39 years of  
4 service.

5

6 [applause]

7 JEFF KRAUT: I will also grant you the opportunity if  
8 you'd like to say anything. With no time limit, Charlie.

9

10 CHARLIE ABEL: Well, thank you very much. It's really been  
11 a privilege to support the council and my goal has always been  
12 to do what I can in whatever capacity I can to improve  
13 healthcare in New York, so hopefully I leave the state's  
14 healthcare system in a slightly better position than when I  
15 found it. Thank you.

16

17 JEFF KRAUT: Well, Thank you so much Charlie, again, and  
18 we wish you well, and like many of your colleagues who preceded  
19 and departed from the Department of Health, we expect after a  
20 two year hiatus we may see you in the back. So we should  
21 actually put little plaques... never mind. OK. So, but Charlie,  
22 thank you again. And again, there'll be other opportunities and  
23 I would encourage everybody to go up and give your personal  
24 recollections and thanks after the meeting.

1           So our next agenda item is the adoption of the minutes, and  
2 may I have a motion for the adoption of the June 7, 2018 PHHPC  
3 meeting. I have a motion by Dr. Berliner. May I have a second?  
4 Mr. Robinson. All those in favor.

5

6 [Aye]

7           The motion is passed. And now I'm going to turn it over to  
8 Ms. Dreslin who will update the council on the Department's  
9 activities since our last meeting.

10

11           SALLY DRESLIN: Thank you. That's quite the act to follow.  
12 So good morning. Again, I'm Sally Dreslin the Executive Deputy  
13 Commissioner here at the Department and it's a pleasure to be  
14 with you. We've had as we usually do, a busy summer so far,  
15 which has included the launch of four regional cancer studies  
16 that were first announced by the Governor in October. The  
17 purpose is to examine cancer trends and potential causes in  
18 areas of the state with higher than expected rates of diagnosis.  
19 As Mr. Kraut mentioned, Adrienne Mazeau our Deputy Director of  
20 the Office of Public Health will speak a little bit in more  
21 detail on that later.

22           As many of you are aware, Governor Cuomo recently announced  
23 a first in the nation strategy to eliminate hepatitis C.  
24 Including the establishment of a Hepatitis C elimination

1 taskforce to advise the state as it implements it's plan moving  
2 forward. Hepatitis C related deaths have exceeded HIV related  
3 deaths in the state outside New York City since 2007 and with  
4 injection drug use as the most common risk factor, the opioid  
5 epidemic has fueled a rise in Hepatitis C cases. The recently  
6 announced elimination effort allocates \$5 million initially with  
7 the goal of stopping the spread of the virus by increasing  
8 access to medications that can cure Hepatitis C and expanding  
9 programs to connect New Yorkers with prevention, screening and  
10 treatment services. New York is also the first state effective  
11 July 1 to authorize Medicaid reimbursement for harm reduction  
12 services including regulations expanding syringe access, syringe  
13 exchange access. ON the medical marijuana front, on July 12, the  
14 Department issued emergency regulations that add opioid  
15 replacement to the 12 qualifying conditions for medical  
16 marijuana use. Registered practitioners may certify patients to  
17 use medical marijuana as a replacement for opioids provided that  
18 the precise underlying condition for which the opioid would  
19 otherwise be prescribed is stated in the patient certification.  
20 This allows patients with severe pain that doesn't meet the  
21 definition of chronic pain, (currently a condition) to use  
22 medical marijuana as a replacement for opioids. In addition, the  
23 regulation adds opioid use disorder as an associated condition,  
24 allowing those patients who are enrolled in a certified

1 treatment program in collaboration with their opioid use  
2 disorder treatment provider to potentially address their  
3 condition with medical marijuana. Medical marijuana has been  
4 shown to be an effective treatment for pain that may also reduce  
5 the chance of opioid dependence which is a critical step in  
6 combating the deadly opioid epidemic that's effecting people  
7 across the state. To date, there's 65,446 certified patients,  
8 and 1785 registered practitioners in the state's medical  
9 marijuana program. Also, as I imagine you're aware, the  
10 Department delivered a regulated marijuana impact assessment to  
11 the Governor for his review on July 13. The assessment concludes  
12 that the benefits of a regulated marijuana program outweigh the  
13 potential negative impacts. The assessment concludes that a  
14 regulated marijuana program would enable New York State to  
15 better control licensing, ensure quality control, and consumer  
16 protection, and set age and quantity restrictions. It would also  
17 allow the ability to oversee the production, testing, labeling,  
18 distribution, and sale.

19 Just last week in recognition of the 20<sup>th</sup> anniversary of the  
20 American's with Disabilities Act, New York launched ABLE New  
21 York, which is a multiagency effort to improve accessibility to  
22 services and programs statewide for New Yorkers with physical  
23 disabilities. DOH is leading the first phase of this effort  
24 beginning with communications and nursing home administrators

1 identifying programs available to people living with  
2 disabilities in their communities. Updated requirements for  
3 nursing homes surrounding this directive will include  
4 certification requirements, home and community-based services,  
5 evaluations as part of the certificate of need review, a  
6 discharge rights letter for residents and a nursing home  
7 discharge incentive. More to come on that.

8       Each year during this season, the department of health is  
9 busy focusing our efforts on tick and mosquito borne illness  
10 prevention and surveillance. Just recently, we discovered a new  
11 species of ticks, the Longhorn Tick which is not native to the  
12 United States. It's been confirmed in some areas of Westchester  
13 County. While thought to be more dangerous to livestock than to  
14 people, the same precautions apply for the Longhorn Tick as do  
15 for all tick and mosquito prevention efforts, such as using  
16 repellent, wearing long sleeves and pants when possible, and  
17 always inspecting for ticks after being outside. In June a  
18 summit focused on tick borne diseases was held in Albany to  
19 gather stakeholders to discuss new ideas for controlling the  
20 tick population. At that summit a new public-private partnership  
21 research collaboration with Regeneron Pharmaceuticals and the  
22 Wadsworth Center to advance the diagnosis and treatment of tick  
23 borne diseases was announced. So that's very exciting.

1           And finally, last but not least, building on the Governor's  
2 top priorities as part of the women's agenda. In anticipation of  
3 federal action, the Governor is actively working to protect  
4 access to comprehensive reproductive rights, reproductive health  
5 services. Among his efforts in recent months, the Governor's  
6 directed DFS to require coverage of emergency contraception,  
7 over the counter contraception in commercial plans, and to allow  
8 for 12 months of contraception all at one time versus the  
9 current three months in both commercial and Medicaid.  
10 Additionally, the Governor has requested for the Senate to  
11 return and to vote to codify Roe v. Wade in state law. And most  
12 recently the Governor announced that New York will pursue all  
13 legal actions to right the new proposed federal regulations for  
14 the title 10 program. The Department of Health is very concerned  
15 by these proposed changes to the Title 10 funding that would  
16 severely limit women's access to family planning services  
17 including abortion services. It is critical that women are able  
18 to know their options. As part of the state's correspondence  
19 with the US Department of Health and Human Services secretary,  
20 we submitted several pages of comments outlining the harm and  
21 legal affront that the proposed rules would inflict upon the  
22 State's family planning program, the health of New Yorkers, and  
23 the landscape of health services.

1           That wraps up our high level review of some of our  
2 activities this summer, and I'm going to take some questions.

3

4           JOHN BENNETT: That's a lot of exciting things going on. My  
5 question is around Hepatitis C. So, we treat Hepatitis C now  
6 with a drug, with a greater than 90 percent cure rate. I mean,  
7 it's really awesome. So do we have any, you know, I may just be  
8 ignorant and it may be easily available out there but have we,  
9 do new have any data on the resulting incidents and prevalence  
10 of Hepatitis C in New York State? And then, or do we have any  
11 plans to track that to see how effective has this drug been in  
12 truly eradicating it within the state. And my second question is  
13 a corollary that since my clinical knowledge tells me that the  
14 most likely, in addition to the very small rate of drug failure,  
15 but there is a small rate of drug failures, in addition to that  
16 a rate of, the likelihood of reinfection is most likely  
17 attributed to the needle drug using population. Do we have any  
18 data at all on the rate of reinfection amongst IV drug users?

19

20           SALLY DRESLIN: So I think you're absolutely right to hone  
21 in on those surveillance aspects. Because while I think there  
22 is some surveillance we can certainly do a better job and that's  
23 going to be part of what the taskforce looks at. It's going to  
24 be modeled very much on the ending the epidemic for HIV and AIDS

1 and so there's a very significant data collection, communication  
2 of information connecting with treatment and then follow on in  
3 that initiative and I think that the work group for hepatitis C  
4 will be modeling on that. But I know that surveillance will be  
5 a significant portion of it. There's also the incidence of the  
6 coinfection of HIV and Hepatitis C and how that effects  
7 potentially which drugs are effective and aren't in curing the  
8 Hepatitis C. And then again, to your point on the injection  
9 drug use being the main risk factor, that again speaks to the  
10 comprehensive approach of all that we're trying to do with the  
11 opioid epidemic, with syringe exchange access, etc. So it will  
12 certainly heed into it. And I think we'll look to get some of  
13 that data. Absolutely.

14

15 JEFF KRAUT: Dr. Martin, then Dr. Berliner.

16

17 GLENN MARTIN: Good morning. Yes, so I wanted to just  
18 follow up on the marijuana, changes to the medical marijuana  
19 regs that you mentioned and the emergency regs. And also I want  
20 to thank you for the information that was provided. Very  
21 helpful.

22 There are a whole bunch of things we could talk about but I  
23 don't want to waste the time. The part of it that's most  
24 concerning, and I'm saying this as an individual, not

1 representing any of the organized medicine who I'm sure have  
2 more than enough to add during the comment period, I remain  
3 particularly concerned about the reg as it appears to be written  
4 concerning the now approved, I guess, the possibility of using  
5 marijuana in the treatment of opioid addiction. So, the concerns  
6 are on a variety of different levels. One is the evidence-base  
7 as far as I can determine is virtually non-existent. There is  
8 some evidence that cannabidiol might be of use, and in fact at  
9 my institution Dr Heard has done a great deal of research in  
10 that and it does look promising, but obviously that's not  
11 cannabis pure. And so my concern is basically doing what, again,  
12 do IRBs for a living so it appear to be a large experiment but  
13 not particularly well designed at the moment socially. I'm also  
14 a little concerned because Dr. Brown and I sit on the Behavioral  
15 Health Services Advisory Council. I know this didn't come up  
16 there at all and we're both OMH and OASAS, and Dr. Brown is in  
17 the industry and can speak better to it than I am, but I'm very  
18 concerned about how it will work with OASAS regulated facilities  
19 in particular generally speaking the                      has been you're  
20 not supposed to be using other drugs when you're trying to be  
21 abstinent and in fact is urine toxicologies and a bunch of other  
22 things, some that are regulated, some that are just practice.  
23 And I just don't see how that's going to turn on a dime and  
24 people are suddenly going to deal with that. And I also notice

1 there's the restriction on you have to be in a program, but  
2 we'll just point out parenthetically that one of the public  
3 health challenges that has been to try to get physicians out in  
4 the field to be using suboxone more and to be treating people in  
5 private practices or in offices rather than in clinics. And how  
6 this, if one honestly believes that marijuana is an important  
7 tool, then why restrict it without that?

8       And lastly, I would say that I do understand the politics  
9 around that, and in particular the fact that it's very hard to  
10 do research given it's bizarre federal current classification as  
11 well as the attorney general saying things that isn't  
12 necessarily followed up by other people so it's hard to figure  
13 out what's going on. But at the very least is that if one of the  
14 reasons for doing this was to make experimentation easier, then  
15 I would ask that we seriously consider, especially with the use  
16 disorder, that it be limited to approved projects that they can  
17 make it available, but you've got to be in an approved clinical  
18 trial and you could argue about who would approve it, IRBs,  
19 State, whatever, but I think just doing it willy-nilly was not a  
20 good idea, and I'm concerned about it. I know there's a 60 day  
21 comment period where other people will pile on, but during the  
22 60 days if there's any way of restricting or at least very  
23 attentive to what goes on in that particular end of the reg, I'm

1 really concerned about. So whatever reaction you might have or  
2 not.

3

4 SALLY DRESLIN: I can react. So yeah, I mean, a couple of  
5 different elements to that. We are working on guidance and we  
6 certainly welcome your feedback on the guidance and you're  
7 right, there is the 60 day comment period for the regulations so  
8 we had the emergency regulations but we also went through the  
9 normal rule process at the same time, so there's the 60 day. As  
10 far as the research that your colleague is doing at Mt. Sinai, I  
11 think that preclinical research and some of it is clinical, is  
12 promising and I completely agree with you that the research  
13 isn't where we necessarily would want research to be moving  
14 forward with ... because of the status of marijuana obviously.  
15 But I think that the notion that practitioners need to turn on a  
16 dime, is not the case. It's not any type of a, even a  
17 recommended treatment, it's an option for treatment. And so  
18 again, starting slow with practitioners who are in article 32  
19 clinics who are engaged in active collaboration with their  
20 clients in treating opioid use disorder, that if they are  
21 interested in trying this option while we have now also by the  
22 regulation allowed more research to occur, that option is  
23 certainly there for a clinician to use their best judgement to  
24 have this opportunity, this extra tool, as we're talking about

1 in the midst of this incredible opioid epidemic, which has come  
2 up in every single topic so far that we've discussed. So it's  
3 so perfuses [sic] into all of the different issues that we are  
4 addressing here at the Department. So I think that that sort of  
5 justifies the restriction to the article 32 clinics. While I  
6 completely agree that the state is undertaking a massive effort  
7 to try to expand suboxone and naltrexone, and methadone beyond  
8 the substance use disorder providers. So, again, we welcome the  
9 feedback, absolutely. We totally hear the concerns, but we are  
10 looking at options, and as I said, the research is starting to  
11 look promising for CBD and the medical marijuana program has a  
12 number of formulations where high CBD, low THC formulations are  
13 effective particularly with epilepsy in children. So I think  
14 it's an opportunity.

15

16 JEFF KRAUT: Going to go Dr. Berliner, Dr. Brown, Dr.  
17 Gutierrez, and Scott, you want to... Dr. Brown. You asked for  
18 questions.

19

20 LAWRENCE BROWN: Good morning. I want to add my thanks  
21 to those that you received from Glenn for the receptivity by you  
22 and your colleagues to have a little chat with us a couple of  
23 days ago. Glenn referred to me as being in "the industry"  
24 almost as if there's some kind of black coat, black... then my

1 colleague over here often referred to as (idealistic). So I want to  
2 be very clear from the perspective that I have as someone who  
3 grew up in a neighborhood where addiction was, is, and unless  
4 there's a miracle, going to be a component of the landscape, as  
5 someone who is in addiction medicine, certified physician, who  
6 in fact understand and appreciates that when we talk about the  
7 approved medications for the treatment substance use disorders,  
8 that they have gone through a deliberate process and having that  
9 deliberate process is a way in which physician providers like  
10 myself can defend the efficacy for the use of a pharmacotherapy.  
11 I also want to speak to you from the standpoint, the agency that  
12 I'm affiliated with has about 2900 patients in addiction  
13 treatment in Brooklyn and Manhattan and I had the opportunity to  
14 share with them the information about this new approach. I first  
15 shared it with the patients, and they said to me clearly, now  
16 these are patients that are disenfranchised, ok, so I want to be  
17 very clear, they said to me that they do not understand why this  
18 is important. And I think part of that had been because of the  
19 messaging. I think if the state had done a more effective  
20 messaging to say this is to conduct a research study, that that  
21 might have been more embraced, but when the state went further  
22 to say that this is a possible option for the treatment of  
23 opiate use disorders, and these programs I think then some of  
24 the credibility may have been lost because of the fact that

1 there's already some problems with getting addiction medicine  
2 accepted in a house of medicine, getting addiction medicine even  
3 accepted in healthcare, and I think that's part of the reason  
4 why Glenn and I are on this council along with behavioral health  
5 in order to do the integration. So the messaging I think  
6 could've been better to be able to clarify what was the purpose  
7 because it does become difficult to explain, how is this  
8 pharmacotherapy that is not gone through the usual tests for  
9 efficient for safety as well as efficacy, here is more the  
10 efficacy part with opiate use disorder, it becomes challenging  
11 to explain that. I do end with a question because my providers  
12 in these same programs asked me the question that Dr. Brown,  
13 given that this is a medication that has come risks, not zero  
14 risk - even aspirin has some risks - so given that this  
15 medication has some risks, is there a reason why it's not on the  
16 ISTOP? Why is it... because a couple of times they said they've  
17 seen patients with the marijuana card, tried to check ISTOP to  
18 see if they could find the patient and it was not there, so it  
19 raises a concern for the clinicians on how to embrace a patient  
20 who is on a pharmacotherapy which has risks. We're treating  
21 them for a substance use disorder and they can't even get the  
22 sense of collaborating what the fellow colleague to make sure  
23 that the patient is adequately served and there's no harm. Now  
24 if it sounds as if I'm impassionate, please forgive me. I am

1 from Brooklyn, and way with doing it, and we did promise you  
2 that Glenn and I would behave. So I want to make sure I'm on my  
3 best behavior. But I do believe that as right as Dr. Heard is,  
4 as a fantastic scientist that is not the same as a specialist in  
5 addiction, and would we do the same thing for someone for which  
6 we're treating for some cardiovascular issue, would we in fact  
7 have the representation of not having clinicians or the  
8 specialty organizations - there are a couple of them - and New  
9 York state, the New York Society of Addiction Medicine to in  
10 fact be there so that we could try to address these issues on  
11 the front end rather than having it on the back end and raising  
12 issues about credibility. So again, thank you for the time, and  
13 I appreciate, and I too am willing to continue the collaboration  
14 even as terribly as I have behaved.

15

16 JEFF KRAUT: Thank you very much Dr. Brown. You got the  
17 gold star, and very insightful comments. Dr. Gutierrez and then  
18 Mr. LaRue.

19

20 ANGEL GUTIERREZ: Yes, Ms. Dreslin. Thank you very much  
21 for your remarks. Up to 2003 trying to get Hepatitis C treatment  
22 for inmates in the correction system was incredibly difficult.  
23 That's a literally captive population with high incidents of  
24 Hepatitis C. What is the availability of the new treatment to

1 the inmates in the department of corrections in New York State  
2 today?

3

4 SALLY DRESLIN: So I can't speak directly to what DOCs is  
5 providing and doing for inmates with Hepatitis C, but what I can  
6 tell you is that the AIDS Institute at the Department of Health  
7 is very actively collaborating with DOCs on their attention and  
8 focus on patients, inmates, patients with Hepatitis C. So I know  
9 that there's work going on. I know that there is a focus on  
10 there. I know that we have a very strong relationship with Dr.  
11 Koenigsman, who is the medical director at DOCs. In fact, I was  
12 just talking to him last week. So I can get you information on  
13 what the AIDS Institute is doing in collaboration with DOCs and  
14 what initiatives they may have around Hepatitis C positive  
15 inmates. Yeah.

16

17 SCOTT LARUE: Good morning. Different topic. I want to go  
18 back to the comments you made about the physically disabled and  
19 the initiative to discharge from the nursing home. Obviously one  
20 of the biggest barriers is probably housing and I know the work  
21 you're doing on discharging individuals with mental illness out  
22 of adult homes, there's another group that's focused on finding  
23 housing and another group focused on doing service. So is there  
24 housing component that's happening at the same time?

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SALLY DRESLIN: There are some MLTC Housing Disregard opportunities with the managed long term care program and Medicaid, but you're right. I mean, housing is a challenge in so many different areas. There are, there is plan to be some work with local social service divisions around personal care services so in the case where there is housing available at least making sure that there's that connection to the services that would be needed upon discharge from a nursing home. And then part of the proposal will be working with the MLTC housing disregard which provides nursing home residents who are discharged back to the community with additional housing allowances. So we are focused on it. I'm not sure, the goal is to do as much as we can with the resources that sort of are available until housing, but the focus on housing and so many of our issues is critical.

SCOTT LARUE: I'd also mention you know, for those who are physically disabled in a nursing home and are able to move back to the community, I'm not aware of any program that's been more successful in moving people back to the community than the PACE program, and I think that's a real opportunity to help that population with the housing. That's usually the stumbling block.

1 SALLY DRESLIN: Thank you.

2

3 HOWARD BERLINER: So from the sublime to the ridiculous,  
4 what's up with this hand foot and mouth disease? It was one  
5 thing when Noah Syndergaard got it, because, Mets. But now that  
6 Yankees are getting it I think it's a serious threat to public  
7 health. I mean, why is it that adults in professional  
8 occupations coming down... is this rare? Is this common?

9

10 JEFF KRAUT: Thank you. We've never been reported in the  
11 sports pages, but now you're guaranteeing it.

12

13 SALLY DRESLIN: I'm not sure in have an answer for you. We  
14 can talk to some of our communicable disease folks and see if  
15 there is...

16

17 JO BOUFFORD: It's been a pediatric disease. Period.

18

19 JEFF KRAUT: It's been primarily a pediatric disease.  
20 Anybody in infectious disease? Take it off line.

21 Yes, Dr. Kalkut:

22

1 GARY KALKUT: Can I ask about another infectious ...  
2 Legionnaires and some comments on what's happening with  
3 Legionnaires in the city and about surveillance.

4  
5 SALLY DRESLIN: Absolutely. We have a very robust process  
6 that works in collaboration with the local health departments on  
7 cooling tower inspection. We have obviously the regulations, New  
8 York City has regulations that require the owners of buildings  
9 that have cooling towers to conduct regular inspections and when  
10 they find the levels higher than a certain level, they're  
11 required then to undergo a certain set of disinfection and  
12 retesting processes. There's a section of that regulation that  
13 applies to healthcare facilities where they also have to address  
14 the potable water in the hospitals, and I know there have been  
15 reports of over a dozen, close to 20, not sure of the exact  
16 number, in New York City and we've been... And Jacobe on water  
17 restrictions and we work very closely with them to make sure  
18 that they're mitigating whether it's putting filters on the  
19 showers or bottled water, depending also on the condition of the  
20 patients, what the appropriate approach there. This time of  
21 year, this is a regular occurrence as the weather gets hot we  
22 see spikes, we see spikes in western New York, in New York City,  
23 in areas across the state. We do work very closely, we have  
24 actually a fantastic website that has a lot of good just sort of

1 background explanation, a lot of discussion of the regulations  
2 themselves, and then also what to do. I mean, in general, just  
3 to reiterate it is not the general population that will get ill  
4 when they're exposed to Legionella. It is generally elderly,  
5 vulnerable or already with respiratory disease, and it is also  
6 sometimes very difficult to diagnose it appropriately because  
7 it's hard to get sputum samples out of these patients, and then  
8 it becomes a challenge to sort of match the sick person with any  
9 potential elevated findings in water towers. But suffice it to  
10 say we have a robust program. We are deeply involved. We work  
11 closely with the local health departments that are experiencing  
12 cases, and we do work very closely with the healthcare  
13 facilities that have issues.

14

15 GARY KALKUT: And the threshold for healthcare facility  
16 like Jacobe to come off water restriction?

17

18 SALLY DRESLIN: We do... so they have to have a certain number  
19 of negative tests on the water itself. I'll have to get you the  
20 exact... I'm forgetting what it is but I know that they have to do  
21 repeat testing of the tanks of the water. And then they do  
22 follow up testing in the event that there's any patients who are  
23 positive then they will follow for 30 to 60 days to make sure  
24 that there's no additional cases. I can pull it up for you.

1

2           JEFF KRAUT:       Any other questions? Thank you Ms. Dreslin.  
3 I'm now going to turn to Mr. Sheppard to give us an update on  
4 the activities of the Office of Primary Care and Health Systems  
5 Management.

6

7           DAN SHEPPARD: Good morning. I'd like to use my report time  
8 today to give you an update on the recommendations and  
9 discussion items that we covered in our retreat last September,  
10 so coming up on the one year anniversary of that. We thought  
11 this would be a good opportunity to give you status report and  
12 other information about the myriad of topics that we covered  
13 during that two day retreat.

14           You have a handout in front of you. It's a three page  
15 matrix that's titled "PHHPC Retreat Recommendations and  
16 Discussion Items." So I'll be using that to go through and it's  
17 kind of dense so keep it handy. And you can take it home with  
18 you.

19           So, first recommendation we... a lot of focus our discussion  
20 last September about nursing home quality and I think we've had  
21 two major areas that we've done work in there. The first is  
22 incorporating quality measures into our nursing home character  
23 and competence determinations. I think is what we've talked  
24 about. Right now, the folks in character and competence is on

1 recurrent deficiencies. We're working on how to actually imbue  
2 quality into that as well. Developing a set of quality metrics  
3 that we can objectively and uniformly apply is something that  
4 we're still working on. But what we've been doing in the  
5 interim for about at least one PHHPC cycle now is that for  
6 establishment applicants who have facilities with overall star  
7 ratings of one or two, we want them to come here prepared to  
8 talk about what they're doing in the facilities they operate to  
9 increase quality as well as what they're going to do in the  
10 facility that they're coming before PHHPC to become the operator  
11 of. The other major thrust that we had this year was to perform  
12 some legislation that was introduced in both the senate and the  
13 assembly health committees late in the session and session wound  
14 down before any action could happen on them, but I think we're  
15 optimistic that because they were introduced in committees that  
16 they'll be right for discussion next year, next session. And  
17 just to go over some of the major elements of that legislation,  
18 it would allow the department to require nursing homes that have  
19 had serious or habitual violations to have to bring on an  
20 independent quality monitor who would report directly to the  
21 Department. Also to assist us to understand financial, the true  
22 financial condition of a nursing home. The legislation included  
23 enhanced disclosure of interests in familial corporations and  
24 related party in audit speak, and related parties that are

1 providing services to that facility. The legislation also would  
2 increase the monetary penalties for violations that either are  
3 resulting in serious harm to residents or are repeat violations.  
4 And also again, just to address some of the issues that have  
5 happened in the past and just allow us to keep much closer tabs  
6 on these important public health assets, would require advanced  
7 notification of the intent of an operator to sell real property  
8 of facility, and then also to the extent it's sold, repay the  
9 undepreciated value of the capital assets that have been covered  
10 by Medicaid because Medicaid reimbursement includes capital  
11 reimbursement in the rate. Also, moving off of nursing home  
12 quality, another big area of discussion at the retreat was how  
13 to better align the CON process with health across all policies  
14 and what was recommended and what we've, are implementing is  
15 incorporating the prevention agenda and public health in  
16 hospital CON determinations, and that is implemented. As it says  
17 here, this PHHPC cycle you will start to see CON applications  
18 for hospital establishment construction projects will have  
19 information about the applicants' activities that advance  
20 prevention agenda goals and community public health needs.

21       Next, there was some discussion at the retreat as well as  
22 ongoing discussion leading up to the retreat about rationalizing  
23 the LHCSA establishment, the licensed home care service agency  
24 establishment process. In the budget that was enacted at the

1 end of March, current year, state fiscal year 2019 budget, that  
2 budget established a two-year moratorium on approvals. It  
3 authorized the Department to develop licensure regulations that  
4 incorporate public need and financial feasibility after the  
5 moratorium expires, currently as I think I've said to the  
6 council before, were limited to only character and competence in  
7 LHCSA reviews. This would allow us to incorporate public need  
8 and financial feasibility. And then to assist in not just  
9 evaluation of potential need, but also with respect to policy  
10 making in the area of home care services the legislation  
11 requires LHCSAs to report and register annually. I think as  
12 Becky Gray mentioned earlier they are currently required to  
13 report but compliance has not been as good as we hoped. So what  
14 the legislation does is allows us to fine providers who do not  
15 report data to us in a timely fashion and if they're non-  
16 compliant for a two-year period, we can pursue revocation. And  
17 then also has a registration provision, an annual registration  
18 provision so we can enables us to keep better tabs on LHCSAs  
19 that are actually operating.

20 Next, another recommendation, discussion item from the  
21 retreat was age-friendly New York. A term that we used, but how  
22 do we make New York more age friendly. And in the Governor's  
23 2018 State of the State from last January, there was a multipart  
24 proposal to support the needs of a modern ageing population.

1 Specifically it established a long term care planning council.  
2 It directed agencies to consider the impact of their policies  
3 and procurement on health aging, similar to health in all  
4 policies. This is a subset or drill down specific to aging. And  
5 then also set as a goal that 50 percent of health systems would  
6 be age friendly in the next three years. An example of that is a  
7 geriatric ED or portion of the emergency department that is  
8 focused on providing care to geriatric patients recognizing that  
9 in environments that are more tailored to the needs and  
10 challenges of a geriatric patient they tend to recover more  
11 quickly and become less ill. Just, Mark Kissinger the  
12 Commissioner's advisor for long term care issues is spearheading  
13 this, and Mark and I were talking yesterday and thought that it  
14 might be useful in some upcoming PHHPC meeting to talk more  
15 holistically about these, because I know the topics come up from  
16 time to time here.

17 Another sort of umbrella area that we talked a lot about  
18 was how do we modernize our statute policies and regulations to  
19 align better with the health system transformation that's  
20 happening all around us? And the vehicle and the process that we  
21 established to do this on an ongoing basis was the regulatory  
22 modernization initiative process. I've presented to the council  
23 before on this so I'll try to be brief and go into details if  
24 you have questions for me, but we conducted while I would call

1 the first round of this from September 2017 through December of  
2 2017 and I want to just cover with you, review with you some of  
3 the, not just the topics but also more importantly what we're  
4 doing with them. So, one focus of RMI or regulatory  
5 modernization was telehealth and as a result of the  
6 recommendations of that effort the budget recently enacted had  
7 statute that would basically eliminate one of the major barriers  
8 to the expansion of telehealth by allowing Medicaid  
9 reimbursement for the services regardless of where the patient  
10 was located as opposed to having to be located in a healthcare  
11 facility. And the August 2018 Medicaid update will include  
12 implementation guidelines for this. In addition on telehealth,  
13 Department of Health, Office of Mental Health, Office of  
14 Alcoholism, Substance Abuse services are developing joint  
15 guidance for consumers, providers, and insurers on telehealth.  
16 We estimate release of this guidance in the fall. This was in  
17 response to feedback that we've received of just that you had  
18 three agencies all involved in telehealth with different  
19 approaches and this is the beginning of our concerted efforts to  
20 align and streamline the guidance between those agencies.

21 Next, another big area of focus was integrated primary and  
22 behavioral health services. Again, also in the budget. To help  
23 implement this, the way the statute was structured it  
24 effectively established volume thresholds on if you were

1 offering for example, primary care in a behavioral health  
2 setting, behavioral license setting limited the amount of  
3 primary care that could be provided. And the legislation to give  
4 statute eliminated those volume thresholds, again, which just  
5 allows a much more flexible playing field for providers to  
6 innovate and for us to develop policies to move more and more  
7 toward integrated settings. We, the three agencies, Department  
8 of Health, Mental Health, and OASAS are developing new  
9 regulations to allow providers to more readily offer these  
10 integrated services and streamline licensure and approval  
11 processes, and again, standardize them across all the agencies.  
12 And finally with respect to primary and behavioral health  
13 services one of the areas that again we hear a lot of feedback  
14 was a challenge had to do on the reimbursement side and the  
15 Department of Health, both primary care health systems  
16 management as well as the office of health insurance programs,  
17 OMH and OASAS, we've convened an integrated care billing  
18 workgroup to address barriers the providers are facing regarding  
19 receiving payment for integrated care. There was an area called  
20 post-acute care management models that we explored through RMI.  
21 Just want to highlight two. There's a lot of ground covered.  
22 Just want to highlight two major areas. One was community  
23 paramedicine. Essentially using emergency medical EMTs,  
24 emergency medical technicians to perform certain duties in a

1 non-emergent setting under proper supervision. We advanced  
2 legislation to allow this. It was not enacted. We're currently  
3 exploring regulatory alternatives to doing this. And then there  
4 was an existing piece of statute called public health law 2805X  
5 that authorized pilot projects involved collaborations between  
6 hospitals, homecare agencies, and physicians. It was enacted  
7 about two years ago but haven't leveraged it, hadn't rolled it  
8 out, and so one of the suggestions was to use that as a vehicle  
9 for exploring some different models for post-acute care  
10 management. We issued guidance back in December asking for  
11 proposals and we've received two or three to date and are in the  
12 process of reviewing those. Another area was cardiac services.  
13 Both looking at catheterization PCI as well as cardiac surgery.  
14 As a result of the recommendations in the area of PCI we are in  
15 the process of developing regulatory amendments that increase  
16 the flexibility to authorize PCI services. Those will be  
17 brought to this council probably this fall, fourth quarter of  
18 the current calendar year. And I have plenty of opportunity to  
19 talk about them from a payer and provider and consumer  
20 standpoint. And we're still doing some more data analysis on  
21 cardiac surgery and we expect to be advancing amendments to the  
22 cardiac surgery portion of the regs early in 2019. Another area,  
23 off campus emergency departments. I think the general consensus  
24 there was that the system we have now works pretty well in terms

1 of our policies, specifically with regard to keeping them  
2 limited to affiliations with hospital systems. And then an area  
3 that we're moving to in the next round, not limited but  
4 certainly one of the areas that I want to bring forward to for  
5 our next round of RMI, our procedural diagnostic and treatment  
6 centers. These are our licensed D&TC settings where procedures  
7 more invasive procedures, surgical or otherwise are being  
8 performed and setting up an oversight framework for those  
9 settings balancing safety with the continued expansion of some  
10 of these services outside more traditional hospital or ASC  
11 environments. And then again, we're going to convene an RMI  
12 workgroup early in 2019. So moving past RMI, there were a  
13 couple of other items just to wrap up here that we had discussed  
14 at the retreat. One was eliminating financial feasibility  
15 reviews for provider applicants that already were evident, that  
16 demonstrated financial stability. This is a streamlining area.  
17 It's very, it's time consuming for us as well as the applicant  
18 on some of these projects to go through the financial  
19 feasibility review process. Here we would look to the rating  
20 agencies, Moody's, Standard and Poor's, and Fitch, and if the  
21 proposal that we're in the process of finalizing would have  
22 those providers, mostly hospitals with bond ratings of A or  
23 better, for three consecutive years, that that would constitute  
24 or satisfy the statutory review criteria for financial

1 feasibility. And finally two quick areas that both require  
2 legislation which we have not been successful on; one is  
3 eliminating CON for primary care construction projects, and the  
4 other is eliminating CON for facility construction projects that  
5 do not reflect changes in service. These are more narrower in  
6 the streamlining vein and I think as we prioritize our  
7 legislative requests, these will wait for a later opportunity.  
8 That is all. Happy to take questions.

9

10 JEFF KRAUT: So, just to provide a framework before we  
11 ask questions. So the importance of this was to recognize the  
12 effort that we put into the work that led up to the retreat of  
13 last summer was, it's not like one and gone. That we're  
14 constantly coming back and getting updated. So I think Dan  
15 provided us with a framework now that he built upon, if you  
16 remember, a previous report he gave that when there's  
17 substantive changes in these things, I've asked him to work that  
18 into the report to the council at every meeting so it comes back  
19 to those conversations. The second issue is that this document  
20 is obviously dynamic to the degree that we identify new issues.  
21 We don't have to wait another year or two to have a retreat. So,  
22 if there are other issues that we need to consider, and we need  
23 a process on how they get on to this paper so it just can't be,  
24 you came up with an idea and we're going to throw it on the

1 paper. But through the committees, the planning committee,  
2 public health, codes, whatever, fi the committees are making  
3 recommendations to place items in here and we vetted it with the  
4 department staff and there's a policy focus, we'd like to add  
5 items to this. Obviously the CON activity and trying to  
6 streamline CON, remove as many, as you notice, some are  
7 legislatively have a solution, but there may be process issues  
8 that as we review certain types of CON you could stop and say,  
9 why are we spending our time on this? And we might from a  
10 regulatory perspective or a process perspective, as the  
11 Department of Health if these could be dealt with at the staff  
12 level and not come up to us. That would save them time. It  
13 would use our time more effectively to have the kind of  
14 conversations Dr. Brown and Dr. Martin just had with us. So I  
15 think just to remember that we can add to this, take things off,  
16 and so then I'll open it up to questions if anybody has. Dr.  
17 Boufford.

18

19 JO BOUFFORD: Let me congratulate you on the progress  
20 that's been made. It's really terrific and the report is  
21 incredibly helpful. So I'm really glad. It organizes everything  
22 in a way that I know helps us follow what's going on. I have  
23 two or three comments, questions sort of in the spirit of the  
24 dynamic document I guess in pulling together some of it. One of

1 the things we did talk about in the retreat was beginning the  
2 alignment of the CON process with health and with the acute care  
3 hospital but also extending it to DTCs and specialty ambulatory  
4 care centers. So I'd just like to have that on the left hand  
5 column so that we don't lose the fact that we're moving along,  
6 and I know that I've been talking a lot with the public health  
7 folks. It seems like the first couple rounds have gone pretty  
8 well. Everybody's OK with it. I mean, should've been doing it  
9 anyway, but the reporting, shifting reporting from one place to  
10 another is not without its complications. So, but I don't want  
11 to lose that dimension of it.

12 The other thing that I recall from the retreat on the age  
13 friendly side was also looking at the long term care CON process  
14 relative to age friendly. We talked about that. I think mark was  
15 going to take a look at some feasibility piece about the eight  
16 domains of age friendly, it may be dealt with a little bit... it  
17 isn't really dealt with I don't think, by the health systems  
18 piece. It was sort of in the spirit of looking at health in all  
19 policies for the acute care facilities and the long term care  
20 facilities. How can they advance age friendly policies in the  
21 long term care space when they come in for CON and he was going  
22 to come back to us I think and this other thing happened and  
23 there's a lot more going on, but just to not lose that.

1           And the final one was having to do with the integration --  
2 well two more quick ones - integration of primary care and  
3 behavioral health services. This is, I know it's really  
4 complicated and I appreciate that you've gotten these action  
5 steps. I was missing a timeframe there. I'd love to see  
6 something that said, by X, because this was a big priority for a  
7 lot of health systems under DSRIP sort of domain three, they  
8 were going to try to do this and we've had a bunch of public  
9 health and planning committee meetings on it going back a couple  
10 of years, and this is really nicely organized, but do you have a  
11 sense of a timeframe? It's kind of getting out of the way of the  
12 provider community. I think in some ways the steps that you've  
13 identified.

14

15           DAN SHEPPARD: In some ways, you're right. What was  
16 challenging the timeframe is that it's happening in pieces. I  
17 mean, there are some areas particularly with respect to shared  
18 services that we're rolling out now on a case by case basis. I  
19 suspect by this fall on the billing on the, some of the billing  
20 workgroup guidance will be moving that forward. One of the more  
21 challenging, each of these things can lend sensitive time, lend  
22 themselves to a whole discussion, but one of the challenges with  
23 respect to integrating primary care particularly into the  
24 article 31 and 32 settings has to do with insuring that a person

1 doesn't get disconnected from their primary care physician and  
2 when you're blending that with network issues, gets a little  
3 complicated, but we're working through that. So I think we're  
4 making good progress. So I would make a soft commitment of  
5 before the end of this calendar year on that. One of the  
6 barriers that I really don't... hard time because we don't control  
7 it is co-location is very much a domain of CMS and we've been  
8 working hard trying to get their attention on this, and it's  
9 been hard to get their attention on this. But we have good  
10 relationships on the region and are continuing to get them to  
11 focus and help them get guidance as to how to move this forward.  
12 ... very sticky and this is very much the case on FQHCs which  
13 obviously are such an important part of the care network. So, I  
14 will try to come back to you with some firmer deadlines, but in  
15 some ways it's all happening now, and in some ways there are  
16 things that are little harder. But appreciate the comment.

17

18       JO BOUFFORD:     Just a couple quick things. On the  
19 procedural diagnostic and treatment centers, we talked, I think  
20 this came up a few meetings ago, there were some requests for  
21 this or somebody had come through, I just want to flag the  
22 concern about opioid distribution opportunities there. I think  
23 there has been some, and more in the public literature than in  
24 the scientific literature about setting up these kinds of

1 procedure centers that get certified to do surgical procedures  
2 where opioids are prescribed and we're off to the races. So I  
3 just want to flag that connected to that as you developed.

4

5 DAN SHEPPARD: And I can mention to you interestingly that  
6 we do from time to time some proposals, they're actually part of  
7 what's ...

8

9 JO BOUFFORD: Pain management and other...

10

11 DAN SHEPPARD: But there are providers that are actually  
12 interested in creating opioid free procedure centers and that  
13 brings with it some challenges in terms you've got to monitor  
14 them and all of that, that I think we'll start to I think can be  
15 discussed in the context as a workgroup. This area is  
16 incredibly geeky but I think deceptively important too for all  
17 those planning and clinical issues and it's going to be a very,  
18 looking forward to it, it's going to be a very interesting  
19 discussion in the next year.

20

21 JO BOUFFORD: I'm sorry, one last thing that John, my  
22 favorite, maybe just to get it back on the list or take it off  
23 the list forever is this oversight of urgi centers issue that we  
24 talked about a lot, sort of doc-in-the-box from the pharmacies

1 and the urgi centers and we had lots of folks in talking about  
2 the overall provider community wasn't necessarily negative about  
3 some of the things that were being promoted. I know it seemed to  
4 imply any foreseen legislative action which was not forthcoming,  
5 but it's really exploding even more and maybe it's too late but  
6 I just wanted to raise it again.

7

8 DAN SHEPPARD: Certainly, carry the list. I can not imply,  
9 I can tell you very explicitly that that would require statutory  
10 changes because largely the ones you were talking about relate  
11 to the private practice of medicine.

12

13 JO BOUFFORD: No, I understand that. But I'm still not shy  
14 about raising it again, because I think it's a really important...

15

16 DAN SHEPPARD: Happy to carry it on the list.

17

18 JO BOUFFORD: Just so it doesn't get lost. That'd be  
19 great. Thanks.

20

21 JEFF KRAUT: Mr. Robinson, Mr. Holt, Dr. Bennett, and  
22 then Mr. LaRue.

23

1           PETER ROBINSON:       First of all, Dan, thank you very much  
2 for all of the follow up to the work of the retreat, and I  
3 really do appreciate and I think all of us do the fact that  
4 there really are things going on with regard to this. So thank  
5 you very much. Actually, my comment was Dr. Boufford's last one  
6 which was around urgent care, so I will defer the rest of my  
7 observations to whoever is up next.

8  
9           JEFF KRAUT:       Mr. Holt is next. Dr. Bennett on deck.

10  
11          THOMAS HOLT:     Dan, following up on the comment about  
12 having the establishment applicants with a CMS rating of one or  
13 two coming and presenting, is there a way for the Department to  
14 have the actual owner or operator themselves be here? We have  
15 some operators who we've never seen before the council before.  
16 They're represented, they have multiple facilities. Just seems  
17 like there might be a different level of accountability for them  
18 to speak to the council directly about what their planning to do  
19 around quality.

20  
21          DAN SHEPPARD:    I think that's something we can certainly  
22 advise them. I mean, just from memory, I think sometimes you do  
23 see their representatives, and sometimes they are, the owner or  
24 operator is sitting... but I think it's certainly this council's...

1 what you just said I think will be heard by people who are  
2 watching this and I think that's a reasonable expectation.

3

4 JEFF KRAUT: Mr. Holt, and there's a very simple way to  
5 accomplish that. You can ask a question, and if it's not the  
6 owner or the operator you'll say, fine, I want to defer the  
7 application until I can speak to the owner or the operator. And  
8 that's your right. And I think just having said that I suspect  
9 as you say, will get some things. But if that's what the  
10 council wants, then that's what will happen. Dr. Bennett... I'm  
11 sorry, yes, Dr. Bennett, Mr. Larue, then Dr. Brown.

12

13 JOHN BENNETT: So, thank you for this follow up, and I  
14 remember talking about most of these issues. One issue I  
15 thought I raised and I'm not sure where it stands is the issue  
16 about evaluating CON applications with regard to the future  
17 implications on cost and quality to the communities in which  
18 they occur. As everyone knows, I think that's essential. I  
19 think that's a huge missing piece of the work we should be doing  
20 here. Because I think it speaks to the fundamental problem of  
21 healthcare in New York State and the nation. And that is the  
22 inability to improve the cost and quality relationship. And so,  
23 where do we stand on that?

24

1           DAN SHEPPARD: So first of all Dr. Bennett, you're  
2 absolutely correct that that's something I think moreso I think  
3 was mentioned at the retreat but you've mentioned it a couple  
4 times since. That was an unintentional omission from here and  
5 it'll certainly go on the next round. I would say that like any  
6 of these areas where we move from a policy discussion to  
7 implementation, you know, the implementation can be challenging.  
8 I think what we can do, and let me look down table to Tracy,  
9 because in some ways I think we may be getting into this in some  
10 of the upcoming discussions that we're going to have. The first  
11 order is let's have a policy discussion about what it is we want  
12 to do. How do we want to take something I think we can all agree  
13 is important which is the consumer and the payer perspective in  
14 CON determinations, and what should that be and then how do you  
15 operationalize that? What should actually be in a CON process?  
16 So I know, Tracy, I know you've given a lot of thought to this  
17 if you want to speak a little bit to that and what we have  
18 coming up.

19

20           TRACY RALEIGH: Sure. Thank you Dan. I don't know that we've  
21 made, we're still working out the details but we do plan on  
22 having an educational session for PHHPC members around the  
23 subject more particularly on governance models but I think it  
24 brings up some of your issues and we certainly do appreciate you

1 raising them. We've had many applications which are for co-  
2 establishment, and so I think you appropriately raised those  
3 questions in those context about what the benefit, the public  
4 benefit of those applications are with respect to cost and  
5 quality. So that may offer an opportunity to have a public  
6 discussion on that as well. We certainly do appreciate and will  
7 just take the time, PHHPC does have the right to ask questions  
8 of applications and you have been voicing that issue, and we  
9 appreciate that applicants are responding or being on notice to  
10 come prepared to respond to those questions. So, but we'll  
11 continue to take your input on that, and certainly as Dan said,  
12 keep that as an item on the list.

13

14 SCOTT LARUE: Yes, good morning. More of a comment.  
15 First, I want to thank the Department for the attention that  
16 you've paid to the nursing home quality issues that are on this  
17 list, and I think we've made a lot of progress in the last 12  
18 month, there's been an unprecedented number of ownership changes  
19 in the nursing home, and ensuring that the profile of these  
20 operators are consistent with the goals of what we need to  
21 deliver the services to the people we serve going forward, is  
22 really important. So I really look forward to bringing this to a  
23 conclusion as complicated as it is to get this to a set of

1 standards that everyone could agree on. I certainly appreciate  
2 the work that's been done over the past 12 months.

3

4       LAWRENCE BROWN:       I would also like to offer my thanks  
5 and applaud you and Department and you for doing such a great  
6 job. I have one question and it may be the fact that the way  
7 that it is written as opposed to what the intent. And the area  
8 of telehealth it says clearly to allow for primary care services  
9 to be provided where the patient is located. And phenomenal. I  
10 was wondering if there's a way to also include the provision of  
11 other services, because I find that sometimes some of the state  
12 agencies will say that the service has to be provided, and the  
13 state regulated facility which then undermines the issue of  
14 providing access to care. So, it would be useful, maybe it's a  
15 wording issue as much as anything else, but I think that... and  
16 again, this is a superb document. I must tell you that I'm  
17 going to take this and share this with my board of trustees so  
18 they'll know that I was involved in something important when I'm  
19 elected to office. So, but I was wondering if you could just  
20 briefly chat about that.

21

22       DAN SHEPPARD: I think it may be just a wording issue. The  
23 intent is certainly that all services can be provided in all  
24 settings. I don't... I think there might be a technical

1 explanation as to why the word primary care is there because we  
2 may not have the same level of limitations with the other  
3 services, but why don't we get back to looking at that and get  
4 back to you. What I can assure you of is the intent is all  
5 behavioral health and medical physical health services.

6

7 JEFF KRAUT: Any other questions? That's for I think a  
8 little later. I'm sorry?... is that the am-surg? We're going to  
9 discuss that when we get to the other projects. So yes, Mr.  
10 Lawrence.

11

12 HARVEY LAWRENCE: Thank you. I'd also like to comment  
13 you, Dan, for this summary, and I guess what triggered my  
14 question is Dr. Bennett's focus again on quality and cost and I  
15 think I recall at the retreat we were talking about the impact  
16 of consolidation and financial feasibility and the impact on  
17 price. And at some point, what does that portend for if you have  
18 a tremendous amount of consolidation happening, what does that  
19 mean in terms of the price and also the stability of the  
20 delivery system at some point. And so I don't know if that is  
21 something that you're also looking at. I know at the retreat we  
22 had a lot of discussions and it's a very difficult issue to  
23 frame and especially around a particular application, but it

1 does impact, I think, the delivery system to the extent that  
2 there's consolidation and price continues to increase.

3

4 DAN SHEPPARD: Now, again, I think it's an issue that we  
5 take very seriously. We've been very, I think, mindful of the  
6 comments that the council, Dr. Bennett and other council members  
7 have made about consolidation, impact on price and access. As  
8 Tracy alluded to, what our intent is to identify and bring  
9 before the council outside experts who can speak to these issues  
10 outside of the context of individual CON transactions in you  
11 know, through the committee structure here, and from that, put  
12 some data and put some data around the implied concerns, the  
13 real concerns about impact of consolidation on cost and other  
14 things, and then from there use that as a platform for  
15 developing policy recommendations and going through the same  
16 process we have with some of our other policies. So again,  
17 something that we're queueing up I guess what I can say. It's  
18 something we hear you, it's very much on our mind, and we think  
19 it's an important policy discussion to have and we will have it.

20

21 JEFF KRAUT: The only thing I would add in the  
22 discussion, Tracy mentioned about taking a look little broader,  
23 it's not a policy conversation that is exclusively focused on  
24 commercial rates. It has to include the holistic view of the

1 system on how we pay holistically for healthcare and the  
2 underpayments or the, on how Medicaid and Medicare pay, and how  
3 that requires these providers to essentially at the end of the  
4 day just deal with the cuts in Medicare, the cuts in Medicaid,  
5 and the fact that commercial is not rate settled, it is done  
6 through a negotiation and that there's a responsibility that  
7 transcends these payers for the collective responsibility of  
8 maintaining 24 hour access. So it just can't be one piece of  
9 the system. It must be a broad based view. That would be the  
10 conversation and that should essentially take the rest of the  
11 year for us to discuss. But it's an issue that's very complex  
12 and you can't reduce it necessarily to one particular  
13 application and how it's solves the world. Dr. Kalkut, and then  
14 I'd like to move on a little.

15

16 GARY KALKUT: So I will be the last to congratulate you on  
17 the document. It's thoughtful and just clearly well put  
18 together. Also comment specifically on the telehealth because  
19 there's real opportunity. We've talked about it here before, to  
20 both lower cost and make things better for patients. I think  
21 there's a number of things as somewhat, corollary of what Jeff  
22 just said, in Medicaid that could be used to improve cost and  
23 quality. Number of discussions recently about observation and  
24 user of observation to lower hospitalizations and make it

1 feasible for hospitals to do, that would be a big advance in  
2 changing the 10 or 15 fold difference between observation and  
3 admission and all of the administrative work that goes into  
4 denials and reclassification, patient status, all of that stuff.  
5 So Medicaid really can be a lever for cost and quality  
6 improvement.

7

8 JEFF KRAUT: And I will take the prerogative as the last  
9 word. And I'll go back to just the data and the integration of  
10 psych. In those discussions, please, please provide regulatory  
11 requirements to merge the psych, the mental health, behavioral  
12 health, the substance use databases with our clinical one. It is  
13 ridiculous that we can't integrate OMH data from psych into our  
14 clinical path line here. This is, you know, and many of us  
15 maintain separate records because of, I think, anachronistic  
16 regulatory standards with respect to the use of the data and  
17 concerns about it as we're trying to integrate the provision of  
18 this care. The data has to be integrated and Dr. Martin and I  
19 have, we probably agree or disagree on some aspects of it, but I  
20 think there's a lot of informed people and at a later date, I'd  
21 love to come back, just something somebody said, about the all-  
22 payer database and how are we pushing out access to that  
23 database and the integration with SPRCS, because we are hearing  
24 there's problems in the SPRCS release has been delayed again?

1 And the updates we're not in 2018 and they can't push out the  
2 balance of 2017. So we heard that, you know, this is a good  
3 venue to bring those issues here. So thank you very much for the  
4 report. Thank you for the update. We'll have a more thorough  
5 conversation at least once a year. But I think in every meeting  
6 to the degree again that there's a change in this matrix we'll  
7 ask Mr. Sheppard to mention it as part of his general report.  
8 And I'll turn to Ms. Mazeau to give us an update on the  
9 activities of the Office of Public Health.

10

11 ADRIENNE MAZEAU Good morning. I'm Adrienne Mazeau and  
12 I'm the deputy director for the Office of Public Health and I'm  
13 pleased to be here today to provide you with some important  
14 updates of some of the efforts that we have underway. As Sally  
15 mentioned, I'd like to provide an overview of the Department's  
16 work on the Governor's cancer research initiative. In addition,  
17 I'd like to talk about our efforts to reduce maternal mortality  
18 and maternal depression. And lastly I'll discuss the themes that  
19 we're seeing within the new CON review process that's just  
20 beginning with this meeting.

21 In October of last year, the Governor announced that he was  
22 directing the Department to undertake cancer research  
23 initiatives ... sorry about that, for areas of the state with  
24 higher than expected rates of cancer diagnosis. Those regions

1 targeted for the study are in Erie County which is in the  
2 Eastern Buffalo and Western Cheektowaga area, Staten Island,  
3 Warren County and the Southern Adirondacks, and the hamlets of  
4 Centereach, Farmingville, and Selden in Suffolk County on Long  
5 Island. As part of this initiative DOH staff are conducting a  
6 detailed review based on cancer data from the New York State  
7 cancer registry, and the Department's environmental facilities  
8 and cancer mapping application, which was recently updated with  
9 more updated information. The Department is also examining  
10 information on demographic, socioeconomic, behavioral, and  
11 occupational factors that might be contributing to the higher  
12 incidences of these specific cancers in these targeted areas. In  
13 addition, we're working with the Department of Environmental  
14 Conservation to identify potential sources of environmental  
15 contaminants that may be affecting the cancer rates. The  
16 Department anticipates using the results of this initiative to  
17 enhance our community cancer prevention and screening efforts  
18 and support access to appropriate high quality healthcare. A  
19 series of public outreach meetings were held in each of the  
20 study areas with stakeholder and community members in July. This  
21 anticipate report release by the end of the calendar year.

22 Now the second area I'd like to report on are the  
23 Department's efforts to reduce maternal depression and maternal  
24 mortality. In May, the Governor launched a new multiagency

1 initiative to combat maternal depression and to further address  
2 the stigma that is often a barrier to seeking treatment. This  
3 effort is part of the 2018 women's agenda and directs  
4 comprehensive action including mandated coverage for maternal  
5 depression screenings, and to ensure that women receive proper  
6 access to care and treatment. Together with the Office of Mental  
7 Health, the Department will launch a strategic awareness  
8 campaign to provide critical information about symptoms and  
9 treatment options. As part of our efforts to reduce maternal  
10 mortality, a taskforce on maternal mortality and disparate  
11 racial outcomes launched in June with its first meeting being  
12 held in New York City. The taskforce will provide expert policy  
13 advice on improving maternal outcomes addressing racial and  
14 economic disparities and reducing the frequency of maternal  
15 mortality and morbidity across the state. The taskforce is  
16 taking a closer look at improving outcomes for new mothers,  
17 especially those in low income areas with a focus on racial  
18 disparities. A series of seven listening sessions is planned for  
19 over the coming months where Commissioner Zucker will partner  
20 with community groups in high risk areas across the state to  
21 listen to stakeholders and explore the barriers that women face  
22 that make it difficult for them to receive routine prenatal  
23 care. The next taskforce meeting will take place this fall here  
24 in Albany and review the feedback since received from these

1 listening sessions. Lastly, I'd like to address what Dan had  
2 referenced is one of the recommendations from the fall retreat  
3 and it's the implementation of the public health considerations  
4 within the certificate of need process. The implementation of  
5 PHHPCs decision to incorporate public health considerations into  
6 the CON process was started for all proposals that were received  
7 after June 1. Actually today's meeting we have one proposal  
8 that's under review that has gone through our full review  
9 process. We have several others that are in the pipeline now and  
10 going through that review. Some of the themes that we're seeing  
11 within our review is that the public health priorities are very  
12 consistent with the community services plans in the hospitals.  
13 And that many hospitals really embracing the goals of the  
14 prevention agenda. We're also seeing that hospitals are working  
15 more with the local health department which is really one of  
16 those areas that we wanted to see that collaboration happen, as  
17 well as stakeholders within the local community. One area that  
18 we're seeing is that we are working with our state office for  
19 the Aging on the healthy aging initiative and working more with  
20 them to incorporate more of these goals within our plan.

21 One of the problems with going last is that you have to  
22 update your remarks as you go along when your colleagues have  
23 touched on a lot of the things that you mentioned. So that's  
24 all that I have for today, and thank you for allowing me to

1 present, and if you have any questions, I am happy to answer  
2 them.

3

4 JEFF KRAUT: Thank you very much. Any questions? Thank  
5 you very much. I'll now turn to Dr. Boufford is going to give us  
6 an update on the activities of the committee.

7

8 JO BOUFFORD: I do have slides. Well, as we're getting  
9 keyed up I just want to mention tying together the focus on  
10 family planning, because what we have seen in our work on  
11 maternal mortality is the number one risk factor is unplanned  
12 pregnancy. And so I think that's a really important connection  
13 there. And to say to the council will also be providing a sort  
14 of comprehensive look at the progress on maternal mortality at  
15 the October meeting. I think we've agreed to do that. So, let  
16 me give you, this will be interesting here. Let me give you an  
17 update.

18 This is really sort of a progress report as well as a  
19 preview of coming attractions because you will be getting the  
20 revised five year plan for the prevention agenda at the  
21 preliminary discussion in November with a final decision in  
22 December. So this is to keep you abreast of what's going on.  
23 We're ... you doing that? OK. Fine. This diagram reflects the  
24 sort of new approach to the prevention agenda. The prevention

1 agenda revision is now traveling with health across all policies  
2 which is the ball diagram there which identifies all the sectors  
3 that are being engaged now through the Governor's request for  
4 all agencies to look at the health impacts of their decision  
5 making. And integrating it with the goal to have New York State,  
6 and it has been declared the first age friendly state. There are  
7 things we have to do to implement it, but in terms of that  
8 commitment and we sort of borrowed that nice diagram from the  
9 AARP - the award is really tiny there but just to put age  
10 friendly there, and they have been an important partner in this  
11 process.

12 The work that's been going on most recently really reflects  
13 very close collaboration with the health department, department  
14 for the aging, department of state especially the economic  
15 development areas, and the Governor's office. This is really  
16 terrific workgroup that's been together for almost a year now,  
17 looking at how to implement this health across all policies, and  
18 age friendly, and I would say in an integrated way there have  
19 been a couple of meetings of all these agencies. We're hoping  
20 to have another one in the fall just to take stock of what's  
21 going on and I want to again thank the Commissioner and Paul  
22 Francis for being, providing leadership in this process. Many of  
23 you will remember that the Office of Mental Health and OASAS  
24 kind of joined the prevention agenda process in the last

1 revision because we added the goal of mental health and  
2 substance, or, drug policy to be attended to and so we've been  
3 working with them and now in response to this new partnership,  
4 we have very active engagement of the Department of Ag and  
5 Markets. I mentioned Department of State and Department of the  
6 Aging and others that are joining us which we'll talk about in a  
7 minute. Next.

8 This the timeline. It's a bit of a downslide. The point  
9 really is that in the last, in the February to April period  
10 we've been doing a lot of review of data that was the basis for  
11 the previous prevention agenda priority setting. A lot of  
12 consultation we had, actually two meetings of the ad-hoc  
13 committee. One during this period and one during the May period  
14 and many of the members of that committee which is as you recall  
15 is the public health committee as well as the upwards now I  
16 think of 30 plus state level organizations, non-profits,  
17 professional associations, advocacy groups that have joined us,  
18 they took forward meetings with their constituencies over 20  
19 different meetings. They put together and we did a survey that  
20 was posted online and got over 200 responses. So this compiling  
21 of initial data led, and then also the state agencies that have  
22 been involved in the process that Commissioner Zucker and Deputy  
23 Secretary Francis have been commissioned or solicited, their  
24 input was solicited and we had very good responses on what we

1 should do from NYSERDA which is the energy agency, Department of  
2 Environmental Conservation, and most recently the New York State  
3 Education which is joined with the OMH colleagues in working on  
4 that area we're very happy with. So all of that was pulled  
5 together in May to September now. The Ad-hoc committee did meet.  
6 We decided I'm going to go to this little bit more detail, stay  
7 with the goals we had before but focus areas have changed  
8 reflecting differences in the data that was identified. We are  
9 now during this period, we have priority specific committees  
10 that upwards of 150 are involved in. This was posted. They  
11 were invited to join on each of the priority areas and the  
12 agencies that have joined are noted there. So NYSERDA is  
13 energy, DEC is the environmental services and New York State  
14 Education I think was added yesterday because it's fairly recent  
15 addition which is great news.

16 So, that is that part of it. And I just wanted to identify  
17 just a couple of examples of how important the other agencies  
18 are in bringing and advancing this work. One is to talk about  
19 NYSERDA, the Healthy Homes initiative. These are things that are  
20 going on anyway but may not have been looked carefully enough in  
21 regards to potential health impact or positive impact on aging.  
22 They are now working on a framework that is allowing Medicaid  
23 managed care organizations to support residential healthy homes  
24 which means energy efficiency, weatherization plus asthma and

1 injury prevention and that will be included, is being considered  
2 to be included in the value-based payment rates. So, it's an  
3 example of agencies collaborating to really begin to cover some  
4 of the areas that are causing really high cost in the delivery  
5 system but also potential to prevent illness. A lot of activity  
6 in Brooklyn, I think where because Paul Francis is sort of  
7 leading that initiative with the commissioner. There's a lot of  
8 RFPs out on supportive housing there with the emphasis on  
9 projects that place emphasis on health and wellness oriented  
10 uses, and prioritizing housing and amenities for seniors. So  
11 again, coming together in the Brooklyn effort. The Complete  
12 Streets initiative which means when you're redoing your streets  
13 you try to look at the options for cars and bicycles and  
14 pedestrians to promote physical activity. There is a review  
15 going on now with local health departments in communities that  
16 have implemented Complete Streets or want to implement Complete  
17 Streets, and we'll be talking with the New York State Department  
18 of Transportation about how to build that and more into their  
19 program initiatives. So, it's just an example of enriching the  
20 activities possible by the prevention agenda by getting agencies  
21 outside of the Department, the Health Department, DOH, and OASAS  
22 involved.

23 So, let me just drill down for a minute. Next. On the  
24 summary of feedback, just to be aware, overall I think the

1 feedback was very positive. The decision as I said was to keep  
2 the previous goals with a little tweaking here and there. This  
3 was the conversation we had at the ad-hoc leadership group. I  
4 think there was a sense that some of the updating of focus areas  
5 on issues, number two, vaping and e-cigarettes, ACES which are  
6 the adverse childhood experiences that can lead to chronic  
7 disease going forward. Obviously the opioid crisis as we  
8 mentioned earlier and then the question of looking at food  
9 security as it relates to obesity and a number of other risk  
10 factors. They have now begin to be worked into this process  
11 that's going on now. Integrating actual interventions related to  
12 health and wellbeing of older adults in each priority area.  
13 This was a debate at the ad-hoc group. Should we have a sixth  
14 goal for aging for older persons, and we decided not to do that  
15 but to require that as the plans come in every intervention  
16 that's identified at a community level needs to address the  
17 needs of older persons as part of what they're doing, and that  
18 was a good compromise I think. Similarly the need to emphasize  
19 disparities and kind of connecting the dots here in some of the  
20 areas like HIV. We've talked about maternal mortality. There are  
21 a lot of initiatives going on, so part of what we're trying to  
22 do is sort of for example, at HIV we're going to be using the  
23 End the Epidemic work that's happening and linking it in to the  
24 prevention agenda not starting something separate. And then I

1 think a lot of what you will see, we've added the word  
2 'wellbeing' which was a really interesting conversation. We had  
3 presentations from OMH and OASAS on what does wellbeing mean?  
4 How do you measure it? What does it look like when it's  
5 happening on the ground? And that's been added to the goal  
6 there. So, try to sort of simplify the messages. So here we go  
7 with the just overview. We want to still work on the healthiest  
8 state, and you'll see the addition of For People of all Ages  
9 which recognizes the integration of health across all, and  
10 promotion of the needs of older persons to keep them active and  
11 engaged in the community as long as they wish to be. We hope to  
12 move, we've gone from 17 to 14 to 10 in America's Health  
13 Ranking. This is the healthiest state over the last six years  
14 and want to get into that 10 and stay, get higher within the 10  
15 in the next five years, and however, on America's Health  
16 Rankings which began ranking states on the health of people of  
17 older persons who are 18. So we have some ground to cover there  
18 as part of this effort. Next.

19 We debated a lot of cross cutting principles. This is for  
20 when you get into writing reports, this is your preambular  
21 language rather than having 11 goals or 12 goals is to say 'all'  
22 the goals really need to reflect a commitment to these  
23 principles. The social determinants of health, that diagram with  
24 the wheel really reflects looking at the impact of decisions

1 made in areas like transportation and housing and environment on  
2 individual health. So looking at health in all in aging  
3 together. Also an emphasis number four on inclusive community  
4 engagement, we've been tracking which stakeholders are meeting  
5 together at local level, when the local community coalitions  
6 meet to develop their priorities and others, special emphasis on  
7 this and on providing TA for the increasing the engagement and  
8 widening the engagement in the local decision making process.  
9 And I think a real emphasis on trying to... there are many many  
10 initiatives going on in communities to promote health, but many  
11 of them are not evidenced-based. And so we're trying to, through  
12 the Department, looking at the research of standards at the  
13 state level, at federal level, and others is to make those  
14 available to communities so they can begin to move in the  
15 evidence-based direction and measure the outcomes.

16       These are the priorities. They're stated pretty similarly.  
17 The change is number four, as you see, promote wellbeing and  
18 prevent mental and substance use disorders that adds that  
19 dimension. And rather than have a litany of infectious diseases,  
20 after a lot of debate I think all of the infectious disease  
21 people came together and decided to simplify it and say "prevent  
22 communicable diseases" and if you are interested in that area  
23 they will be stipulating which ones we're preventing, but it's a  
24 little easier to handle. And let's see... so largely HIV, STDs,

1 STIs, Hepatitis C, vaccine preventable diseases, antimicrobial  
2 resistance and healthcare associated infections.

3 The process that is going on now, each of is being led, the  
4 summer process, it was up on the screen earlier, is being led by  
5 subject matter experts in the Department of Health, Office of  
6 Mental Health and OASAS and using the same process we used last  
7 time, it's just that they're chairing them. We're inviting any  
8 members of the ad-hoc committee, we're invited to nominate  
9 people to join the different goal areas and it is open to  
10 consultation. The goal is for each of these focus areas, there  
11 would be measurable objectives including addressing disparities,  
12 evidence-based interventions, and then for each evidence-based  
13 intervention, addressing the needs of older persons as well as...  
14 you see the principle is really integrating all of these things  
15 together. And this is what you will see, see this as it comes  
16 through when we begin to report to you in November. And the ad-  
17 hoc committee is meeting the end of September for the results of  
18 this deliberative process that is going on. So the next slide  
19 is;

20 So as I mentioned you'll get your final draft for review  
21 and comment in November and then we'll come back for your formal  
22 vote in December, and the next cycle where this is transmitted  
23 to guide local action begins in January. And I just want to  
24 focus on a couple of, to give you one or two examples, I'm not

1 going to go into detail, but the next, maybe skip to, this one.  
2 This is the kind of thing that you're going to... the guidance  
3 that's coming out for each of the five. I just wanted to  
4 highlight the changes here in the conversation. For example, in  
5 the prevention of chronic disease, the issue we had last time  
6 around, it was healthy eating/active living, and the decision was  
7 we needed to break it out here so that people could really look  
8 at interventions that targeted issues of availability of fresh  
9 fruits and vegetables and do people know how to cook them, how  
10 to prepare them, and then this issue of food insecurity which  
11 was not called out last time, and the feeling that it really  
12 needed to be called out. Some really interesting work in  
13 Schenectady where I think they showed high association between  
14 populations in town that where the most foods insecure were also  
15 the most obese because they rely on cheaper junk foods. And  
16 then similarly breaking out physical activity so that you could  
17 have specific interventions that are located in different  
18 institutional bases and can be sponsored by those. This is an  
19 example of trying to sort of fine tune it. And then one more,  
20 just to show, just the next one. This is healthy and safe  
21 environment. This was pretty anemic last time around, because we  
22 were just beginning to kind of figure out what work we could do,  
23 but I think the good news just seeing how it's really expanded  
24 dealing with climate and environment and looking at design and

1 promoting healthy homes and also dealing with hazardous  
2 exposures. And I don't know that I'm going to remind our  
3 colleagues, the cancer study areas would be really important  
4 here. And that had not been discussed. But it's another example  
5 of how that can happen. And then obviously linking to the  
6 concerns of water quality. And now because we have the ag and  
7 markets folks with us we can look at food and consumer products,  
8 which we would not have been able to do before. So I just  
9 wanted you to kind of get a feeling for how this is moving. So  
10 I'll stop there. Thank you. Take any questions.

11

12 JEFF KRAUT: Questions for Dr. Boufford? I think, look,  
13 if you look back to where we started and where we came and the  
14 degree of specificity from the general statements, it's really  
15 very impressive because the statements are more actionable than  
16 they ever probably were. Which then leads us to data to measure  
17 the actions. But I'll save that for another day.

18 Thank you very much. Thank you Dr. Boufford. Dr.  
19 Gutierrez, if you'd give us the report on Codes, Regulations,  
20 and Legislation.

21

22 ANGEL GUTIERREZ: Good afternoon. At today's meeting of  
23 the committee on Codes, Regulations, and Legislation, the  
24 committee reviewed two proposals; one for adoption, and one for

1 information. For adoption we had advanced home health aides.  
2 This proposal will revise several parts of title 10 regarding  
3 advanced home health aide authorization to perform advanced  
4 tasks with appropriate training and under supervision by  
5 registered nurses employed in home care services agencies,  
6 enhanced assisted living residences and hospice programs. The  
7 committee voted to recommend adoption to the full council, and I  
8 so move. Lisa Ullman from the Department is here to answer any  
9 questions from council members.

10

11 JEFF KRAUT: I have a motion. I have a second, Dr.  
12 Berliner. Any comments or questions? We heard, it's pretty  
13 fresh in our minds. All those in favor, aye.

14

15 [Aye]

16 Opposed? Abstentions? The motion carries.

17

18 ANGEL GUTIERREZ: For information is an update to  
19 patients' bill of rights. This proposal will amend sections  
20 405.7 and 751.9 of title 10 to update information reflected in  
21 the patients' bill of rights. Since the proposal was presented  
22 for information, there was no vote, and again, Ms. Ullman is  
23 here to answer questions by council members.

24

1           JEFF KRAUT:       Thank you. If anybody has any question on  
2 that regulation? Hearing none, thank you Dr. Gutierrez. I'll now  
3 turn to Dr. Kalkut to provide the report of the Committee on  
4 Establishment and Project Review.

5

6           GARY KALKUT:     Thank you. I'd like to start the  
7 presentation with a discussion of the ambulatory surgery center  
8 limited life report that was distributed prior to the meeting.  
9 This is a report that was requested by the Establishment and  
10 Project Review Committee and I think we're all appreciative of  
11 going through that today. Charlie, do you have any comments on  
12 that?

13

14          CHARLIE ABEL:    Just a few and then we'll take questions.  
15 This is our semiannual report we tried to, we have been  
16 presenting this to the council each February and August. So  
17 this represents reporting and monitoring to date. You'll note  
18 that we have three sections of the report. The first section are  
19 all of the ASCs, ambulatory surgery centers, that are under  
20 initial limited life authorization. The next section contains  
21 three ASCs that have received a limited life extension primarily  
22 because they did not live up to their projections with respect  
23 to service to the uninsured and the Medicaid population in its  
24 initial limited life, but showed genuine initiative toward that

1 effort. And so an extension of that limited life was proposed  
2 and approved by PHHPC. And then the final section, one which  
3 relatively recently PHHPC has requested is those limited life  
4 ambulatory surgery centers that have graduated essentially to  
5 indefinite life. What's been happening and we get that  
6 information essentially from cost reports and annual reports,  
7 although for most facilities annual reporting terminates once  
8 that limited life period terminates as well. So, you'll note  
9 that for on the first report where we have the facilities that  
10 are under it's limited life, and you should know or I'll remind  
11 you that every time we do a CON approval for limited life, it  
12 has a condition that requires the submission of an annual report  
13 which is overseen and prepared by an independent third party.  
14 That annual report should, is to be submitted 60 days after each  
15 anniversary of the commencement of operations beginning on the  
16 second year of operation. You'll note that some of these ASCs  
17 that have been indicated on here, some have non reported for the  
18 most recent year. That would be 2017. Staff routinely reminds  
19 ASCs at the beginning of every year of their obligation to  
20 report and follows up when any annual report is late. Once an  
21 annual report is submitted within 60 days, the staff contacts  
22 the ambulatory surgery center with any concerns that we see  
23 relative to under performance of services to the uninsured and  
24 the Medicaid population. And we talk with them reminding them of

1 their obligation and you know, what has been their outreach to  
2 these populations. What have been their efforts? What they may  
3 view as their impediments. And we engage in a discussion on  
4 potential opportunities for improving strategies for improving  
5 care to those populations. And we're well into the second year  
6 of those active ambulatory surgery center contacts on a regular  
7 basis. If those who may be interested, you'll see that the  
8 facilities that began operations in 2013, two of those  
9 ambulatory surgery centers are actually on the agenda today for  
10 indefinite life with our recommendation for approval. All of the  
11 others with the exception of one have submitted applications and  
12 they're under review by the Department staff and we have been in  
13 contact with that final facility which hasn't yet seen its  
14 operating authorization expire, but is due to expire shortly and  
15 we're reminding them that an application must be submitted.

16 So, it's an orientation of the projects that are on here.  
17 The ambulatory surgery centers that we monitor and basically how  
18 we do the monitoring. I'm happy to take questions.

19

20 GARY KALKUT: Thank you. Any questions? Dr. Berliner,  
21 then Dr. Gutierrez.

22

23 HOWARD BERLINER: Charlie, the ambulatory surgery centers  
24 are required to submit data to SPRCS as well, right?

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CHARLIE ABEL: That's correct.

HOWARD BERLINER: Do we check on that?

CHARLIE ABEL: Yes we do. And if there are any discrepancies we engage the facility to resolve those discrepancies. Why are they discrepant.

HOWARD BERLINER: Thank you.

ANGEL GUTIERREZ: So Charlie, for instance, let me see if I understand this correctly; these are the numbers they are reporting to us. And we have, I am assuming, that we have a way of corroborating the validity of the data they report to us.

CHARLIE ABEL: Two things to consider is the annual report that they are to submit must be submitted, prepared and submitted through a independent third party. So that's one method that we use to ensure the integrity of the data. Cost reports are submitted and they are, must be audited by an accounting firm. That is another means for verification.

1           ANGEL GUTIERREZ:       Second part is when I look at those  
2 that have completed the four years of reports, there are some  
3 that one could anticipate this group is not complying. It's not  
4 meeting the standards. How proactive is the Department in  
5 telling them you're not meeting the expectation?

6

7           CHARLIE ABEL: I can tell you from a historical  
8 perspective, there have been some facilities where we have  
9 reached out and discussed with them their underperformance. And  
10 the unfortunate reality is for some of these ambulatory surgery  
11 centers, we get the impression that it is only upon our contact  
12 that they are actually doing a genuine effort to reach out to  
13 these underserved populations. That being said, as I mentioned,  
14 we are well into the second year of that contact. So we do not  
15 expect that we're going to see poor performance from any  
16 ambulatory surgery center who has gone through this monitoring  
17 and discussion with the Department, and who has put forward a  
18 genuine effort in the latter years of their limited life. We  
19 would expect that they're going to achieve some level of  
20 success. And to the extent that they have not, we are going to  
21 hold them accountable in terms of why is that not the case? And  
22 ultimately this body will hold them accountable, because most of  
23 these facilities that are coming now on, I think all of them  
24 that have began operation in 2013, all of them have to come

1 before this body for reauthorization of its limited life. You  
2 may remember several years ago, we changed our limited life  
3 approval process from a limitation on its establishment to a  
4 limitation on its operating certificate authorization. That  
5 enables us to more streamline, in a more streamlined manner  
6 approve for indefinite life some of these ambulatory surgery  
7 centers that have demonstrated compliance with the principles  
8 that ad-hoc ambulatory surgery center, charity care, Medicaid,  
9 committee, any facility that would not, that cannot demonstrate  
10 to us a substantial and sustained good faith effort to serve  
11 these populations, even in that establishment approval, I'm  
12 sorry, in that administrative approval process, we would bring  
13 to this council for your evaluation.

14

15 ANGELO GUTIERREZ: So that said, thank you. That said,  
16 then this is our tool in a way, because I see that 121346, sixth  
17 from the top, has met none of the goals set forth as approved  
18 targets way back when we put that on, and is coming for review  
19 on the next time we get together.

20

21 JEFF KRAUT: Well, they have to apply, but that's why  
22 they're saying they contact them and they have that  
23 conversation. I'm sure they're...

24

1 ANGEL GUTIERREZ: You've had the conversation.

2

3 CHARLIE ABEL: Yes.

4

5 ANGEL GUTIERREZ: Way down at the bottom, 121104 which is  
6 the sixth from the bottom, they are dramatically below ...

7

8 JEFF KRAUT: Yeah, but they've only just started.

9

10 ANGEL GUTIERREZ: Right. But I use that as an example.  
11 Are they aware that we know that they're dramatically below?

12

13 CHARLIE ABEL: Within two months of the submission of their  
14 annual report, we are engaging every one of these ambulatory  
15 surgery center operators with any concerns that we have relative  
16 to deficient ... what we believe is a deficient number of services  
17 to those targeted populations.

18

19 ANGEL GUTIERREZ: And the last concern is I'm wondering  
20 whether continuing to pursue charity care matters? The only one  
21 that out performed what we set as a target is the Island  
22 Ambulatory Surgery. We anticipated or expected 2 percent and  
23 they are at 6.9 percent. I don't know the validity of the number  
24 but nevertheless I don't see anybody matching that.

1

2 CHARLIE ABEL: Well, you're correct in characterizing this  
3 as a tool. And since we began this process, you know, we've had  
4 a number of initiatives under the affordable care act, etc., to  
5 be able to get more individuals insured. So, that's one of the  
6 reasons, I think, and it's certainly a reason that has been  
7 cited by some of these ambulatory surgery centers when they say  
8 that they have not been able to realize at least 2 percent  
9 charity care.

10

11 JEFF KRAUT: Well, remember, we brought it into the room  
12 and we take each one independently and we've made I think our  
13 thinking has evolved over charity care whereas it's been pretty  
14 clear about Medicaid access. Dr. Bennett.

15

16 JOHN BENNETT: So, you've kind of already almost answered  
17 my question and my point was going to be that if you look at  
18 this particularly the top group, a lot has happened in the  
19 growth of Medicaid in New York State and the decrease in the  
20 uninsured population. So my question was going to be do you  
21 take into consideration the changes in the baseline opportunity  
22 they have, and it sounds like the answer to that is yes. I might  
23 also add on the flipside, that the Medicaid program has grown  
24 considerably and so it gets easier to meet that bar. And then

1 the third point I would make is that I imagine because these are  
2 so variable that you're doing it by the area that they're in  
3 because we've seen that the uninsured rate, while it has dropped  
4 overall, there is a considerable variability. In upstate New  
5 York we look at it on a County by County basis and it is quite  
6 variable, although it's very low upstate.

7

8 JEFF KRAUT: Just to close on the conversation, this is  
9 probably a good example of where the council through its  
10 processes by focusing in on this issue and adapting the process  
11 to align with a policy goal, so for those of you who weren't  
12 here, when we decided that we were concerned about Medicaid  
13 access and it was a little bit rocky at the beginning and we did  
14 these limited lives, we started marrying up or encouraging the  
15 providers to deal with the FQHCs and the Medicaid provider  
16 networks, that really, cause everybody knows don't come back in  
17 this room on a limited life if you haven't done certain things  
18 and you haven't hit these numbers. And they've contributed. So  
19 it's been significant. Yes, Mr. Lawrence and then we'll go back  
20 to the reports.

21

22 HARVEY LAWRENCE: Thank you Charlie. I know that the  
23 uninsured number of people in the state have probably dropped  
24 and a lot have been moved into Medicaid managed care or

1 Medicaid, but I find it hard to believe that there are not  
2 people out there in need of charity care. And I just find that I  
3 don't think we're at that point in the state, and it seems as  
4 though this is the best efforts for the ambulatory care surgery  
5 centers, and I'm just wondering is there something else that we  
6 should be doing to make them more compliant with regard to  
7 offering and actually finding those New Yorkers who need charity  
8 care in this setting. Because this is, these results are non-  
9 compliant, vast majority. Just doesn't seem to make sense in  
10 this state. And I know in communities around the city and New  
11 York City it doesn't add up. So, if it's a best efforts endeavor  
12 then there's got to be another either some sort of, I don't know  
13 if it's a carrot and stick approach and we're doing more of the  
14 carrot and less of the stick, but I understand it's a voluntary  
15 effort. But what else can be done. Any suggestions?

16

17 CHARLIE ABEL: I'm happy to take any suggestions, because  
18 as we implement, I mean, with this strategy with the ambulatory  
19 surgery centers we basically tell them look, they need to  
20 establish good contacts where the uninsured are getting services  
21 or where they are living. One clear strategy is good  
22 communication and referral systems with FQHCs.

23

1           JEFF KRAUT:       The fact of the matter is I think that's an  
2 important question that we ask when we bring the applicant in on  
3 how to do that and as you said, there are pockets here where  
4 these are bigger problems than not and that's where we want to  
5 kind of have that data about the level of the uninsured and  
6 recognize the uninsured also find their way into networks of  
7 care that a lot of these centers are really focused on the  
8 private practice of medicine that is conducting ambulatory  
9 surgery. So you'll probably see higher percentages of the  
10 uninsured also cared for in the hospital based am-surg centers  
11 that provide those access points. And we don't bring in that  
12 data when we get into it. But what we want to do is shift and  
13 share that responsibility. So I think when an applicant comes  
14 into that room, you should always ask those questions. Yes.

15

16           HARVEY LAWRENCE:   Is this something that we can create a  
17 hotline and have some advertisement at the state level?

18

19           JEFF KRAUT:       So without going through it we went through,  
20 there has been repeated presentations since we started it which  
21 is going back six years? Where we have a process with the FQHCs,  
22 the New York Association for Ambulatory Care, the Community  
23 Health things where they have those organizations have done

1 these in their statewide meetings and in the industry specific  
2 meetings that that has been encouraged.

3

4 HARVEY LAWRENCE: right. But I'm just saying maybe a  
5 little more advertisement, maybe a hotline, something that makes  
6 it known throughout the state.

7

8 JEFF KRAUT: Oh yeah. But some of the providers actually  
9 do that locally. But you know, ...

10

11 HARVEY LAWRENCE: ... arguing that wouldn't help. We need  
12 more exposure.

13

14 JEFF KRAUT: You can only limit... the issue is what can  
15 the Department of Health do? They have hotlines for everything.  
16 They have... where we see there's a need and if there's an issue  
17 that comes up with the providers, they typically intervene to  
18 connect the providers. But yes, if you talk to some of the  
19 providers there are hotlines, there are things that we've asked  
20 the New York Association for Ambulatory Surgery Centers to do,  
21 and I think if we wanted we can bring those people in here. I  
22 just don't think right now any one of us is aware of everything.  
23 That's all I'm suggesting. Dr. Berliner. Then I'd like to start  
24 the report.

1

2           HOWARD BERLINER:       Charlie I'm sorry I've forgotten this.  
3 What do we do about bad debt?

4

5           CHARLIE ABEL:   So that is often an area where we engage  
6 with the ambulatory surgery center because there are cases that  
7 are characterized as bad debt that could be characterized as  
8 charity care, and it's very specific in terms of the process  
9 that the individual ambulatory surgery center goes through with  
10 it's engagement with patients. do they expect to be paid when,  
11 before the service is rendered or not. That's the defining  
12 factor.

13

14           JEFF KRAUT:     I'd like to start because I'm afraid I'm  
15 going to lose a quorum. And out of fairness to the applicants  
16 that have been here today I don't mean to cut off the  
17 conversation. We'll come back to it at another time. But we  
18 need to get to the applications. Dr. Kalkut if you'd please  
19 begin.

20

21           GARY KALKUT:   Thank you. I'll batch applications by  
22 category where possible. First is 181260 C, Hudson Valley  
23 Hospice in Dutchess County. This is to purchase the building in  
24 which the administrative offices currently reside and perform

1 renovations to expand the building. Both the Department and the  
2 Committee recommend approval with conditions and contingencies  
3 and I so move.

4

5 JEFF KRAUT: I have a motion. May I have a second? Dr.  
6 Berliner. Any comments from the Department of Health? Any  
7 questions from the council? Hearing none, all those in favor  
8 aye?

9

10 [Aye]

11 Opposed? Abstention? The motion carries.

12

13 GARY KALKUT: 181155C, Oxford Nursing Home in Kings  
14 County. This is to construct a 200 bed replacement facility to  
15 be located at 2832 Linden Blvd., in Brooklyn and decertify 35  
16 skilled nursing facility beds, residential healthcare facility  
17 beds and amend CON 031182. Both the Department and the committee  
18 approve the application with conditions and contingencies, and I  
19 so move.

20

21 JEFF KRAUT: I have a motion, I have a second Dr.  
22 Berliner. Mr. Abel.

23

1 CHARLIE ABEL: Thank you. So I will note that we  
2 distributed three letters to PHHPC members to expressing  
3 opposition to the project where the nursing home is being  
4 constructed. Those were from two nursing homes that are in the  
5 area located within blocks of the proposed location, and also a  
6 letter of concern about the nearby, proposed co-location of --  
7 co-location is not a good word, but the proposed approximate  
8 location of this proposed nursing home to the existing  
9 facilities, that it was from the continuing care leadership  
10 coalition. So we have that material was submitted to the  
11 Department since the Establishment and Project Review committee.  
12 It was distributed to members. The Department has viewed that  
13 material and stands by it's recommendations for approval.

14

15 JEFF KRAUT: And just no one appeared in opposition to  
16 this application at the public part of the hearing. Is that  
17 correct?

18

19 CHARLIE ABEL: That's correct.

20

21 JEFF KRAUT: Any comments from the council members? Any  
22 questions? Mr. La Rue.

23

1           SCOTT LARUE:    One quick question.  As part of this  
2 applicant probably really missed it's opportunity by not coming  
3 to the original committee meeting so that you can ask questions  
4 but in terms of the Department, when you're looking at a CON  
5 application is it a consideration where this facility or any  
6 facility would be located and the impact it could be having on  
7 the others that are located adjacent... I mean certainly we  
8 applaud this applicant for building a new nursing home.  There  
9 aren't that many applications that come forward that are  
10 constructing a brand new nursing home today.  But I was just want  
11 to understand what consideration if any is given to the location  
12 of it and it's impact on the others.

13

14           CHARLIE ABEL:  It's absolutely considered, as well as, by  
15 the way, the location from which that nursing home, where that  
16 nursing home is currently operated is that is the relocation  
17 setting up a void to access, a problem with access in that area.  
18 As you probably know, this site being in Brooklyn, from a  
19 regulatory perspective, all of New York City is considered a  
20 planning area, so there's no regulatory prohibition to siting a  
21 nursing home near other nursing homes, and when you take a look  
22 at urban areas often you find that kind of situation.  But in  
23 this area the two nursing homes that we reviewed that also  
24 submitted those opposition letters, they are very well utilized,

1 utilization is very high at both of those facilities, and at  
2 least they have been profitable. So we don't see, we think that  
3 there is sufficient demand especially with respect to a nursing  
4 home where its catchment area is many more than just a few  
5 blocks away. We don't think that there's going to be a  
6 significant negative impact to those other nursing homes in the  
7 area.

8

9 JEFF KRAUT: Any other questions? Hearing none I'll call  
10 for a vote, all those in favor aye?

11

12 [Aye]

13 Opposed? Abstention? The motion carries.

14

15 GARY KALKUT: 181206C, Omni Surgical Center in Oneida  
16 County. This is to certify ambulatory surgery multispecialty  
17 services. The center is currently certified as a single  
18 specialty specializing in pain management services. The  
19 Department recommends approval with no change in the operating  
20 certificate expiration date and with conditions is recommended.  
21 The Establishment and Project Review Committee made no  
22 recommendation with one member abstaining. And I so move.

23

1           JEFF KRAUT:       So this application comes to us with  
2 recommendation of the Department with approval. No  
3 recommendation from Establishment. I have a motion. Second Dr.  
4 Berliner. Mr. Abel.

5

6           CHARLIE ABEL:    Just to call your attention to material that  
7 was distributed and received since Establishment and Project  
8 Review. Taking in opposition to the project and submitted by  
9 Mohawk Valley Health System and Mr. Cicero. And other associated  
10 facilities.

11

12          JEFF KRAUT:       So for those of you who were not present  
13 during the project review committee hopefully you've had an  
14 opportunity to review those letters and if you have any  
15 questions you can ask of the Department or any of the council  
16 members that were present at the meeting. Dr. Boufford.

17

18          JO BOUFFORD:      Not specifically that but I wonder how it  
19 relates to the surgery center on your list here that has 0, 0,  
20 0, the number says 13102 not 18026, but it's got the same name  
21 and location.

22

23          CHARLIE ABEL:    I believe that is the same facility. This  
24 facility is under its limited life

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JO BOUFFORD: And is there any conversation about... this was one of the ones that stimulated my comment earlier on the question but just looking, the numbers...

JEFF KRAUT: They've not yet according to the data you've resented, they've not been in operation long enough or they've not yet hit the numbers.

CHARLIE ABEL: Both, I would argue.

JO BOUFFORD: I says zero.

CHARLIE ABEL: They've had two years of operation. They have reported that in terms of our review of this application that their Medicaid utilization has been at 12.4 percent. Their charity care utilization clearly needs some improvement, they make the argument that by moving to multispecialty services certification that they will have an opportunity to improve on the charity care numbers.

JEFF KRAUT: Any other questions? Yes, Dr. Bennett.

1 JOHN BENNETT: I heard you mention some letters of  
2 opposition. Did you mention the letters of support?

3  
4 CHARLIE ABEL: The applicant did submit a number of letters  
5 of support, and I think I mentioned that at Establishment and  
6 Project Review, but they are also here for any questions - the  
7 applicant is.

8  
9 JEFF KRAUT: Any other? Yes, Mr. Lawrence.

10  
11 HARVEY LAWRENCE: Charlie, did I understand you to say  
12 that for Medicaid that's at 12 percent? Because that's not  
13 reflected here?

14  
15 CHARLIE ABEL: This is through their latest annual report  
16 so their more recent information that was provided to us in the  
17 context of our review of the application is before you now has  
18 updated information. Now, I have to say, it is self-reported.  
19 It is not gone through the audit process that annual reports go  
20 through. So it is, I give that for you for your information.

21  
22 JEFF KRAUT: No other questions? Then I'll call for a  
23 vote. Just to be clear, if you're voting yes, you're voting to  
24 approve this becoming a multispecialty center and it's the

1 recommendation of the Department of Health. A yes vote. If  
2 you're voting no, you're not voting to permit it to become a  
3 multispecialty center. OK. All... maybe we should do a roll call  
4 because we had that issue at project review and that's probably  
5 will be clearer.

6

7 Ms. Baumgartner

8 Dr. Bennett

9 Yes

10 Dr. Berliner

11 No.

12 Dr. Boufford

13 Abstain

14 Dr. Brown

15 No

16 Dr. Gutierrez

17 No

18 Mr. Holt

19 No

20 Dr. Kalkut

21 No

22 Mr. LaRue

23 No

24 Mr. Lawrence

1 No

2 Mr. Robinson

3 Yes

4 Dr. Ruge

5 Yes

6 Dr. Strange

7 Yes

8 Mr. Thomas

9 No

10 Dr. Watkins

11 No

12 Dr. yang

13 No

14 Does not pass 5-10. 5 yeses 10 nos.

15

16 JEFF KRAUT: so we need... and you have one abstention. We  
17 need 13 affirmative votes. So we're three votes short. I'll  
18 entertain an alternative motion. Which of course will be the  
19 inverse of the voting if everybody stays consistent. This is one  
20 of those things we're going to put them in limbo if we don't  
21 act. So, what I would consider to understand, those of you who  
22 voted yes or those of you who voted no, it's depending on how we  
23 do it. If I have an alternative motion to disapprove the  
24 application... well, I just want to explain. If I can get an

1 alternative motion to disapprove it, and we have 13 people  
2 disapprove it, it would permit the applicant to afford  
3 themselves due process to take this to another level for  
4 reconsideration of the votes of the council. If we fail to get  
5 13 votes, they cannot proceed and avail themselves of that due  
6 process.

7

8 HARVEY LAWRENCE: What's the intent and the purpose of  
9 having a second vote?

10

11 JEFF KRAUT: Right now the application is in limbo. The  
12 applicant can only appeal a decision of the public health  
13 council if we have affirmatively voted for or against. Am I  
14 correct? So we have not voted for nor have we voted against  
15 because we needed 13 votes. So this what I'm suggesting is if  
16 you vote, if we have 13 no votes or vote against the  
17 application, the applicant can then proceed for, to avail  
18 themselves of the appeals process, and I would ask the  
19 department if they wanted to embellish what I've said please do  
20 so. Although I think I correctly stated it. Conference. I'm  
21 fine letting it stay, it's just not going to benefit... and this  
22 is a historic thing, Mr. Lawrence. We found that we should  
23 determine it one way or the other, and sometimes when we can't  
24 get consensus on an approval we allow a disapproval so they can

1 appeal the vote recognizing that there was... the record will show  
2 there wasn't a consensus. We're doing this as an administrative  
3 action.

4  
5 JOHN RUGGE: Jeff, could you just indicate who they're  
6 appealing to?

7  
8 JEFF KRAUT: I'd rather have a lawyer do it, even though,  
9 I think I could do it. Administrative law judge.

10  
11 RICK ZAHNLEUTER: This is Rick Zahnleuter. If there is a  
12 negative outcome, then what would happen is the applicant would  
13 be entitled to an administrative hearing, there would be an  
14 administrative law judge assigned, a record would be produced  
15 and then a recommendation would be made and then it would return  
16 to PHHPC.

17  
18 JEFF KRAUT: You may have heard this referred to as an  
19 article 78 hearing.

20  
21 RICK ZAHNLEUTER: Not quite yet. The court would be after  
22 that.

23

1           JEFF KRAUT:       That's true. That's after an administrative  
2 law judge hears it. So, Dr. Gutierrez, would you like to make a  
3 motion? Or a comment?

4

5           ANGEL GUTIERREZ:    No, I would like to make a motion to  
6 disapprove the application.

7

8           JEFF KRAUT:       I have a motion to disapprove the  
9 application. Do I have a second? Dr. Brown. Is there any  
10 discussion? Yes I'm going to ...

11

12           JOHN BENNETT:    I just want to clarify this again, pardon  
13 me, I'm not a lawyer but this doesn't make a lot of sense to me.  
14 Someone wants to do something, and we deny them, they can  
15 appeal. Someone wants to do something, and we effectively deny  
16 them by not approving them, and they cannot appeal?

17

18           JEFF KRAUT:       They can still appeal.

19

20           RICK ZAHNLEUTER:    In lay terms, this is...

21

22           JOHN BENNETT:    Because it's not making sense to me.

23

1 DAN SHEPPARD: Basically as a body, you individual cast  
2 your vote and made your decision, but as a body because you did  
3 not reach majority of seats on PHHPC, you've made no decision as  
4 a body. I think 10 to 5 vote not to approve is not a decision to  
5 disapprove. It's not even a decision.

6

7 JOHN BENNETT: That part I get. I'm with you so far.

8

9 DAN SHEPPARD: Because, and this is where I'm going to go  
10 from policy to legal, but do a smooth handoff... there's been no  
11 determination. A 10 to 5 vote effectively is a no determination  
12 on the application. So therefore if there's no determination the  
13 applicant can't appeal that. There's nothing to appeal. You  
14 haven't made a decision as a body.

15

16 JOHN BENNETT: So there's nothing else they can do? It  
17 dies?

18

19 DAN SHEPPARD: It's worse.

20

21 JEFF KRAUT: They have no appeal. It's purgatory.

22

23 JOHN BENNETT: Nothing can ever happen. That doesn't make  
24 sense to me.

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JEFF KRAUT: Yes. And that's why we're ... listen, and that's why...

JOHN BENNETT: But they can resubmit a new application.

JEFF KRAUT: Right. But that's why we're asking to entertain another motion that was just made because to allow the applicant to avail themselves of the due process. That's why. So, if you vote yes on this motion, you are voting to disapprove the application. I'm going to do a roll call vote because we're trying to create a record here so it'll be clear if you voted yes the first time and if you choose to change your vote this time it would be clear as to why that occurred. At least for the record. Could you please do a roll call vote, and I will vote as well this time.

Ms. Baumgartner

Dr. Bennett

Yes.

Dr. Berliner

yes

Dr. Boufford

yes

- 1 Dr. Brown
- 2 I'm interested in due process. Yes.
- 3 Dr. Gutierrez
- 4 yes
- 5 Mr. Holt
- 6 yes
- 7 Dr. Kalkut
- 8 yes
- 9 Mr. LaRue
- 10 yes
- 11 Mr. Lawrence
- 12 yes
- 13 Mr. Robinson
- 14 Yes
- 15 Dr. Ruge
- 16 Yes
- 17 Dr. Strange
- 18 Yes
- 19 Mr. Thomas
- 20 yes
- 21 Dr. Watkins
- 22 yes
- 23 Dr. yang
- 24

1           JEFF KRAUT:     And I will also vote yes. So it's unanimous.  
2 The motion passes. The application has been disapproved. Dr.  
3 Kalkut.

4  
5           GARY KALKUT:    I'm going to batch these applications.  
6 172395E, Queens Endoscopy... ASC, LLC, in Queens. Requests for  
7 indefinite life for CON number 111076. The Department and the  
8 committee recommend approval with condition and contingencies.  
9 181112E, Clinton Square Operations LLC d/b/a Bishop  
10 Rehabilitation and Nursing Center in Onondaga County. To  
11 transfer 100 percent interest from two current members to one  
12 new sole member limited liability company with two individual  
13 members. The Department and the committee recommend approval  
14 with a condition and a contingencies. 181144E, Park Terrace Care  
15 Center in Queen County. This is to transfer 45.1 percent  
16 ownership interest in the estate of one withdrawing member to  
17 one existing member. The Department and committee recommend  
18 approval with a condition and then 181165E, Queens Nassau  
19 Rehabilitation And Nursing Center in Queens County. This is to  
20 transfer 40.1 ownership interest in one withdrawing shareholder  
21 to one of the remaining shareholders. The department and  
22 committee recommend approval with a condition. And I so move.

23

1           JEFF KRAUT:       I have a motion. I have a second, Dr.  
2 Gutierrez. The Department has any comment? Any member of the  
3 council have question on any one of these projects? Hearing  
4 none, I'll call for a vote. All those in favor, aye.

5

6 [Aye]

7           Opposed? Abstentions? Motion carries.

8

9           GARY KALKUT:     Peter... an interest, let me do it.  
10 Certificate of dissolution, Genesee Valley Group Health  
11 Association. There's an interest declared by Mr. Robinson and  
12 Mr. Thomas. This is for Ruby Western Manor. Approval is  
13 recommended by both the Department and the committee and I so  
14 move.

15

16           JEFF KRAUT:       I have a motion. May I have a second? Dr.  
17 Gutierrez. Any comment? No. Any questions? All those in favor,  
18 aye.

19

20 [Aye]

21           Opposed? Abstentions? Motion carries.

22

23           GARY KALKUT:     172313E, this is Kingston Nursing Home  
24 Operations LLC, d/b/a Tenbrouck Center for Healing in Ulster

1 County. Mr. Carver Cheney is not present, with a conflict.  
2 Establish Kingston Nursing Home Operation LLC d/b/a Tenbrouck  
3 Center for Rehabilitation and Healing as the new operator of  
4 Tenbrouck Commons, a 258 bed residential healthcare facility.  
5 The Department and the committee recommend approval with  
6 conditions and contingencies, and I so move.

7

8 JEFF KRAUT: Have a motion have a second, Dr. Gutierrez.  
9 The department wishes to comment.

10

11 CHARLIE ABEL: Only that we wanted to note that we produced  
12 updated exhibits for all of the nursing home projects that  
13 included an additional column for when the individual in the  
14 proposed owner in the subject application became owner of the  
15 facility with the star rating. So in that chart we did add that  
16 column.

17

18 JEFF KRAUT: Thank you. Any member of the council has a  
19 question or a comment? Hearing none I'll call for a vote. All  
20 those in favor, aye.

21

22 [Aye]

23 Opposed? Abstentions? Motion carries.

24

1           PETER ROBINSON:       Application 181046E, Marine Center for  
2 Rehabilitation and Nursing in Westchester County. Conflict and  
3 recusal has been declared by Dr. Kalkut who has left the room.  
4 Transfer two percent ownership interest from one withdrawing  
5 member to one new member and transfer of 33 percent ownership  
6 interest from one existing member to five new members. The  
7 Department and the committee recommend approval with a condition  
8 and contingencies and I so move.

9

10           JEFF KRAUT:        I have a motion and a second by Dr.  
11 Berliner. Any comment?

12

13           CHARLIE ABEL:     Just that since establishment and project  
14 review committee we did receive a letter in opposition or  
15 actually mentions a complaint from an individual, private  
16 individual in the community and we also, that went on the PHHPC  
17 members as well as Warren Centers response to that complaint.  
18 The Department has reviewed both pieces of correspondence and we  
19 continue to recommend approval.

20

21           JEFF KRAUT:        Thank you. Any questions for the Department?.  
22 All those in favor, aye.

23

24   [Aye]

1           Opposed? Abstentions? Motion carries. Could we ask Dr.  
2 Kalkut to return as Mr. LaRue leaves. And I'll just start, Peter  
3 you just want to do the... no no, just until Gary gets back in.

4  
5           PETER ROBINSON:           Certainly. This is application  
6 181182E. MARNC LLC d/b/a Messina Rehabilitation and Nursing  
7 Center in St. Lawrence County. Noting the conflict ad recusal by  
8 Mr. LaRue who's left the room. This is to establish MARNC  
9 Operating LLC as the new operator of the 160 bed residential  
10 healthcare facility located at 89 Grove Street in Messina  
11 currently operated at St. Regis Nursing Home. Both the  
12 Department and the committee recommend approval with a condition  
13 and contingencies and I so move.

14  
15           JEFF KRAUT:           I have a motion Mr. Robinson, a second Dr.  
16 Gutierrez. No comments from the Department. Any questions from  
17 the council? All those in favor, aye.

18  
19 [Aye]

20

1           Opposed? Abstentions? Motion carries. Please ask them to  
2 return.

3

4           GARY KALKUT: We have a restated certificate of  
5 incorporation. The Frederick Ferris Thompson Hospital to modify  
6 its purpose. Conflict and recusal by Mr. Robinson who is left  
7 the room ad Mr. Thomas who left the room and I so move.

8

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

12

13 [Aye]

14           Opposed? Abstentions? Motion carries. Please ask them to  
15 return.

16

17           GARY KALKUT: 181152E, Roosevelt Surgery Center LLC d/b/a  
18 Manhattan Surgery Center in New York County. This is request  
19 for indefinite life for CON 101134. The Department and committee  
20 recommend approval. One member abstained at the establishment  
21 and project review committee and I so move.

22

23           JEFF KRAUT: I have a second, motion and second Dr.  
24 Gutierrez. No comment. This, just so you know on the chart that

1 you're looking at the Roosevelt Surgery Center, it was formerly  
2 known as Manhattan on the database that you have in front of  
3 you. Any questions from the council members? Hearing none, I'll  
4 call for a vote. All those in favor, aye.

5

6 [Aye]

7 Opposed? Abstentions? Motion carries.

8

9 GARY KALKUT: 181251E, South Nassau Community Hospital in  
10 Nassau County. There is a conflict by Dr. Martin who is out of  
11 the room. This is to establish Mr. Sinai Hospital Group Inc.,  
12 and disestablish South Nassau University Health System  
13 incorporated as the active parent co-operator of the South  
14 Nassau Community Hospital and its certified home health agency  
15 and long term health program. The department recommends  
16 approval with conditions and contingencies. The committee  
17 recommends approval with a condition and contingency with one  
18 member opposing and I so move.

19

20 JEFF KRAUT: I have a motion. May I have a second, Dr.  
21 Berliner. No comments. Any questions from the council? All  
22 those in favor aye.

23

24 [Aye]

1 Opposed? Absten... Dr. Bennett is opposed. Abstentions?

2

3 JOHN RUGGE: Yes abstaining.

4

5 JEFF KRAUT: One abstention, Dr. Rugge. So, Dr. Bennett  
6 is opposing, Dr. Rugge is abstaining and the motion carries.

7 Thank you.

8

9 GARY KALKUT: 1811084E, Willcare in Erie County. Conflict  
10 and recusal by Dr. Watkins who is leaving the room and an  
11 interest by Ms. Baumgartner. This is to, change of indirect  
12 ownership of two certified home health agencies currently  
13 operated by Willcare and Litson. The Department recommends  
14 approval with condition and contingencies as does the project  
15 review committee with two members abstaining and I so move.

16

17 JEFF KRAUT: I have a motion. May I have a second? Dr.  
18 Berliner. Any comments from the Department? Any questions from  
19 the council? All those in favor aye?

20

21 [Aye]

22 Opposed? Dr. Gutierrez opposes. Abstentions? The motion  
23 carries.

24

1 GARY KALKUT: 121198E, Leroy Operating LLC d/b/a Leroy  
2 Village Green Nursing and Rehabilitation Center in Genesee  
3 County. This project has been deferred at the applicants  
4 request.

5

6 JEFF KRAUT: And we've agreed.

7

8 GARY KALKUT: 161026E Foundation for Elderly  
9 Care d/b/a Atlantis Home Care. I make a motion on this because  
10 I'm recusing myself for the next one. The Department recommends  
11 approval as did the committee and I so move.

12

13 JEFF KRAUT: Second Dr. Gutierrez. Any questions? All  
14 those in favor, aye?

15

16 [Aye]

17 Opposed? Abstention? The motion carries.

18

19 PETER ROBINSON: Application 172165E, Utica LHCSA LLC  
20 d/b/a Oneida Home Care in Oneida County. Noting recusal by Dr.  
21 Kalkut who has left the room. The Department recommends approval  
22 with a contingency and I so move.

23

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

3

4       [Aye]

5           Opposed? Abstention? The motion carries. Ask Dr. Kalkut to  
6 return.

7

8           PETER ROBINSON:       And finally application 181393E  
9 Community Care Companions Inc., d/b/a Interim Healthcare of New  
10 York in Monroe County with an interest declared by me. The  
11 Department recommends approval with a contingency as does the  
12 committee and I so move.

13

14           JEFF KRAUT:       And I would also sy that Mr. Thomas also  
15 declared an interest in that application. Any questions from  
16 the council? All those in favor, aye.

17

18       [Aye]

19           Opposed? Abstention? The motion carries.

20           Thank you very much. I think that will adjourn that portion  
21 of the meeting. And I'll call for motion for adjournment. The  
22 full meeting of the next council is going to be, the committee  
23 day is on September 27. The full council meeting will convene  
24 on October 10, both in New York City. I'll have a motion to

1 adjourn. We have a move. Dr. Brown we are adjourned. Thank you  
2 very much.

3

4

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10

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Section 405.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (a) of Section 405.4 is amended to read as follows:

- (a) *Medical staff accountability.* The medical staff shall be organized and accountable to the governing body for the quality of the medical care provided to all patients.
- (1) The medical staff shall establish objective standards of care and conduct to be followed by all practitioners granted privileges at the hospital. Those standards shall:
    - (i) be consistent with prevailing standards of medical and other licensed health care practitioner standards of practice and conduct; and
    - (ii) afford patients their rights as patients in accordance with the provisions of this Part.
  - (2) The medical staff shall establish mechanisms to monitor the ongoing performance in delivering patient care of practitioners granted privileges at the hospital, including monitoring of practitioner compliance with bylaws of the medical staff and pertinent hospital policies and procedures.
  - (3) The medical staff shall review and, when appropriate, recommend to the governing body, the limitation or suspension of the privileges of practitioners who do not practice in compliance with the scope of their privileges, medical staff bylaws, standards of

performance and policies and procedures, and assure that corrective measures are developed and put into place, when necessary.

(4) The medical staff shall adopt, implement, periodically update and submit to the Department evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock (“sepsis protocols”) that are based on generally accepted standards of care. Sepsis protocols must include components specific to the identification, care and treatment of adults, and of children, and must clearly identify where and when components will differ for adults and for children. These protocols must include the following components:

- (i) a process for the screening and early recognition of patients with sepsis, severe sepsis and septic shock;
- (ii) a process to rapidly identify and document individuals appropriate for treatment through severe sepsis and septic shock protocols, including explicit criteria defining those patients who should be excluded from the protocols, such as patients with certain clinical conditions or who have elected palliative care;
- (iii) guidelines for hemodynamic support [with explicit physiologic and biomarker treatment goals, methodology for invasive or non-invasive hemodynamic monitoring], including monitoring, therapeutic endpoints and timeframe goals;
- (iv) for infants and children, guidelines for fluid resuscitation with explicit timeframes for vascular access and fluid delivery consistent with current, evidence-based guidelines for severe sepsis and septic shock with defined therapeutic goals for children; and

- (v) a procedure for identification of infectious source and delivery of early antibiotics with timeframe goals[; and
  - (vi) criteria for use, where appropriate, of an invasive protocol and for use of vasoactive agents].
- (5) The medical staff shall ensure that professional staff with direct patient care responsibilities and, as appropriate, staff with indirect patient care responsibilities, including, but not limited to laboratory and pharmacy staff, are periodically trained to implement sepsis protocols required pursuant to paragraph (4) of this subdivision. Medical staff shall ensure updated training when the hospital initiates substantive changes to the protocols.
- (6) [Hospitals shall submit sepsis protocols required pursuant to paragraph (4) of this subdivision to the Department for review not later than September 3, 2013. Hospitals must implement these protocols after receipt of a letter from the Department indicating that the proposed protocols have been reviewed and determined to be consistent with the criteria established in this Part. Protocols are to be implemented no later than December 31, 2013.] Hospitals must update sepsis protocols required pursuant to paragraph (4) of this section based on newly emerging evidence-based standards. Protocols are to be [resubmitted] submitted to the Department at the request of the Department[, not more frequently than once every two years unless the Department identifies hospital-specific performance concerns].
- (7) Collection and Reporting of Sepsis Measures.
- (i) The medical staff shall be responsible for the collection, use, and reporting of quality measures related to the recognition and treatment of severe sepsis for

purposes of internal quality improvement and hospital reporting to the Department. Such measures shall include, but not be limited to, data sufficient to evaluate each hospital's adherence [rate to its own sepsis protocols, including adherence] to timeframes and implementation of all protocol components for adults and children.

- (ii) Hospitals shall submit data specified by the Department to permit the Department to develop risk-adjusted severe sepsis and septic shock mortality rates in consultation with appropriate national, hospital and expert stakeholders. Hospitals shall submit data to the Department or the Department's designee in the form and format, and according to such specifications as may be required by the Department.
- (iii) Such data shall be reported annually, or more frequently at the request of the Department, and shall be subject to audit at the discretion of the Department.

(8) Definitions. Sepsis is a life threatening medical emergency that requires early recognition and intervention. For the purposes of [this section] hospital data collection, the following terms shall have the following meanings:

- (i) *sepsis* shall mean a [proven] confirmed or suspected infection accompanied by two [a] systemic inflammatory response syndrome (SIRS) criteria;
- (ii) [for adults,] *severe sepsis* shall mean sepsis complicated by [plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, *severe sepsis* shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more] organ [dysfunctions] dysfunction; and
- (iii) for adults, *septic shock* shall mean [severe sepsis with persistent] sepsis-induced hypotension persisting [or cardiovascular organ dysfunction] despite adequate IV fluid resuscitation and/or evidence of tissue hypoperfusion; for pediatrics, septic

shock shall mean [severe] sepsis and cardiovascular organ dysfunction [despite adequate IV fluid resuscitation].

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (“PHL”) Section 2800 provides that “[h]ospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, . . . the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital related services . . .”

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

### **Legislative Objectives:**

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

**Needs and Benefits:**

Sepsis is a range of clinical conditions caused by the body's systemic response to an infection and affects more than 1.5 million people in the U.S. each year.

In New York State 47,081 cases of sepsis were reported in 2016 with 11,982 deaths – a mortality rate of approximately 25 percent. However, the number of sepsis cases and the sepsis mortality rate varies widely from one hospital to another. The morbidity rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacterial infection. A patient may have a greater chance of dying from sepsis if care is provided by an institution poorly prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to alarming sepsis statistics, regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock. The sepsis regulations as originally drafted included guidelines and a definition of sepsis that is no longer consistent with the current international guidelines. This amendment will refine the guideline requirements and the definition to assure complete consistency. The amendment also makes other, minor technical changes to clarify language without changing the meaning or intent.

## **COSTS:**

### **Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

Existing sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH are unchanged. Costs to the regulated entities are expected to be minimal and to be primarily associated with efforts needed to update internal protocols and definitions to align with the proposed changes. There is no impact on consumers or providers. This change ensures consistency in definitions but in no way alters the intent or impact of the current regulations.

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

There is no anticipated fiscal impact to State or local government as a result of this regulation, except that hospitals operated by the State or local governments will incur minimal costs as discussed above.

### **Costs to the Department of Health:**

There will be no additional costs to the Department of Health associated with this definition change.

### **Local Government Mandates:**

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

**Paperwork:**

There is no additional paperwork associated with this change in wording.

**Duplication:**

These regulations do not duplicate any State or Federal rules and assure consistency with established and clinically accepted definitions in use throughout the Nation.

**Alternative Approaches:**

There are no viable alternatives. Stakeholders requested that this change be made to assure absolute consistency with established definitions and to avoid any possible confusion on the part of hospitals and clinicians.

**Federal Requirements:**

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

**Compliance Schedule:**

These regulations will take effect upon publication of a Notice of Adoption in the New York *State Register*.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS  
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

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

**STATEMENT IN LIEU OF  
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

## **JOB IMPACT STATEMENT**

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, a new Section 405.34 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 405.34 Stroke services.

(a) Definitions. The following terms when used in this section shall have the following meanings:

- (1) “Stroke patient” means a patient exhibiting the signs and symptoms of a suspected stroke.
- (2) “Certifying organization” means an accrediting organization approved by The Centers for Medicare and Medicaid Services (CMS), that has applied to the Department and has been approved by the Department to certify that a hospital meets the criteria to provide advanced stroke care.
- (3) “Certified stroke center” means a general hospital that has successfully completed a stroke center certification with a certifying organization.
- (4) “Designated stroke center” means a certified stroke center approved by the Department to operate as a designated stroke center under this section.

(b) General Provisions.

- (1) General hospitals may choose to participate in the designated stroke center program under this section.

- (2) Only a certified stroke center may apply for stroke center designation from the Department.
  - (3) No hospital shall hold itself out to the public as having a stroke center designation unless it has a stroke center designation under this section.
- (c) **Certifying Organization Application.** Accrediting organizations may apply, in a format determined by the Department, to be approved as certifying organizations. Upon review of the application, the Department may approve certifying organizations to perform stroke center certification.
- (d) **Stroke Center Designation.** Hospitals seeking stroke center designation shall:
- (1) Obtain and maintain continuous stroke center certification from a certifying organization. The Department may participate in any onsite visits conducted by the certifying organization during certification and recertification.
  - (2) Submit an application to the Department with a copy of the certifying organization's certification and supporting documents. When determining whether to approve a certified stroke center as a designated stroke center, the Department may take other criteria into consideration, including but not limited to investigations by federal or state oversight agencies.
- (e) **Issuing Authority.** The Department shall make the final determination on all applications for stroke center designation. The Department shall provide written notification to a hospital when an application for a stroke center designation is approved. If an application for stroke center designation is denied, the Department shall provide written notification

and a rationale for the denial, and shall allow additional opportunities for the hospital to apply for a stroke center designation.

(f) Withdrawal of Stroke Center Designation.

(1) The Department may withdraw a hospital's stroke center designation upon notice to a designated stroke center if:

(i) The designated stroke center does not comply with state or federal regulations relating to stroke centers.

(ii) The designated stroke center fails to comply with its certifying organization's certification requirements and certification lapses.

(iii) The designated stroke center requests withdrawal of stroke center designation.

(2) Before withdrawing a stroke center designation pursuant to subdivision (f)(1)(i) or (ii) of this section, the Department shall provide the designated stroke center with a written notice containing a statement of deficiencies. If the designated stroke center fails to adopt a plan of correction acceptable to the Department within thirty (30) days, the Department may withdraw the hospital's stroke center designation.

(3) If a hospital no longer maintains stroke center designation, the hospital shall immediately notify affected parties and provide the Department with a written plan describing specific measures it has taken to alter its arrangements and

protocols under subdivision (i) of this section within thirty (30) days of a withdrawal of stroke center designation.

(g) Transition Period.

(1) Hospitals designated as stroke centers by the Department prior to the effective date of this section shall have two years from the effective date of this section to initiate the stroke center certification process with a certifying organization approved by the Department. The process is initiated when a hospital enters into a contractual agreement with a certifying organization. Once the hospital has entered into a contractual agreement with a certifying organization, the hospital shall have one year to complete the certification process.

(2) Any hospital that does not initiate the stroke center certification process with a certifying organization within two years of the effective date of this section shall no longer maintain a stroke center designation and may no longer hold themselves out as a designated stroke center.

(h) Coordination Agreement. Designated stroke centers shall communicate and coordinate with one another to ensure appropriate access to care for stroke patients, in accordance with a written coordination agreement. The Department may issue guidance to specify the provisions of coordination agreements. Designated stroke centers shall have policies and procedures in place for timely transfer and receipt of stroke patients to and from other hospitals consistent with section 405.19 of this Part. Transport of stroke patients to the appropriate receiving hospital shall be in accordance with State Emergency Medical

Advisory Committee (SEMAC) approved EMS protocols developed and adopted pursuant to subdivision two of section 3002-a of the Public Health Law.

- (i) Emergency Medical Services Providers; Assessment and Transportation of Stroke Patients to Designated Stroke Centers. Designated stroke centers shall work with Emergency Medical Services agencies to ensure that stroke center destination protocols are consistent with protocols adopted by the State Emergency Medical Advisory Committee, the State Emergency Medical Services Council (SEMSCO), the Regional Emergency Medical Advisory Committee (REMAC), and the Regional Emergency Medical Services Council (REMSCO).
- (j) The Department shall maintain and post on its public web page a list of designated stroke centers. The Department shall notify the State EMS advisory bodies and EMS regions via established communication networks whenever there is a change to a hospital stroke center designation, including but not limited to a new designation or a withdrawal of designation.
- (k) Reporting of Data and Quality of Care Initiatives.
  - (1) Each designated stroke center shall submit data, as requested by the Department, that shall be sufficient to determine the performance of the hospital and the system of care on at least an annual basis and in a format determined by the Department.
  - (2) The Department shall define the data elements to be reported.
  - (3) Each designated stroke center shall conduct stroke quality improvement activities including, but not limited to:

- (i) evaluation of the quality and appropriateness of care provided;
- (ii) participation in regional and statewide quality improvement activities, including but not limited to activities conducted by the Regional Emergency Medical Advisory Committee, consistent with section 3006 of the Public Health Law;
- (iii) analysis of data to identify opportunities for improvement; and
- (iv) integration of these activities with the hospital's quality assurance program, as required by section 405.6 of this Part.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

### **Legislative Objectives:**

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

### **Needs and Benefits:**

This proposed regulation will create a tiered voluntary stroke designation program and stroke system of care for hospitals in New York State.

Stroke, also known as brain attack, is a medical emergency. It occurs when a vessel in the brain is either ruptured (hemorrhagic stroke) or blocked by a clot (ischemic stroke), arresting the blood supply to the brain. Stroke is a deadly condition, and it is the fifth leading cause of death and a major cause of disability in the United States. Each year, about 795,000 people in the United States develop a stroke, producing an enormous economic and healthcare burden. It is estimated that there are almost three million survivors of stroke living with a long-term disability in the United States, with a societal cost of approximately \$34 billion.

Since stroke treatment is complex and time sensitive, advanced hospital care is crucial. Evidence has shown that a standardized approach to hospital care for patients with acute stroke improves outcomes by increasing survival and minimizing disability.

The current New York State Department of Health (NYSDOH) stroke designation program began as a demonstration pilot program in select areas of the state in 2002 and was later expanded in 2004 to the entire state. The designation program is voluntary. Since 2004, NYSDOH has only recognized one level of stroke center designation: The Primary Stroke Center. As of June 2018, there are 120 designated Primary Stroke Centers among 213 hospitals in New York State. According to the Centers for Disease Control, New York State has the second lowest stroke mortality rate in the United States, demonstrating the success of the current program. NYSDOH data shows that the mortality rate (risk-adjusted, 30-day, all cause) for stroke patients is lower in Primary Stroke Centers versus non-designated hospitals (13.76 vs. 16.08 deaths per 100 admissions).

Stroke care guidelines and clinical evidence have evolved, and these stroke regulations align with the latest guidelines to ensure patients continue receiving high quality advanced stroke care. A consensus statement from the Brain Attack Coalition in 2005 cited evidence that integration of a new level of stroke center, called a Comprehensive Stroke Center, into stroke systems of care would likely improve outcomes of patients who require these services. Nationally recognized accrediting organizations began certifying Comprehensive Stroke Centers in 2012. In 2015, the American Heart Association issued a Class 1A recommendation for endovascular therapy for eligible ischemic stroke patients with large vessel occlusion, and recommended that access to endovascular therapy should be incorporated into stroke systems of

care. Because the current NYSDOH stroke designation program has remained static, some NYS hospitals have sought Comprehensive Stroke Center certification from outside organizations.

The current NYSDOH stroke center designation program requires interested hospitals to submit an application demonstrating that they meet or exceed a set of 14 criteria that are based on “The Brain Attack Coalition Guidelines for Primary Stroke Centers,” originally published in the Journal of the American Medical Association in 2000 and updated in 2011. The application is then reviewed by the Office of Quality and Patient Safety (OQPS) in NYSDOH, and an on-site evaluation is done by a nurse and a medical director from NYSDOH at no charge to the applying hospital. Once the hospital passes all requirements, the NYSDOH designates the hospital as a New York State Primary Stroke Center.

Representatives from the NYSDOH began engaging stakeholders and soliciting comments and feedback internally and externally in the fall of 2017 from the following affected parties: Healthcare Association of New York State, Regional stroke coordinators from hospitals across the state, Stroke Advisory Committee, Greater New York Hospital Association, Iroquois Healthcare, American College of Physicians, The Medical Society of the State of New York, The Joint Commission/American Heart Association, DNV GL Healthcare, the Healthcare Facilities Accreditation Program, the Center for Improvement in Healthcare Quality, South Carolina stroke designation program, Fire Department of NY, Fort Drum Regional Health Planning Organization, and the State Emergency Medical Services Council (SEMSCO). The input received was the impetus for the proposed regulation.

This proposed regulation will create a tiered voluntary stroke designation program and stroke system of care for hospitals in New York State. During the transition period, EMS should continue to operate within their existing framework and per their protocols.

NYSDOH will designate nationally recognized accrediting organizations to certify the ability of hospitals to provide care to stroke patients. Currently, Primary, Thrombectomy Capable or Comprehensive levels are among levels of programs certified by nationally recognized certifying organizations. Certifying organizations will be required to adhere to evidence-based standards provided by the Department.

The regulation also gives the NYSDOH the authority to withdraw designation from a hospital for non-compliance and the failure to maintain or adhere to criteria for stroke designation. Pursuant to the proposed regulations, NYSDOH will continue to collect data and require stroke centers to maintain quality improvement efforts.

With this regulation, the NYSDOH will leverage the experience and resources of the certifying organizations and improve the quality of stroke care, using a multi-tiered system of stroke care that aligns with the latest evidence.

## **COSTS:**

### **Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

The proposed regulation will create costs for hospitals seeking stroke center designation. The certifying organizations each charge a fee for stroke certification, which includes the following services: a consultation visit, onsite survey, ongoing monitoring, data collection and reporting to NYSDOH. The cost of certification for hospitals varies by organization, and by level of stroke center certification, but ranges from \$2,500 - 55,000 every two years. However, the proposed regulation does not require hospitals to be fully accredited by the accreditation organization to receive stroke center designation. Instead, the proposed regulation only requires

hospitals to be certified by the accreditation organization for their disease-specific stroke program. This provision makes the stroke certification costs significantly less expensive than acquiring a full hospital accreditation.

A hospital may also incur infrastructure and staffing costs associated with meeting certification requirements. Stroke center designation could increase the volume of patients that a hospital receives, and consequently revenue, since patients are transported to designated stroke centers by EMS agencies, and community awareness of stroke center designation may increase patient self-referral.

**Costs to Local and State Government:**

The proposed regulations are not expected to impose any costs upon local or state governments. If a hospital operated by a State or local government chooses to apply to become a designated stroke center, it would have the same costs as hospitals that are not operated by a State or local government.

**Costs to the Department of Health:**

There will be little to no additional costs to the Department associated with the proposed regulations. The Department will monitor the certifying organizations and will supervise the stroke designation process with existing staff.

**Local Government Mandates:**

There are no local government mandates.

**Paperwork:**

Hospitals that participate in the stroke designation program must enter into a contractual agreement with an accreditation organization to initiate the stroke center certification process. Certified stroke centers applying for stroke center designation must submit an application to the Department.

Each hospital with stroke center designation will be required to submit data electronically for performance measurement.

**Duplication:**

These regulations do not duplicate any State or Federal rules, since there are no existing stroke regulations.

**Alternative Approaches:**

The Department could continue the existing stroke designation program. However, proposed regulations will ensure access to the highest standard of evidence-based care for stroke patients in New York.

**Federal Requirements:**

Currently there are no federal requirements regarding the stroke regulation.

**Compliance Schedule:**

These regulations will take effect upon publication of a Notice of Adoption in the *New York State Register*.

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**REGULATORY FLEXIBILITY ANALYSIS FOR  
SMALL BUSINESSES AND LOCAL GOVERNMENT**

**Effect of Rule:**

Only general hospitals may apply to become a designated stroke center. There are no general hospitals in NYS that are classified as a small business. There are several hospitals run by local governments. There is a total of six hospitals operated by NYS counties.

**Compliance Requirements:**

The stroke designation program is a voluntary program, so there is no mandate for a hospital to participate. Those choosing to apply for stroke center designation will be expected to comply with NYSDOH stroke center requirements and certifying agency standards. These standards include maintenance of a stroke log and registry as well as reporting requirements for performance measures.

**Professional Services:**

A hospital choosing to participate in the stroke designation program will be required to receive certification from a nationally recognized accrediting organization with stroke center certifying authority.

**Compliance Costs:**

The proposed regulation will create costs for hospitals seeking stroke center designation. The certifying organizations each charge a fee for stroke certification, which includes the following services: a consultation visit, onsite survey, ongoing monitoring, data collection and reporting to NYSDOH. The cost of certification for hospitals varies by organization, and by level of stroke center certification, but ranges from \$2,500 - 55,000 every two years.

**Economic and Technological Feasibility:**

This regulation establishes a voluntary stroke designation program, and as such there is no mandate for compliance. Hospitals seeking stroke center designation shall have the resources, both economic and technological to meet requirements and standards of the program.

**Minimizing Adverse Impact:**

This regulation will not have any adverse economic impact on small businesses or local governments. Hospitals with stroke center designation will preferentially receive suspected stroke patients from EMS providers, increasing volume and having a positive economic impact.

**Small Business and Local Government Participation:**

NYSDOH has included various stakeholders in the development of this regulation, including general hospitals run by local governments through in person presentations and hospital association engagement.

## **STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to § 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose an adverse impact on facilities in rural areas, and will not impose any significant new reporting, record keeping or other compliance requirements on facilities in rural areas.

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

No job impact statement is required pursuant to § 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.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Section 2816 of the Public Health Law, Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 400.18 is amended to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

(a) Definitions. For the purposes of this section, these terms shall have the following meanings:

(1) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(2) Identifying data elements shall mean those SPARCS [and Patient Review Instrument (PRI)] data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(3) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.

(4) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(ii) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to

provide ambulatory surgery services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(5) [Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(6) SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.

[(7)] (6) SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

[(8)] (7) SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS [and Patient Review Instrument (PRI)] data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through [NYSDOH's] a secure electronic network [according to the requirements of section 400.10 of this Part and the] designated by the Department according to specifications provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all

inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days of the receipt of the audit report.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, uniform bill data elements as required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website to the extent allowed by copyright law.

(ii) Health care facilities shall submit, or cause to have submitted, additional data elements as required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.

(d) Requests for SPARCS [and PRI] data.

(1) SPARCS [and PRI] data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.

(2) The Commissioner may determine that additional purposes are proper uses of SPARCS [and PRI] data.

(3) In determining the purpose of a request for SPARCS [and PRI] data, the SPARCS program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(4) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS [and PRI] data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.

(iii) Use by a Federal, New York State, county or local government agency for health care-related purposes.

(5) The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS [and PRI] data contain identifying data elements may be

shared and whether a disclosure of SPARCS [and PRI] data constitutes an unwarranted invasion of personal privacy.

(6) All entities seeking SPARCS [and PRI] data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS [or PRI] data. Applications for SPARCS [or PRI] data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(7) Each data request form must include an executed data use agreement in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.

(8) The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects.

(9) The SPARCS Administrator shall review and make recommendations on requests for SPARCS [and PRI] data containing identifying data elements to a data release committee established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website.

Requests will be granted only upon formal, written approval for access by a majority of

the members of the data release committee. The Commissioner has the final authority over the approval, or disapproval, of all requests. Requests for identifying data elements shall be approved only if:

- (i) The purpose of the request is consistent with the purposes for which SPARCS [and PRI] data may be used;
- (ii) The applicant is qualified to undertake the project; and
- (iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(10) The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

- (i) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the organization and uses of the data remain as indicated in the data request form submitted to the SPARCS program.
- (ii) During the period of retention of SPARCS [or PRI] data, no additional individuals may access SPARCS [or PRI] data without an executed data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS [or PRI] data.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The Statewide Planning and Research Cooperative System (SPARCS) is a comprehensive health care data reporting system established in 1979 through cooperation between the health care industry and government. The enabling legislation for SPARCS is Section 2816 of the Public Health Law (PHL). The regulations pertaining to SPARCS are under Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

### **Legislative Objectives:**

In 2001, the Legislature codified the Department's authority to collect SPARCS data by adding PHL § 2816. In 2011, the Legislature expanded this authority by authorizing the Department to develop and implement an All Payer Database for New York State. In doing so, the Legislature referenced the Department's need for greater flexibility in the forms of data submission.

The enactment of Public Health Law § 2816(6) authorized the Department to describe data elements by reference to information reasonably available to regulated parties, as such material may be amended in the future. This provision recognizes the Department's need for flexibility when determining data elements by authorizing the Department to adjust such data elements administratively.

### **Needs and Benefits:**

The current regulation directs data to be submitted to SPARCS through the Health Commerce System (HCS). This rule making revises Section 400.18 to grant the SPARCS program the flexibility to explore other data intake options, consistent with Public Health

Law § 2816. This rule making also removes all references to Patient Review Instrument (PRI) data, which is an obsolete data source.

This rule making clarifies that input data dictionary elements are protected by copyright law. The Department will continue to precisely identify and publish a description of what data elements must be submitted to the extent it may do so under copyright law.

The proposed regulation changes will enhance the SPARCS program by modernizing the program's technology and functionality. Currently, HCS users regularly experience bandwidth issues, poor network performance, and slow data transfer speeds. These issues hinder the ability of data submitters to submit SPARCS data in a timely fashion. By leveraging new technology for SPARCS data intake, the SPARCS program will operate more efficiently.

Lastly, the proposed regulation specifies that data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website to the extent allowed by copyright law. The SPARCS program is in the process of changing its data format to require data to be submitted in the X12 837R ("X12") format, which is to some extent proprietary intellectual property owned by X12 Incorporated. See <http://www.x12.org/>, <http://members.x12.org/policies-procedures/cap01v3-bylaws.pdf>, <http://store.x12.org/store/ip-use>. Consistent with past practice, the Department will publish the data elements with specificity so that regulated parties will know exactly what data elements must be submitted, with the caveat that the Department will not publish intellectual property that it does not have a right to publish.

**Costs:**

**Costs to Regulated Parties:**

The rule change levies minor additional costs to health care facilities licensed under Article 28 of the PHL that may need to, in some cases, change their existing contracts with vendors to submit data, if they utilize a vendor. These minor additional costs would be solely related to changes needed to submit data to the Department's contractor rather than submitting data directly to the Department using the HCS. Data will continue to be submitted in the standard claims data format that all Article 28 facilities have already adopted under federal regulations in 42 CFR Part 162 as authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

**Costs to the NYSDOH:**

The costs associated with this change will be offset by savings from no longer having to finance a mainframe system and changes needed to the HCS maintained by the NYS Office of Information Technology Services. This change will also allow for the reallocation of NYSDOH staff to areas needing additional resources.

**Costs to State and Local Governments:**

There are no anticipated costs to local governments as a result of this rule change, except that any PHL Article 28 facilities that are operated by local governments will incur the same costs as any other Article 28 facilities subject to this regulation.

**Local Government Mandates:**

This rule change imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

**Paperwork:**

The rule change imposes no significant reporting requirements, forms, or other paperwork upon regulated parties.

**Duplication:**

There will be no duplication of reporting efforts to New York State for health care facilities licensed under Article 28 of the PHL.

**Alternatives:**

There are no reasonable alternatives that could serve as a substitute, because the Department will no longer be able to collect data using the HCS. The Department's mainframe system for SPARCS was scheduled to sunset when key staff retired. The Office of Information Technology Services would no longer support COBOL/mainframe SPARCS translation. Likewise, the Office of Information Technology Services was sunsetting support for a key technology used to support the SPARCS application on the HCS.

**Federal Standards:**

The rule change does not exceed any minimum standards of the federal government for the same or similar subject area, as the federal government does not operate a national program like SPARCS.

**Compliance Schedule:**

The rule change will not alter SPARCS compliance schedules. Health care facilities licensed under Article 28 of the PHL will continue to submit data to SPARCS at the same frequency and levels they currently do.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS**

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

## **STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

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

The rule change will have no impact on jobs and employment opportunities on the part of regulated parties (health care facilities licensed under Article 28 of the Public Health Law). The regulated health care facilities already have an existing data reporting infrastructure and are required to report SPARCS data. The way facilities submit data to SPARCS would not change. It would not be more burdensome or costly for data submitters as their data submission process would be very similar to what currently is in place. There will be no job impacts in any other segments or sectors of the job market. With regards to adverse employment effects, there is no expectation of job losses as a result of the rule.



**Project # 172101-C  
Coney Island Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Kings  
Acknowledged: October 5, 2017**

**Executive Summary**

**Description**

Coney Island Hospital, a 371-bed, public municipality, Article 28 acute care hospital located at 2601 Ocean Parkway, Brooklyn (Kings County), requests approval to renovate space to repair flood damage incurred during Superstorm Sandy, protect the hospital from future storm damage, and to decertify 20 beds bringing the certified beds to 351.

- Demolition of the Hammett Pavilion and Engineering Building 6 (built in 1934);
- Renovation of select portions of the existing Main Hospital and Tower Building; and
- Building a new permanent flood mitigation structure (e.g., a flood wall) around the campus to protect against natural disaster and storm events.

The campus consists of three patient care buildings - the Hammett Building (1910), the Main Hospital (1954), and the Tower Building (2005). The two older buildings were significantly damaged by Superstorm Sandy and were closed for several months while infrastructure repairs were undertaken, significantly disrupting patient services. The renovations will enable the hospital to endure future natural disasters, improve the healthcare environment for patients and achieve greater operating efficiencies with a stronger, more resilient hospital.

At the end of construction, all acute care and behavioral health inpatients will be in one of two facilities—either the Tower Building, which was able to function throughout Superstorm Sandy and Hurricane Irene disasters, or the new CSS, built with a focus on major disaster preparedness.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Coney Island Hospital's service area contains a growing population of more than 900,000 residents. Over the last seven years Kings County has experienced 5.8% growth. Coney Island Hospital is located adjacent to the westbound Belt Parkway, at Ocean Parkway and is also accessible to Brooklyn, Staten Island, and Queens-Long Island residents.

Major components of the project include flood mitigation, infrastructure modernization, replacement of obsolete and failing structures, enhancement of the visual image of the campus and the provision of an identifiable Ambulatory Care Center. Based on extensive discussions with the Federal Emergency Management Agency (FEMA) and other governmental agencies, the project is envisioned to include the following code conforming components:

There will be a reduction of 20 certified beds from 371 to 351 upon project completion. The beds to be decertified are one intensive care bed, four medical/surgical beds, and fifteen physical medicine & rehabilitation beds.

- A new 11-story, 350,000 sq. ft. acute care hospital tower, the Critical Services Structure (CSS), that will include a flood-resistant Emergency Department;

### 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 \$738,112,383 will be met with \$4,037,401 equity and \$734,074,982 to be funded via the proceeds of two Federal grants as follows: a FEMA Public Assistance Program (FEMA-PAP) E-Grant for \$701,864,100 and a U.S. Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (HUD-CDBG-DR) Grant for \$32,210,882. New York City Health and

Hospitals Corporation (H+H) was awarded \$1.7 billion from FEMA for Superstorm Sandy recovery with about \$33 million to be provided via HUD-CDBG-DR funding. A total of \$922.7 million of this overall Federal funding is approved to support repairs at Coney Island Hospital. The CDBR funding is included in FEMA's commitment plan in several the Hospital's Sandy projects. The projected budget is as follows:

|            | <u>Year One</u>    | <u>Year Three</u>  |
|------------|--------------------|--------------------|
| Revenues   | \$131,245,861      | \$136,099,546      |
| Expenses   | <u>127,131,073</u> | <u>128,966,245</u> |
| Net Income | \$4,114,788        | \$7,133,301        |

## 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. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]
3. The following open schematic design review comments are required to be resolved:
  - a. Comment 306412: 3. In plan 1G/LS-102, when leaving southwest from NS Suite 3 or south from NS Suite 2, what (2) directions are provided for egress in the exit access Corridor 02-800-E? Plan 1D shows direction from Smoke Zone 2 through double doors 02-800-F but not in plan 1G. Secondly, when directing egress into Smoke Zone 2 from Smoke Zone 1 per plan 1D/LS-102, what (2) directions for exiting are provided? Corridor 02-800-D (with 02-800-E is one corridor) is an exit access corridor and occupants cannot enter suites or the smoke compartment of origin as exit access options. Given the number of exit option in Smoke Zone 1, an option may be not to direct occupants into Smoke Zone 2 at all, pending all other common path and travel distances are met. This would have to be presented in revised life-safety plans. 6. Not all exit options are required to be presented, only those intended to meet the minimum requirements for each level of compartmentation proposed. As a direct exit option from Smoke Zone 2, it was simply pointed out that exit Stair B would be a main and obvious choice for an intended exit. The MAXIMUM dead end, common path of travel and travel distances are also only required to be presented. 10. 2012 NFPA 18.2.5.7.3.4(A)- Plan 3D presents exit access STD from NS Suite 1 as 110ft. From the room shown, the distance is actually +115ft to doors shown, and +110ft to next doors south (east end of Circulation 02-300-J), which exceeds the TD allowed by the given citation (>100ft).
  - b. Comment 306646: 3. Unless Clean Supply /Linen room 09-E33 and Soiled Holding room 09-E34 are actually workrooms, the only 'occupied' (habitable) space in both Non-sleeping Suite 3 and 1 is the Seclusion room 09-E22, requiring only the circulation connection to the corridor as a corridor extension. Anteroom 09-E22-B serves as circulation only and is also unoccupied space and like Circulation 09-E00-E, is accessory to the main exit access corridors 09-E00 and 09-E00-B. Please clarify. 4. Door 09-W19 for Documentation room 09-W19 is still shown as swinging into corridor on all attached plans.
  - c. Comment 306674: 3. Unless Clean Supply /Linen room 10-E28-B and Soiled Holding room 10-E28-A are actually workrooms, the only 'occupied' (habitable) space in both Non-sleeping Suite 3 and 1 is Seclusion rooms 10-E29-A/10--E29-C, requiring only the circulation connection to the corridor as an extension. Anteroom 10-E29 serves as circulation, is also unoccupied space, and like Circulation 10-E28, is accessory to the main exit access corridors 10-E00 and 10-E00-B. Please clarify above and why double doors flanking Circulation 10-E00-C (vs. 'corridor') don't allow through exiting during an event. No exit signs shown going into Circulation 10-E00-C and space is not shown as part of NS Suite 3. 4. Door to Conf/MP 10-W23 is now shown as swinging into and infringing on the clear required width of Corridor 10-W00-B.
  - d. Comment 306754: 2. Door swing for P Toilet room IT205A now does not provide proper approach clearances in attached plans LS-114.00 / AEX-121.00. [DAS]

**Approval conditional upon:**

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 10, 2018 and construction must be completed by April 3, 2023, 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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**October 11, 2018**

## Need Analysis

### Background

| <b>Beds</b>                | <b>Current</b> | <b>Request</b> | <b>Proposed</b> |
|----------------------------|----------------|----------------|-----------------|
| Chemical Depend. - Detox   | 15             |                | 15              |
| Coronary Care              | 9              |                | 9               |
| Intensive Care             | 22             | -1             | 21              |
| Maternity                  | 14             |                | 14              |
| Medical/Surgical           | 213            | -4             | 209             |
| Neonatal Intermediate Care | 10             |                | 10              |
| Pediatric                  | 9              |                | 9               |
| Physical Medicine & Rehab. | 15             | -15            | 0               |
| Psychiatric                | <u>64</u>      |                | <u>64</u>       |
| <b>Total</b>               | <b>371</b>     | <b>-20</b>     | <b>351</b>      |

Medical/surgical, physical medicine and rehab, intensive care, and coronary care are collapsed into medical/surgical for utilization purposes.

| <b>Coney Island Hospital Bed Utilization</b> |                     |              |              |              |              |              |
|--|---------------------|--------------|--------------|--------------|--------------|--------------|
|  | <b>Current Beds</b> | <b>2012</b>  | <b>2013</b>  | <b>2014</b>  | <b>2015</b>  | <b>2016</b>  |
| Med/Surg                                     | 259                 | 70.1%        | 55.3%        | 81.3%        | 83.0%        | 76.8%        |
| Pediatric                                    | 9                   | 27.7%        | 0.2%         | 13.1%        | 16.9%        | 16.6%        |
| Obstetric                                    | 14                  | 78.0%        | 40.4%        | 79.0%        | 80.7%        | 84.1%        |
| General Psychiatric                          | 64                  | 80.3%        | 52.2%        | 81.4%        | 73.8%        | 90.6%        |
| Chemical Dependence                          | 15                  | 98.3%        | 25.8%        | 120.5%       | 116.6%       | 112.2%       |
| High Risk Neonate                            | 10                  | 15.0%        | 8.1%         | 12.2%        | 21.4%        | 18.6%        |
| <b>Total</b>                                 | <b>371</b>          | <b>70.8%</b> | <b>50.4%</b> | <b>79.3%</b> | <b>79.4%</b> | <b>77.9%</b> |

Source: SPARCS. 2017 SPARCS data is not complete as of press time.

With the reduction of 20 beds, the utilization rate should decrease to 83.3% which is closer to the planning optimum of 85%.

The following are the Strategic Objectives to recover and aid in the prevention of future super storms while improving patient care:

- Provide high quality, easily accessible health for the southern Brooklyn community and grow share to ensure quality and value.
- Provide uninterrupted service during the 100-year storm and, following evacuation for a 500-year storm, can recover and resume activities as soon as the event ends.
- Flood and disaster mitigation.
- Replacement of obsolete campus structures.
- Development of facilities and infrastructures designed for maximum efficiencies in staffing and operations.
- Operate in Code conforming infrastructures and facilities.
- Function as a community resource during normal operations and in emergent situations.
- Provide identifiable and easily accessible ambulatory care facilities.
- Enhance the visual image of the campus.
- Provide improved campus parking.

## Compliance with Applicable Codes, Rules and Regulations

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

## Prevention Agenda

As a public hospital, Coney Island is not required to submit a community service plan or participate formally in the Prevention Agenda. However, in its response to the public health questions, Coney Island described the way in which NYC Health + Hospitals and its OneCity PPS are addressing five public health issues that they identified as priorities in 2016 when they conducted a community health needs assessment for DSRIP: Diabetes, Cardiovascular disease, hypertension and cholesterol management, Care transitions for patients discharged from the hospital at high risk of readmission, Cancer and Smoking.

Coney Island Hospital reported strategies they are implementing for each of these five priorities, including: diabetes and cardiovascular disease registries to identify and improve disease management for patients, support groups, and increasing access to cancer screening and palliative care. The hospital also reported measures they are using to track progress for each initiative. As a public hospital, Coney Island is not obligated to report community benefit spending.

Coney Island Hospital should consider working with the NYC Department of Health and Mental Hygiene and other community partners to address these important public health issues. Doing so would enable the hospital's clinical initiatives to connect to policy efforts that address the underlying causes of these diseases.

## Conclusion

The project will help ensure medical resources are available to the community, even during extreme weather.

# Financial Analysis

## Total Project Cost and Financing

Total project costs for new construction, renovation, and movable equipment is estimated at \$738,112,383, broken down as follows:

|                               |                  |
|-------------------------------|------------------|
| New Construction              | \$429,754,793    |
| Renovation & Demolition       | 29,174,861       |
| Site Development              | 37,666,860       |
| Temporary Utilities           | 578,796          |
| Asbestos Abatement or Removal | 2,460,000        |
| Design Contingency            | 39,000,000       |
| Construction Contingency      | 19,500,000       |
| Fix Equipment                 | 17,523,772       |
| Architect/Engineering Fees    | 38,698,701       |
| Construction Manager Fees     | 54,498,463       |
| Movable Equipment             | 45,354,176       |
| Telecommunications            | 19,862,560       |
| CON Application Fee           | 2,000            |
| CON Processing Fee            | <u>4,037,401</u> |
| Total Project Cost            | \$738,112,383    |

Project costs are based on a construction start date in the December 2018 and a 52-month construction period.

The applicant's financing plan appears as follows:

|  |                     |
|--|---------------------|
| Equity   | \$4,037,401         |
| Federal Grants (FEMA-PAP E-Grant)                | \$701,864,100       |
| U.S Housing & Urban Develop. (HUD-CDBG-DR Grant) | <u>\$32,210,882</u> |
| Total  | \$738,112,383       |

The applicant has provided documentation of approval of the Federal grants allocated to Coney Island Hospital's Superstorm Sandy projects.

#### Operating Budget

The applicant has submitted the operating budgets for the first and third years for the departments moving into the new facility, using 2018 dollars, as summarized below:

| <b>Revenues</b>                     | <u>First Year</u> |                    | <u>Third Year</u> |                    |
|-------------------------------------|-------------------|--------------------|-------------------|--------------------|
|                                     | <u>Per Disch.</u> | <u>Total</u>       | <u>Per Disch.</u> | <u>Total</u>       |
| <b>Inpatient</b>                    |                   |                    |                   |                    |
| Medicaid                            | \$8,125           | \$47,066,324       | \$8,453           | \$48,967,804       |
| Medicare                            | \$6,342           | 39,102,478         | \$6,598           | 40,682,218         |
| Commercial                          | \$6,184           | 5,212,973          | \$6,434           | 5,423,578          |
| Private Pay                         | \$139             | 58,224             | \$144             | 60,576             |
| All Other #                         | \$7,279           | <u>414,915</u>     | \$7,573           | <u>431,676</u>     |
| Total Inpt. Revenue                 |                   | \$91,854,914       |                   | \$95,565,852       |
| <b>Outpatient</b>                   | <u>Per Visit</u>  | <u>Total</u>       | <u>Per Visit</u>  | <u>Total</u>       |
| Medicaid                            | \$282             | \$17,288,206       | \$294             | \$17,986,649       |
| Medicare                            | \$257             | 5,867,668          | \$267             | 6,104,721          |
| Commercial                          | \$226             | 4,353,098          | \$235             | 4,528,963          |
| Private Pay/Charity                 | \$10              | 376,158            | \$10              | 391,354            |
| All Other #                         | \$376             | <u>400,693</u>     | \$391             | <u>416,883</u>     |
| Total Outpt. Revenue                |                   | \$28,285,823       |                   | \$29,428,570       |
| Other Operating Revenue *           |                   | <u>11,105,124</u>  |                   | <u>11,105,124</u>  |
| Total Revenues                      |                   | \$131,245,861      |                   | \$136,099,546      |
| <b>Expenses (Inpt &amp; Outpt).</b> |                   |                    |                   |                    |
| Operating                           |                   | \$103,805,898      |                   | \$105,641,070      |
| Capital                             |                   | <u>23,325,175</u>  |                   | <u>23,325,175</u>  |
| Total Expenses                      |                   | \$127,131,073      |                   | \$128,966,245      |
| Net Income                          |                   | <u>\$4,114,788</u> |                   | <u>\$7,133,301</u> |
| Patient Discharges                  |                   | 13,279             |                   | 13,279             |
| Patient Visits                      |                   | 141,833            |                   | 141,833            |

# All Other pertains to No Fault, Workers Compensation and Government-Other payors.

\* Other Operating Revenue represents payments for Disproportionate Share Hospital for \$7,183,576 and Upper Payment Limit for \$3,921,548.

The following is noted with respect to the submitted budget:

- Revenues were projected based on FY 2017 Soarian Financial reports for the departments moving into the CSS Building except for Inpatient Medical/Surgical which based on the FY17 CDCR inpatient cash collections prorated to the project's Medical/Surgical inpatient beds. As a conservative measure reimbursement rates were held constant until Year-One (FY 2022), when they were estimated to increase by 2% through Year-Three (FY 2024). Also, the applicant states revenue enhancement projects are currently being undertaken by Health and Hospital Corporation.
- Expenses were based on actual expenses for the departments scheduled to move into the new CSS Building. Staffing FTEs and salaries were based on the February 2017 Active Staffing Roster. A 1% inflation factor was added beginning in the current year FY17 and compounded annually for eight years forward. OTPS costs were projected based on February 2017 OTPS expenses with current year starting FY17 with a 5% inflation factor for FY22 (Year One) remaining the same through FY24 (Year Three).
- Utilization by payor for the first and third years is summarized below:

| <u>Inpatient Payors</u> | <u>First and Third Years</u> |             | <u>Outpatient Payors</u> | <u>First and Third Years</u> |             |
|-------------------------|------------------------------|-------------|--------------------------|------------------------------|-------------|
|                         | <u>Disch.</u>                | <u>%</u>    |                          | <u>Visits</u>                | <u>%</u>    |
| Medicaid                | 5,793                        | 43.63%      | Medicaid-FFS             | 61,223                       | 43.17%      |
| Medicare                | 6,166                        | 46.43%      | Medicare-FFS             | 22,860                       | 16.12%      |
| Commercial              | 843                          | 6.35%       | Commercial               | 19,275                       | 13.58%      |
| Private Pay/Charity     | 420                          | 3.16%       | Private Pay/Charity      | 37,410                       | 26.38%      |
| All Other               | <u>57</u>                    | <u>.43%</u> | All Other                | <u>1,065</u>                 | <u>.75%</u> |
| Total                   | 13,279                       | 100%        | Total                    | 141,833                      | 100%        |

#### Capability and Feasibility

Project costs of \$738,112,383 will be met with \$4,037,401 equity and \$734,074,982 to be funded via Federal grants consisting of a FEMA-PAP E-Grant for \$701,864,100 and a HUD-CDBG-DR Grant for \$32,210,882. H+H was awarded \$1.7 billion from FEMA for Superstorm Sandy recovery with about \$33 million to be provided via HUD disaster recovery block grant funding. A total of \$922.7 million of this overall Federal funding is approved to support repairs at Coney Island Hospital. The CDBR funding is included in FEMA's commitment plan in several the Hospital's Sandy projects

Working capital requirements are minimum as the budget reflects moving existing services into to the new CSS Building. Any added working capital will be funded from operations. BFA Attachment A is Coney Island Hospital's financial summary from their 2017 Institutional Cost Report (ICR), which indicates the availability of sufficient funds for the project

The submitted budgets indicate a net income of \$4,114,788 and \$7,133,301 in the first and third years, respectively. The budgets are reasonable.

BFA Attachment B is New York City Health and Hospitals Corporation's 2017 certified financial statements, which shows negative working capital (which improved from 2015) and negative operating income.

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 - 2017 Coney Island Hospital financial summary from Institutional Cost Report

BFA Attachment B Financial Summary – New York City Health and Hospital Corporation Certified Financial Statement as of June 30, 2017



## Financial Summary

There are no project costs or acquisition costs associated with this application. The proposed budget is as follows:

|             | <u>Year One</u>    |
|-------------|--------------------|
| Revenues    | \$341,757,618      |
| Expenses    | <u>351,234,272</u> |
| Gain (Loss) | (\$9,476,654)      |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Program Description

Arnot Ogden Medical Center (AOMC), a 266-bed, voluntary not-for-profit Article 28 acute care hospital, located at 600 Roe Avenue in Elmira (Chemung County), requests approval to acquire St. Joseph's Hospital (SJH), a 125-bed hospital located approximately two miles away, at 555 St. Joseph's Boulevard in Elmira.

As a result of service duplication and financial challenges, the NYS Berger Commission report recommended a consolidation of SJH and AOMC. To mitigate financial losses at St. Joseph's Hospital, the State of New York approved the establishment of Arnot Health, Inc. (AHI) as the Active Parent organization for the two facilities. Since August 2011, AOMC and SJH have operated with combined management under AHI as the common active parent.

The proposed full asset merger will consolidate beds and services from SJH's operating certificate onto AOMC's operating certificate and would facilitate a phased approach towards modernizing and rightsizing facilities to meet code requirements and patient health needs. Additionally, the consolidation would allow AOMC to be partially compensated by Medicare for its Graduate Medical Education program that rotates residents through the St. Joseph's Hospital psychiatric and substance abuse units.

Through this acquisition, AOMC aims to protect continued access to health services for area residents while improving financial sustainability through efficiencies and enhancing patients' experience of care. There will be no change in authorized services or number or types of beds as a result of this application.

### Background

| <b>Arnot Ogden Beds, Source HFIS</b> |                  |
|--------------------------------------|------------------|
| <b>Bed Type</b>                      | <b>Bed Count</b> |
| Coronary Care                        | 17               |
| Intensive Care                       | 3                |
| Maternity                            | 25               |
| Medical / Surgical                   | 181              |
| Neonatal Intensive Care              | 13               |
| Neonatal Intermediate Care           | 7                |
| Pediatric                            | 20               |
| <b>Total</b>                         | <b>266</b>       |

| <b>St. Joseph's Beds, Source HFIS</b> |                  |
|---------------------------------------|------------------|
| <b>Bed Type</b>                       | <b>Bed Count</b> |
| Chemical Dependence - Rehabilitation  | 20               |
| Coronary Care                         | 4                |
| Intensive Care                        | 10               |
| Physical Medicine and Rehabilitation  | 40               |
| Psychiatric                           | 25               |
| Transitional Care                     | 26               |
| <b>Total</b>                          | <b>125</b>       |

### Compliance with Applicable Codes, Rules and Regulations

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

## Prevention Agenda

Arnot Ogden Medical Center (AOMC) proposes to certify St. Joseph's Hospital as a division of AOMC. Both organizations have been operating under combined management with Arnot Health as the active parent. The merger would result in a consolidating and modernizing of the facility to meet today's code requirements. Project Capital Cost: \$2,000

Arnot Ogden Medical Center (applicant) submitted a 2016 and 2017 "combined" CSP/CHIP update with Chemung County Department of Health. Within the CSP/CHIP the applicant has identified two Prevention Agenda priorities "Prevent Chronic Diseases" and "Promote Mental Health and Prevention Substance Abuse":

- Reduce obesity in children and adults
- Increase preventive care and management of chronic disease

The applicant identifies a number of evidence-based interventions that are being implemented and align with the workplan and updates. AOMC engages local community partners in its Prevention Agenda efforts as it relates to planning and/or implementation.

While AOMC uses output and input measures to track progress, this effort could be strengthened by using intermediate impact measures to track progress to advance local Prevention Agenda goals. In the most recent Schedule H, AOMC did report Community Benefit spending in the Community Health Improvement Services category.

The applicant should develop intermediate impact measures to track progress on advancing Prevention Agenda goals. These measures would provide information on the impact of the policies and changes adopted, such as the impact of sodium reduction in hospital meals.

## 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 need and programmatic perspective, approval is recommended.**

# Financial Analysis

## Merger Agreement

The applicant has submitted an executed merger agreement between Arnot Ogden Medical Center and St. Joseph's Hospital to be effectuated upon Public Health and Health Planning Council approval. The terms of the agreement are summarized below:

|                       |   |
|-----------------------|---|
| Date:                 | June 25, 2018 (Plan of Merger adopted by vote of the respective Boards) |
| Date:                 | June 26, 2018 (Certificate of Merger execution date)                    |
| Merging Entities:     | Arnot Ogden Medical Center and St. Joseph's Hospital                    |
| Surviving Entity:     | Arnot Ogden Medical Center  |
| Assets Acquired:      | All remaining assets  |
| Liabilities Acquired: | All remaining liabilities   |
| Purchase Price:       | \$0   |

## Operating Budget

The applicant has submitted the current year (2017) and projected first year operating budgets, as 2018 dollars, as summarized below:

|                        | <u>AOMC</u>       | <u>SJH</u>       | <u>Combined</u>   |
|------------------------|-------------------|------------------|-------------------|
| <u>Revenues</u>        |                   |                  |                   |
| Inpatient              | \$107,496,932     | \$28,078,655     | \$135,575,587     |
| Outpatient             | 191,007,070       | 21,922,935       | 212,930,005       |
| Other Operating *      | 7,713,540         | 2,331,691        | 10,045,231        |
| Non-Operating          | 2,874,851         | 49,028           | 2,923,879         |
| Less: Charity Care     | 1,768,089         | 235,843          | 2,003,932         |
| Less: Bad Debt         | <u>14,512,327</u> | <u>3,200,825</u> | <u>17,713,152</u> |
| Total Revenues         | \$292,811,977     | \$48,945,641     | \$341,757,618     |
| <u>Expenses</u>        |                   |                  |                   |
| Operating              | \$285,233,947     | \$50,334,927     | \$335,568,774     |
| Capital                | <u>13,071,200</u> | <u>2,594,298</u> | <u>15,665,498</u> |
| Total Expenses         | \$298,305,047     | \$52,929,225     | \$351,234,272     |
| Excess Revenues        | (\$5,493,070)     | (\$3,983,584)    | (\$9,476,654)     |
| Utilization Discharges | 10,711            | 930              | 11,641            |
| Utilization Visits     | 803,482           | 51,955           | 855,437           |

\*Other operating: Grants, Commission and Sales, Investment Income and Misc. Income.

|                        | <u>Current Combined</u> | <u>Year One</u>   |
|------------------------|-------------------------|-------------------|
| <u>Revenues</u>        |                         |                   |
| Inpatient              | \$135,575,587           | \$139,642,855     |
| Outpatient             | 212,930,005             | 219,317,905       |
| Other Operating        | 10,045,231              | 10,184,467        |
| Non-Operating          | 2,923,879               | 2,923,880         |
| Less: Charity Care     | 2,003,932               | 2,064,050         |
| Less: Bad Debt         | <u>17,713,152</u>       | <u>18,244,547</u> |
| Total Revenues         | \$341,757,618           | \$351,760,510     |
| <u>Expenses</u>        |                         |                   |
| Operating              | \$335,568,774           | \$343,207,224     |
| Capital                | <u>15,665,498</u>       | <u>15,665,498</u> |
| Total Expenses         | \$351,234,272           | \$358,872,722     |
| Excess Revenues        | (\$9,476,654)           | (\$7,112,212)     |
| Utilization Discharges | 11,641                  | 11,757            |
| Utilization Visits     | 855,437                 | 881,100           |

Expense and utilization assumptions are based on the historical experience of the hospitals. The two Elmira hospitals have operated under a common charge master file and payer contracting process since alignment under Arnot Health in 2011. It is presumed that the payor rates for services will remain the same.

Utilization by payor source for inpatient and outpatient for the current year and year one is as follows:

| <u>Inpatient</u> | <u>Current Year</u> | <u>Year One</u> |
|------------------|---------------------|-----------------|
| Medicaid FFS     | 3.66%               | 3.66%           |
| Medicaid MC      | 19.10%              | 19.10%          |
| Medicare FFS     | 33.04%              | 33.04%          |
| Medicare MC      | 18.22%              | 18.22%          |
| Commercial FFS   | 24.04%              | 24.04%          |
| Private Pay      | 1.32%               | 1.32%           |
| Other            | 0.62%               | 0.62%           |

| <u>Outpatient</u> | <u>Current Year</u> | <u>Year One</u> |
|-------------------|---------------------|-----------------|
| Medicaid FFS      | 0.87%               | 0.87%           |
| Medicaid MC       | 16.53%              | 16.53%          |
| Medicare FFS      | 36.62%              | 36.62%          |
| Medicare MC       | 0.78%               | 0.78%           |
| Commercial FFS    | 42.22%              | 42.22%          |
| Private Pay       | 1.14%               | 1.14%           |
| Other             | 1.84%               | 1.84%           |

### Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application. The submitted budget indicates an excess of expenses over revenues of \$9,476,654 during the first year after the merger. The loss will be offset via operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the 2016 and 2017 certified financial statements of Arnot Health, Inc. As shown, Arnot Ogden Medical Center and Affiliates had a positive working capital position and a positive net asset position in 2017. The entity incurred a net loss of \$8,577,438 in 2017. The applicant indicated that the reasons for the loss were the result of inpatient volume decreasing by 3.7%, charity care increased by \$500,000 and total expenses increased by 2.3% due to increased costs for drugs and supplies and employee health care expenses and pension costs increases. The entity implemented the following steps to improve operations: engaged a consulting firm, combining ACMC and SJH's emergency department and working with Corning, Inc. through their loaned extension program to develop and implement quality and lean initiatives.

As shown on Attachment B, St. Joseph's Hospital had a positive working capital position and a positive net asset position in 2017. Also, the entity incurred a net loss of \$3,989,311 in 2017. The entity indicated that the reasons for the losses were the result of the following: much of the facility is old with inefficient space, the hospital requires consolidated investments related to healthcare information technology and support, and the facility's size does not enable their ability to attract better prices for goods and supplies. To improve operations, the entity will merge with Arnot Ogden Hospital into a single entity with a long-range plan of constructing a new more efficiently built facility on the Arnot Campus to replace the old oversized facility.

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 | Organizational Chart Pre- and Post-Merger                          |
| BFA Attachment B | 2016 and 2017 certified financial statements of Arnot Health, Inc. |



**Project # 181334-C  
Samaritan Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Rensselaer  
Acknowledged: May 10, 2018**

**Executive Summary**

**Description**

Samaritan Hospital of Troy NY, Inc. d/b/a Samaritan Hospital (Samaritan), a voluntary not-for-profit, Article 28 acute care hospital located at 2215 Burdett Avenue, Troy (Rensselaer County), requests approval to merge Seton Health System, Inc. d/b/a St. Mary’s Hospital (St. Mary’s), a voluntary not-for-profit, Article 28 hospital located at 1300 Massachusetts Avenue, Troy (Rensselaer County), into its operations. Samaritan will be the surviving hospital and corporation. Upon approval of the merger, the St. Mary’s site will be known as Samaritan Hospital / St. Mary’s Campus. St. Peter’s Health Partners (SPHP), a not-for-profit healthcare system in New York’s Capital Region that operates numerous health facilities, is the sole member, active parent and co-operator of both hospitals.

Since the formation of SPHP in 2011, SPHP has been implementing a Troy Master Facilities Plan (MFP) for acute care services at the Samaritan and St. Mary’s campuses. The MFP includes the following changes:

- Samaritan Campus – This site will provide the principal inpatient services and include the emergency department (ED). Under CON 132378, Samaritan was approved to construct a new patient pavilion that included an ED, intensive care unit, a progressive care unit and two medical/surgical units. Approval of this application provided for the transfer of 60 beds from St. Mary’s to Samaritan via an intra-network bed transfer, and the decertification of 15 chemical dependency (CD) – detoxification beds at Samaritan. This project is under construction and near completion.

- St. Mary’s Campus – Under CON 172273, multiple services (including the ED) and all beds other than 20 CD – rehabilitation beds were decertified. The St. Mary’s bed decertification (a decrease from 196 to 20 beds) enabled the intra-network transfer of 60 beds to Samaritan that were approved under CON 132378. The St. Mary’s site will continue the 20-bed CD – rehabilitation inpatient service and will offer primarily outpatient and other health-related services including urgent care, cancer treatment and the Samaritan School of Nursing. This site also now houses SPHP’s finance department, which eliminated rental expense systemwide.

At the end of the merger process, Samaritan Hospital will consist of two campuses with a net bed count of 277 certified beds (257 beds at the Samaritan campus and 20 CD – Rehabilitation beds at the St. Mary’s campus).

Consistent with the physical reorganization of services in Troy, the rationale for maintaining separate legal status and licenses has disappeared. The merger is expected to deliver governance, administrative and operational efficiencies via one legal board, a single management structure, one set of policies and procedures, one medical and nursing staff, and many unified departments. Regulatory obligations imposed by federal and state agencies will also be cut in half.

Presently, SPHP, Samaritan and St. Mary's have mirror boards. Post-merger, SPHP and Samaritan will continue to have mirror boards and SPHP will retain the active parent reserve powers. St. Mary's will cease to exist as a separately licensed entity and will become a Division under Samaritan's operating certificate (surviving entity).

OPCHSM Recommendation  
Contingent Approval

Need Summary

Through project 132378 the beds consolidations were processed for this merger and for consolidation of services project 172273 was submitted. There will not be any impact on need through the completion of this project.

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 or acquisition price associated with this application. The proposed budget is as follows:

|                       | <u>Year One</u>      | <u>Year Three</u>    |
|-----------------------|----------------------|----------------------|
| Total Revenues        | \$271,277,378        | \$280,285,831        |
| Total Expenses        | <u>\$281,825,534</u> | <u>\$283,501,205</u> |
| Net Income/<br>(Loss) | (\$10,548,156)       | (\$3,215,374)        |

Since the creation of SPHP, Samaritan and St. Mary's have been proceeding with implementation of the MFP to functionally integrate the two Troy hospitals. As in the past, SPHP will continue to support the Troy MFP as they work towards improving the cost structure and identifying opportunities for growth. BFA Attachment C presents St. Peter's Health Partners 2016-2017 consolidated certified financial statements, which shows the financial ability to provide support.

## 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 a Board Resolution by Seton Health System Inc, approving of the merger with Samaritan Hospital of Troy, acceptable to the Department. [CSL]
2. Submission of a photocopy of the Board Resolution of the Samaritan Hospital of Troy approving of the merger with Seaton Health System Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the Board Resolution of St. Peters Health Partners approving of the merger of Seaton Health System Inc. with the Samaritan Hospital of Troy, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Program Description

Samaritan Hospital of Troy NY, Inc. d/b/a Samaritan Hospital (Samaritan), a voluntary not-for-profit, Article 28 acute care hospital located at 2215 Burdett Avenue in Troy (Rensselaer County), requests approval to merge Seton Health System, Inc. d/b/a St. Mary's Hospital (St. Mary's), a voluntary not-for-profit, Article 28 hospital located at 1300 Massachusetts Avenue in Troy (Rensselaer County), into its operations, with Samaritan being the surviving hospital and corporation. Both hospitals have St. Peter's Health Partners (SPHP) as their sole member, active parent and co-operator. Upon approval of the merger, the St. Mary's site will be known as Samaritan Hospital/St. Mary's Campus. There will be no changes to beds or services as a result of this application.

St. Mary's 12 extension clinics (as listed in the chart below) shall become Samaritan Hospital extension clinics and will be renamed, as noted.

| <b>Extension Clinics</b>   |  |
|--|--|
| Capital Region Family Health Center<br><i>To be renamed: Capital Region Family Health Care</i><br>2 Empire Drive<br>Rensselaer, NY 12144     | Seton Health OB/GYN- Cohoes<br><i>To be renamed: Samaritan OB/GYN</i><br>55 Mohawk Street<br>Cohoes, NY 12047  |
| Clifton Park Family Health Center<br><i>To be renamed: Clifton Park Family Practice</i><br>One Tallow Wood Drive<br>Clifton Park, NY 12065   | Seton Health OB/GYN – Latham<br><i>To be renamed: Samaritan OB/GYN</i><br>Capital Region Health Park<br>713 Troy-Schenectady Road, Suite 304<br>Latham, NY 12110 |
| Massry Center<br><i>(No change in name)</i><br>147 Hoosick Street<br>Troy, NY 12180  | Shaker Point Internal Medicine<br><i>To be renamed: Latham Primary Care Associates</i><br>1 Bell Tower Drive<br>Watervliet, NY 12189                             |
| Samaritan OB/GYN, operated by St. Mary's Hospital<br><i>To be renamed: Samaritan OB/GYN</i><br>2231 Burdett Avenue<br>Troy, NY 12180         | St. Peter's OB/GYN at Clifton Park<br><i>To be renamed: Samaritan OB/GYN</i><br>855 Route 146<br>Clifton Park, NY 12065  |
| Seton Health Physical Rehab<br><i>To be renamed: Clifton Park Physical Rehabilitation</i><br>648 Plank Road<br>Clifton Park, NY 12065        | Stillwater Health Center<br><i>To be renamed: Stillwater Family Health Center</i><br>North Hudson Avenue<br>Stillwater, NY 12170                                 |
| Seton Health Pediatrics<br><i>To be renamed: Troy Pediatric Health Center</i><br>500 Federal Street, 6 <sup>th</sup> Floor<br>Troy, NY 12180 | Troy Internal Medicine<br><i>(No change in name)</i><br>1401 Massachusetts Avenue<br>Troy, NY 12180  |

At the end of the merger process, Samaritan Hospital will consist of two campuses with a net bed count of 277 certified beds (257 beds at the Samaritan campus and 20 Chemical Dependence– Rehabilitation beds at the St. Mary's campus).

This merger is expected to deliver governance, administrative and operational efficiencies via one legal board, a single management structure, one set of policies and procedures, one medical and nursing staff, and many unified departments.

## Compliance with Applicable Codes, Rules and Regulations

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

## Prevention Agenda

Samaritan Hospital is seeking approval of the merger of two hospital operators in Troy, NY:

(1) Seton Health System, Inc. d/b/a St. Mary's Hospital ("St. Mary's") and (2) Samaritan Hospital of Troy, NY d/b/a Samaritan Hospital ("Samaritan"), with Samaritan as the surviving hospital. Both hospitals have St. Peter's Health Partners as their sole member, "active parent," and co-operator. The merger would strengthen the organization's ability to sustain and perform community services that otherwise may be in jeopardy.

The applicant identified the priorities selected for action in Samaritan's most recent community service plan and they are in alignment with the Community Health Improvement Plan. These priorities include:

- Preventing chronic disease, focusing on reducing obesity and diabetes in children and adults; and
- Promoting mental health and preventing substance abuse, focusing on preventing substance abuse and other mental, emotional and behavioral diseases.

The applicant described the interventions based on evidence currently implemented by Samaritan Hospital to prevent chronic diseases: promoting pre-diabetes screenings and education by using evidence-based tools and adult self-management programs; implementing nutrition and beverage standards in public institutions, worksites, school districts, and childcare centers; and promoting physical activity in childcare centers, school districts, community venues, and worksites.

Interventions to prevent substance abuse and other mental, emotional, and behavioral diseases are: provider education about addiction and pain management, including educating patients about risk of harm and misuse; promoting safe storage and proper disposal of unused prescriptions; offering New York State Opioid Overdose Prevention Training; and establishing ambulatory detox service locations.

Samaritan Hospital engages with diverse local organizational partners in its Prevention Agenda efforts to plan and/or implement interventions.

While Samaritan Hospital uses output and input measures to track progress, this effort could be strengthened by using intermediate impact measures to track progress to advance local Prevention Agenda goals. For example, the outcomes of participants in their adult self-management programs, and how communities have been impacted by the Complete Streets policy.

In the most recent Schedule H for 2015, Samaritan Hospital reported Community Benefit Spending in the Community Health Improvement Services and Community Benefit operations category.

## 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 need and programmatic perspective, approval is recommended.**

## Financial Analysis

### Merger Agreement

The applicant has submitted a proposed Merger Agreement between Samaritan Hospital of Troy, NY, Inc. and Seton Health System, Inc. to be effectuated upon Public Health and Health Planning Council approval. The terms of the agreement are summarized below:

|                   |  |
|-------------------|--|
| Date:             | January 1, 2019 (proposed effective date)  |
| Merging Entities: | Samaritan Hospital of Troy, NY, Inc and Seton Health System, Inc                               |
| Surviving Entity: | Samaritan Hospital of Troy, NY, Inc  |
| Purchase Price:   | There will be no cash of other consideration paid for in exchange for any membership interest. |

The sole member of Samaritan Hospital of Troy, NY, Inc. is SPHP, a New York not-for-profit corporation, and the sole member of SPHP is Trinity Health Corporation, an Indiana nonprofit corporation. The two members of Seton Health System, Inc. are SPHP and Ascension Health, a Missouri nonprofit corporation. Currently, SPHP is a Class A member and active parent of St. Mary's and Ascension Health is a Class B member and passive parent of St. Mary's. Per the applicant, effective June 3, 2018, Ascension has terminated its membership interest in Seton Health System, Inc. d/b/a St. Mary's Hospital. Ascension will not have a membership interest in Samaritan Hospital post-merger.

### Operating Budget

The applicant has submitted the current year (FYE 6/30/17) and projected first and third year operating budgets, in 2018 dollars, as summarized below:

|                          | <u>Current</u>       | <u>Year One</u>       | <u>Year Three</u>    |
|--------------------------|----------------------|-----------------------|----------------------|
| <u>Revenues</u>          |                      |                       |                      |
| Inpatient                | \$86,564,411         | \$96,416,478          | \$99,247,053         |
| Outpatient               | 165,174,784          | 163,446,156           | 169,624,034          |
| Other Operating Revenue* | 7,885,952            | 7,885,952             | 7,885,952            |
| Non-Operating Revenue**  | <u>7,223,861</u>     | <u>3,528,792</u>      | <u>3,528,792</u>     |
| Total Revenues           | \$266,849,008        | \$271,277,378         | \$280,285,831        |
| <u>Expenses</u>          |                      |                       |                      |
| Operating                | \$256,367,391        | \$267,143,805         | \$270,974,466        |
| Capital                  | <u>11,968,019</u>    | <u>14,681,729</u>     | <u>12,526,739</u>    |
| Total Expenses           | \$268,335,410        | \$281,825,534         | \$283,501,205        |
| Net Income (Loss)        | <u>(\$1,486,402)</u> | <u>(\$10,548,156)</u> | <u>(\$3,215,374)</u> |
| Utilization Discharges   | 9,227                | 9,724                 | 9,986                |
| Utilization Visits       | 413,607              | 470,184               | 475,908              |

\*Grant revenue (\$2M), Rent (\$3.7M), Net Assets release from restrictions for operations (\$1.3M) and Sales (\$9K).

\*\*Investment returns are expected to continue, but at lower rate of return.

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

| <u>Inpatient</u> | <u>Current</u> | <u>Year One</u> | <u>Year Three</u> |
|------------------|----------------|-----------------|-------------------|
| Medicaid - FFS   | 5.79%          | 5.06%           | 5.06%             |
| Medicaid - MC    | 16.53%         | 16.50%          | 16.48%            |
| Medicare - FFS   | 32.20%         | 32.18%          | 32.21%            |
| Medicare - MC    | 23.80%         | 24.83%          | 24.83%            |
| Commercial - FFS | 6.63%          | 6.63%           | 6.64%             |
| Commercial - MC  | 12.74%         | 12.18%          | 12.20%            |
| Private Pay      | .40%           | .75%            | .75%              |
| Charity          | <u>1.91%</u>   | <u>1.87%</u>    | <u>1.83%</u>      |
| Total            | 100%           | 100%            | 100%              |

| <u>Outpatient</u> | <u>Current</u> | <u>Year One</u> | <u>Year Three</u> |
|-------------------|----------------|-----------------|-------------------|
| Medicaid - FFS    | 2.30%          | 1.98%           | 1.98%             |
| Medicaid - MC     | 16.34%         | 16.04%          | 16.03%            |
| Medicare - FFS    | 22.83%         | 22.84%          | 22.85%            |
| Medicare - MC     | 19.16%         | 18.86%          | 18.86%            |
| Commercial - FFS  | 11.29%         | 12.07%          | 12.07%            |
| Commercial - MC   | 25.76%         | 25.11%          | 25.13%            |
| Private Pay       | 1.59%          | 2.40%           | 2.39%             |
| Charity           | <u>.73%</u>    | <u>.70%</u>     | <u>.69%</u>       |
| Total             | 100%           | 100%            | 100%              |

Budget projections are based on the following:

- While the current year shows an operating loss, the applicant indicated that the combined facility results had a positive cash flow from operations.
- The Year One loss is expected to increase as additional non-clinical staff is used to support opening of the new Pavilion during FY 2018, along with an estimated \$4M reduction in investment returns.
- By Year Three, the loss is expected to decline by \$7.3M to a \$3.2M loss, and cash flow is projected to be positive.
- Revenue assumptions include volume growth from the affiliated Medical Group, improved productivity and referrals along with increased volume from the MFP, and LINAC replacement.
- Reimbursement rate assumptions include the impact of Medicare geographic reclassification approval, combined disproportionate share impact, and Samaritan achieving 340(b) status.
- Cost assumptions include variable expenses related to the incremental volume, along with increased depreciation for the LINAC replacement and interest expense related to MFP completion.

#### Capability and Feasibility

There are no project costs or acquisition price associated with this application. BFA Attachment C is the 2016 and 2017 consolidated certified financial statements of St. Peter's Health Partners Albany, NY, which shows positive working capital and positive net asset positions. For 2017, operating income was \$6,302,000 before other items and excess of revenue over expenses was \$37,861,000. The applicant stated that for FY 2017, Samaritan had excess of revenues over expenses of \$9,546,000 while St. Mary's had a deficiency of revenue over expenses of \$11,033,000.

The applicant indicated that St. Peter's Health Partners has invested around \$100 million in the MFP, which is expected to be complete by early 2019. The goal of the MFP is to consolidate inpatient services on the Samaritan campus and transition St. Mary's to an outpatient-focused campus. During 2017, St. Mary's acute inpatient and surgical services were transitioned to Samaritan Hospital.

The Budget shows first and third losses of \$10,548,156 and \$3,215,374, respectively (as previously noted by the third-year cash flow is projected to be positive). SPHP recently completed a FY 2019 operating budget that achieves an operating margin of \$7.2M and is a glided path towards long-term sustainability. The foundation of the plan is built on functional integration, shifting the operating model and creating an organizational structure that supports systemness. Integration started at the time SPHP was created (2011) and the FY 2019 budget continues the efforts in 16 areas. Management initiatives include functional integration, workforce productivity improvements, supply chain and clinical utilization improvements, strengthening St. Peter's Health Partners Medical Associates, P.C, SPHP's affiliated Medical Group, and targeted volume growth through a 5-point growth strategy. SPHP is also in the process of performing a Facility Rationalization Plan (FRP) to determine which facilities and programs best meet the needs of the community and contribute to SPHP's success. With the majority of the combined loss being generated by the St. Mary's campus this campus will be a significant area of focus of the FRP. The budget appears to be reasonable.

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 St. Peter's Health Partners Pre-Merger and Post-Merger Organizational Charts
- BFA Attachment B St. Peter's Health Partners Albany, NY 2016 and 2017 consolidated certified financial statements (including Supplemental Schedules)
- BFA Attachment C Supplemental 2017 certified financial data - Samaritan & St Mary's Hospitals



**Project # 181404-C  
Albany Medical Center Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Albany  
Acknowledged: June 19, 2018**

**Executive Summary**

**Description**

Albany Medical Center Hospital (AMCH), a 716-bed, voluntary not-for-profit, Article 28 acute care hospital located at 43 New Scotland Avenue, Albany (Albany County), requests approval to renovate two floors of the M Building at the main hospital facility as Medical/Surgical units to add 32 net new Medical/Surgical beds. The facility is currently licensed for 399 Medical/Surgical beds. Upon completion of the project, the medical/surgical bed count will increase to 431 and the overall total certified bed capacity will increase to 748 beds.

The proposal represents the creation of additional Medical/Surgical unit space to reduce the existing two-bed patient rooms, decompress current capacity constraints, increase inpatient efficiencies, and provide a more patient-centered facility. The project consists of the interior renovation of existing space with no addition or increase in building area proposed.

The M Building consists of nine floors located at the center of the hospital and currently has patient rooms on the fourth and fifth floors. The M2 and M3 medical/surgical units located on the second and third floors of the building are currently in use as treatment units for apheresis and dialysis, including various support space, as well as office and storage functions. These functions will be relocated to the second floor of the A Building as part of a separate, previously submitted project (CON 172222). The proposed M Building renovation will result in contiguous inpatient care units on floors two through five, which will allow for increased efficiency of patient care. The renovated M2

floor will provide 16 private Medical/Surgical rooms for spine surgery patients, and M3 will provide 16 private Medical/Surgical rooms for general surgery patients. The M2 Spine unit will be approximately 12,295 gross square feet, and the M3 General Surgery unit will be approximately 12,240 gross square feet. Patient surgeries, including spine, are expected to be general and will not require intensive recovery support in terms of observation or equipment. Associated office functions will be located immediately adjacent to the unit in the A Building

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
Albany Medical Center's medical surgical utilization grown significantly the last few years. In 2013 the med/surg utilization was 78.1% and in 2016 that increased by 18% to 92.1%. The addition of these 32 beds will help bring utilization closer to the department's planning standard by reducing it to 86.8%.

**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

Total project cost of \$12,579,945 will be met via \$1,286,285 accumulated funds, a \$8,499,000 mortgage at 4.26% interest for a 25-year term amortized over 27-years, and a \$2,794,660 equipment financing loan over 7 years at 4% interest. Bank of America has provided a letter of interest at the stated terms for the equipment financing. On April 11, 2017, AMCH entered into a \$65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used for capital projects, including the M2 and M3 medical

surgical unit renovation project. The loan is insured by HUD. The incremental budget is as follows:

|          |                   |
|----------|-------------------|
| Revenues | \$31,655,940      |
| Expenses | <u>18,416,349</u> |
| Gain     | \$13,239,591      |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 15, 2018 and construction must be completed by May 31, 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]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Background

Albany Medical Center Hospital is seeking approval for the renovation of two floors of the M Building at the main hospital facility as medical surgical units, and a net increase of thirty-two beds.

### Analysis

| Bed Type                             | Current Beds | Bed Change | Beds After Completion |
|--------------------------------------|--------------|------------|-----------------------|
| AIDS                                 | 15           |            | 15                    |
| Bone Marrow Transplant               | 6            |            | 6                     |
| Coronary Care                        | 20           |            | 20                    |
| Intensive Care                       | 60           |            | 60                    |
| Maternity                            | 39           |            | 39                    |
| Medical / Surgical                   | 399          | 32         | 431                   |
| Neonatal Continuing Care             | 14           |            | 14                    |
| Neonatal Intensive Care              | 13           |            | 13                    |
| Neonatal Intermediate Care           | 29           |            | 29                    |
| Pediatric                            | 55           |            | 55                    |
| Pediatric ICU                        | 19           |            | 19                    |
| Physical Medicine and Rehabilitation | 21           |            | 21                    |
| Psychiatric                          | 26           |            | 26                    |
| <b>Total</b>                         | <b>716</b>   | <b>32</b>  | <b>748</b>            |

|                     | Current Beds | 2011         | 2012         | 2013         | 2014         | 2015         | 2016         |
|---------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Med/Surg            | 521          | 71.5%        | 73.8%        | 78.1%        | 85.3%        | 91.0%        | 92.1%        |
| Pediatric           | 74           | 50.8%        | 52.3%        | 47.5%        | 50.3%        | 51.8%        | 50.0%        |
| Obstetric           | 39           | 66.6%        | 62.5%        | 59.3%        | 64.5%        | 64.4%        | 66.9%        |
| General Psychiatric | 26           | 89.4%        | 99.6%        | 86.7%        | 102.5%       | 107.5%       | 101.7%       |
| High-Risk Neonates  | 56           | 68.8%        | 65.9%        | 68.6%        | 72.4%        | 75.1%        | 75.6%        |
| <b>Total</b>        | <b>716</b>   | <b>69.8%</b> | <b>71.5%</b> | <b>73.8%</b> | <b>80.6%</b> | <b>85.3%</b> | <b>86.0%</b> |

SPARCS data for 2017 is not yet available.

Albany Medical Center is the area's trauma center and has a high inpatient medical/surgical utilization rate at 92.1 percent for 2016. With increasing demand and current capacity restraints, adding an additional 32 medical surgical beds will help improve delivery of care to recovering patients.

### Prevention Agenda

Albany Med noted that the proposed project does not directly address the hospital's Prevention Agenda priorities. The priorities selected for action in the most recent community service plan include opiate abuse related to the goal of preventing substance abuse disorders and the prevention and management of chronic disease, with a focus on diabetes. To address these priorities, Albany Med stated that they are implementing the following evidence-based interventions:

- Prediabetes care with evidence-based screening tools and marketing;
- Adult self-management programs that include best practices/evidence-based strategies;
- Nutrition and beverage standards;
- Physical activity in childcare centers, school districts, community venues, and worksites; and
- Provider education, including prescribing guidelines, community resources and patient education, and New York State Opioid Overdose Prevention Training.

Through a regional approach led by the Healthy Capital District Initiative, Albany Med is collaborating with local health departments, other hospitals, and community-based organizations on community health improvement planning.

Albany Medical Center Hospital did not report spending on community health improvement services in the 2016 Schedule H filing, and is encouraged to increase investments in the Prevention Agenda initiatives they have committed to implement and reflect them on Schedule H. At the very least an estimate of community health improvement services spending by the hospital and its affiliated organizations is needed.

**Compliance with Applicable Codes, Rules and Regulations**

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

**Conclusion**

Increased inpatient utilization overall, and medical/surgical utilization in particular, necessitate additional medical/surgical beds.

**Recommendation**

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

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

**Total Project Cost and Financing**

The total project cost for renovations and movable equipment of \$12,579,945, detailed as follows:

|                            | <u>Total</u>        |
|----------------------------|---------------------|
| Renovation and Demolition  | \$7,033,400         |
| Design Contingency         | 45,000              |
| Construction Contingency   | 703,340             |
| Architect/Engineering Fees | 450,000             |
| Other Fees                 | 15,000              |
| Moveable Equipment         | 4,010,000           |
| Financing Costs            | 125,670             |
| Interim Interest           | 126,735             |
| CON Fee                    | 2,000               |
| Additional Processing Fee  | 68,800              |
| <b>Total Project Cost</b>  | <b>\$12,579,945</b> |

Project costs are based on a construction start date of December 15, 2018, and approximately a 5-month construction period.

The applicant will provide financing to meet the total project cost as follows:

|  |             |
|--|-------------|
| Accumulated Funds  | \$1,286,285 |
| FHA 241/HUD Insured Mortgage (4.26%, 25 years, 27-year amortization) | \$8,499,000 |
| Taxable Equipment Financing (over 7 years @ 4%)                      | \$2,794,660 |

Bank of America has submitted a letter of interest for the equipment financing.

On April 11, 2017, AMCH entered into a \$65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used to fund for capital projects, including the M2 and M3 medical surgical unit renovation project. The loan is insured by HUD and subject to HUD's

receipt and approval of plans and specifications for the project, a guaranteed maximum price for construction, and the CON approval from the New York State Department of Health.

#### Incremental Operating Budget

The applicant has submitted an incremental operating budget for the renovation of two floors of the M Building at the main hospital facility as medical surgical units, in 2018 dollars, during the first and third years after the completion of the project, summarized below:

|                          | <u>Year One</u>   |                     | <u>Year Three</u> |                     |
|--------------------------|-------------------|---------------------|-------------------|---------------------|
|                          | <u>Per Disch.</u> | <u>Total</u>        | <u>Per Disch.</u> | <u>Total</u>        |
| Revenues                 | \$13,379.19       | \$30,798,884        | \$13,379.52       | \$31,655,940        |
| <u>Expenses</u>          |                   |                     |                   |                     |
| Operating                | \$7,271.40        | \$16,738,761        | \$7,207.27        | \$17,052,406        |
| Capital                  | <u>374.58</u>     | <u>862,295</u>      | <u>576.47</u>     | <u>1,363,943</u>    |
| Total Expenses           | \$7,645.98        | \$17,601,057        | \$7,783.74        | \$18,416,349        |
| Gain                     |                   | <u>\$13,197,827</u> |                   | <u>\$13,239,591</u> |
| Utilization (Discharges) |                   | 2,302               |                   | 2,366               |
| Cost Per Discharge       |                   | \$7,645.98          |                   | \$7,783.74          |

Revenue, expense and utilization assumptions are based on the historical experience of the hospital. Operating expenses are increasing due to an increase in patient volume during the third year. Capital expenses are increasing due to mortgage interest and moveable equipment depreciation.

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

| <u>Payor</u>      | <u>Year One &amp;<br/>Year Three</u> |
|-------------------|--------------------------------------|
| Medicaid FFS      | 4.0%                                 |
| Medicaid MC       | 13.0%                                |
| Medicare FFS      | 32.0%                                |
| Medicare MC       | 18.0%                                |
| Commercial FFS    | 18.0%                                |
| Commercial MC     | 12.0%                                |
| Private Pay/Other | 3.0%                                 |

#### Capability and Feasibility

Total project cost of \$12,579,945 will be met via \$1,286,285 accumulated funds, a \$8,499,000 mortgage at 4.26% interest for a 25-year term amortized over 27 years, and a \$2,794,660 equipment financing loan over 7 years at 4%. Bank of America has provided a letter of interest at the stated terms for the equipment financing. On April 11, 2017, AMCH entered into a \$65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used for capital projects, including the M2 and M3 medical surgical unit renovation project. The loan is insured by HUD.

Working capital requirements are estimated at \$3,069,392 based on two months of third year expenses. The applicant will fund working capital from operations. BFA Attachment A is the 2016 and 2017 certified financial statements of AMCH, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost.

The submitted budget indicates an incremental excess of revenues over expenses of \$13,197,827 and \$13,239,591 during the first and third years, respectively. Revenues are based on the hospital's reimbursement rates. The submitted budget appears reasonable.

As shown on BFA Attachment A, the Hospital had a positive working capital position and net asset position from 2016 through 2017. Also, the Hospital achieved an operating income of \$33,106,000 in 2017.

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

Recommendation

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

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## Attachments

BFA Attachment A      Financial Summary - 2016 and 2017 certified financial statements of Albany Medical Center Hospital



**Project # 181448-E  
Brooklyn Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment    **Acknowledged:** July 9, 2018

**Executive Summary**

**Description**

Brooklyn SC, LLC d/b/a Brooklyn Surgery Center, a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 6010 Bay Parkway, Brooklyn (Kings County), requests approval for indefinite life status. The D&TC was approved by the Public Health and Health Planning Council (PHHPC) under CON 112222 as a multi-specialty freestanding ambulatory surgery center (FASC). PHHPC approval was for a five-year limited life and the Center began operations effective November 1, 2013. The applicant notified the Department before their limited life expiration date to request indefinite life status.

**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 for Year One following approval is as follows:

|                 |                  |
|-----------------|------------------|
| Revenues        | \$10,304,659     |
| <u>Expenses</u> | <u>9,723,860</u> |
| Net Income      | \$580,799        |

**OPCHSM Recommendation  
Approval**

**Need Summary**

Data submission by the applicant, a contingency of CON 112222 has been completed. Medicaid procedures were projected at 6.0 % and Charity Care was projected at 2.0% for Year Three of operations. Actual Charity Care in Year Three (2016) was 0.31 % and Medicaid was 18.09%. The center's Medicaid utilization has steadily increased each year of operation, building from 10.8% in 2014 to 19.4% in 2017. This strong utilization, combined with the center's outreach efforts, demonstrate reasonable efforts to provide service to the under-insured in their service area.

## 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

**October 11, 2018**

## Need Analysis

### Analysis

The primary service area is Kings County. The table below provides Year Three utilization, projections and actual, by payor, for CON 112222, and projections for year one following approval. The utilization data comes from the applicant's annual reports. There is an acknowledged difference in the utilization reported by the applicant between the annual report and the AHCF cost report. The applicant is in the process of re-submitting the 2016 AHCF cost report as requested by DOH staff.

| Payor          | CON 112222<br>Projected<br>Year Three<br>(2016) | CON 112222<br>Actual<br>Year Three<br>(2016) | CON 181448<br>Projections<br>Year One |
|----------------|---|--|---------------------------------------|
| Medicaid FFS   | 2.0%  | 0.21%  | 0.21%                                 |
| Medicaid MC    | 4.0%  | 17.88%                                       | 19.19%                                |
| Medicare FFS   | 27.0%   | 24.81%                                       | 27.20%                                |
| Medicare MC    | 2.0%  | 10.50%                                       | 8.38%                                 |
| Commercial FFS | 10.0%   | 10.20%                                       | 17.67%                                |
| Commercial MC  | 51.0%   | 28.42%                                       | 12.61%                                |
| Private Pay    | 2.0%  | 0.69%  | 1.04%                                 |
| Other          | 0.0%  | 6.98%  | 11.70%                                |
| Charity Care   | 2.0%  | 0.31%  | 2.00%                                 |
| Total          | 100.0%  | 100.00%                                      | 100.00%                               |

The center has reached out to area health clinics such as; Erza Medical Center, Cumberland Diagnostic and Treatment Center, Blanche Kahn Family Health, East New York Diagnostic and Treatment Center, Health Care Choices Community Health Center, Caribbean House Health Center, Community Healthcare Network, as well as schools, churches and synagogues to identify Charity Cares. These efforts led to minimal success. The center has treated very few patients who have no health insurance, as most needy patients have obtained Medicaid coverage by the time the center provides services to the patients. During March, which is Colon Cancer Awareness Month, the center advertises free colonoscopies by posting banners on the façade of the center's building, posts flyers in local clinics and send ambassadors of the center throughout their service area promoting this initiative. The center meets with Maimonides Medical Center's Chief Financial Officer, who serves as a Board Member of the center, to secure Charity Care referrals from the hospital. The center participates in the New York State Cancer Registry.

### 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 of 8% for service to the underserved populations in their service area of Kings County. The center's Medicaid utilization was 10.8% in 2014 and has steadily increased to 19.4% in 2017. The center has contacted area health centers, as well as schools, churches to identify charity cases, and met with minimal success. This outreach and their strong Medicaid utilization shows reasonable efforts to provide service to the underserved patients in Kings County.

### Recommendation

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

## Program Analysis

### Program Description

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). It is open Monday through Friday, from 7:00 am to 6:00 pm, and extends its hours as necessary to accommodate need. Dr. Ira Mayer, M.D. will continue to serve as the Medical Director. There are no anticipated changes in services and staffing is expected to increase slightly—by 3.0 FTEs and 5.0 FTEs in Years 1 and 3 respectively—based on the center's forecasted increase in utilization in these years.

### 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 the current year (2017) and first and third year operating budget after receiving indefinite life certification, in 2018 dollars, summarized below:

|                 | <u>Current Year</u> | <u>Year One</u> | <u>Year Three</u> |
|-----------------|---------------------|-----------------|-------------------|
| <u>Revenues</u> |                     |                 |                   |
| Medicaid-FFS    | \$142,400           | \$144,052       | \$152,695         |
| Medicaid-MC     | 1,671,172           | 1,727,449       | 1,831,095         |
| Medicare-FFS    | 1,367,045           | 1,413,723       | 1,498,547         |
| Medicare-MC     | 469,922             | 486,121         | 515,310           |
| Commercial-FFS  | 2,608,982           | 2,488,416       | 2,634,217         |
| Commercial-MC   | 1,943,767           | 2,009,663       | 2,130,243         |
| Private         | 1,121,913           | 1,159,692       | 1,229,273         |
| All Other       | <u>846,268</u>      | <u>875,543</u>  | <u>928,076</u>    |
| Total Revenues  | \$10,171,469        | \$10,304,659    | \$10,919,456      |

|                          |                    |                  |                  |
|--------------------------|--------------------|------------------|------------------|
| <u>Expenses</u>          |                    |                  |                  |
| Operating                | \$5,530,169        | \$6,643,860      | \$6,930,667      |
| Capital                  | <u>2,864,450</u>   | <u>3,080,000</u> | <u>3,130,000</u> |
| Total Expenses           | \$8,394,619        | \$9,723,860      | \$10,060,667     |
|                          |                    |                  |                  |
| Net Income               | <u>\$1,776,850</u> | <u>\$580,779</u> | <u>\$858,789</u> |
|                          |                    |                  |                  |
| Utilization (Procedures) | 9,664              | 10,048           | 10,649           |
| Cost per Case            | \$868.65           | \$967.74         | \$944.75         |

The applicant indicated that the reason costs rise and profits dropped from the Current Year to Years One and Three is due to the planned hiring of non-member physicians starting in the first-year, and related expenses that will be incurred, such as: malpractice insurance, billing fees, marketing and web development costs.

Revenue, expense and utilization assumptions for Years One and Three are projected based upon the Center's current operations.

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

| Payor          | Current Year |               | First Year   |               | Third Year   |               |
|----------------|--------------|---------------|--------------|---------------|--------------|---------------|
|                | Proc.        | %             | Proc.        | %             | Proc.        | %             |
| Medicaid-FFS   | 20           | 0.21%         | 21           | 0.21%         | 22           | 0.21%         |
| Medicaid-MC    | 1,854        | 19.19%        | 1,928        | 19.19%        | 2,044        | 19.19%        |
| Medicare-FFS   | 2,628        | 27.19%        | 2,733        | 27.20%        | 2,897        | 27.20%        |
| Medicare-MC    | 810          | 8.38%         | 842          | 8.38%         | 893          | 8.39%         |
| Commercial-FFS | 1,861        | 19.26%        | 1,775        | 17.67%        | 1,879        | 17.65%        |
| Commercial-MC  | 1,218        | 12.60%        | 1,267        | 12.61%        | 1,343        | 12.61%        |
| Private Pay    | 101          | 1.05%         | 105          | 1.04%         | 111          | 1.04%         |
| Charity        | 41           | 0.42%         | 201          | 2.00%         | 213          | 2.00%         |
| All Other      | <u>1,131</u> | <u>11.70%</u> | <u>1,176</u> | <u>11.70%</u> | <u>1,247</u> | <u>11.71%</u> |
| Total          | 9,664        | 100%          | 10,048       | 100%          | 10,649       | 100%          |

#### Capability and Feasibility

There are no project costs associated with this application. Brooklyn SC, LLC projects an operating excess of \$566,255 and \$843,370 in Year One and Three, respectively. Revenues are based on current reimbursement rates. The budget appears reasonable

BFA Attachment B is Brooklyn SC, LLC's 2015-2016 certified financial statements, 2017 draft certified financial statements and their internal financial statements as of April 30, 2018. For the 2015 and 2016 periods, the Center had negative working capital, negative net assets and positive net income. The draft 2017 financials show negative working capital, while net assets were still negative in both years but trending towards positive based on positive net income in both years. Internals through April 30, 2018, which are on an accrual basis, show positive working capital, positive net assets and net income of \$821,407.

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 | Brooklyn SC, LLC, Membership   |
| BFA Attachment B | Brooklyn SC, LLC's 2015 and 2016 Certified Financial Statements, Draft 2017 Financial Statements, and Internal Financial Statements as of April 30, 2018 |

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 11th day of October 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 indefinite life for CON #112222, 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:

181438 E

FACILITY/APPLICANT:

Brooklyn Surgery Center



**Project # 181307-E**  
**Ajay 28, LLC d/b/a New York Preventive Health Center**

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment    **Acknowledged:** May 2, 2018

**Executive Summary**

**Description**

Ajay 28, LLC, a recently formed New York limited liability company whose sole member is Ajay Kumar Lodha, M.D., requests approval to be established as the new operator of the main clinic site of Forest Hills Health Center (Forest Hills), a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 68-60 Austin Street, Forest Hills (Queens County). E&A Medical Solutions, LLC, whose sole member is Araskya Gevorgyan, is the current operator of the D&TC that is also licensed to operate an extension clinic known as Bronx Health Center located at 253 East 142<sup>nd</sup> Street in the Bronx. The extension clinic location is not included in this transaction request. E&A Medical Solutions, LLC will retain ownership of the Bronx Health Center, which will become its main site of operation upon closure of this application.

On March 27, 2018, E&A Medical Solutions, LLC entered into an Asset Purchase Agreement (APA) with Ajay Lodha, M.D. for the sale and acquisition of the operating interests of Forest Hills' main clinic site. Concurrently, the parties to the APA entered into an Assignment and Assumption Agreement, whereby E&A Medical Solutions, LLC assigned its rights, title, obligations, and interest in all assumed contracts to Dr. Lodha. The assumed contracts include an equipment purchase agreement, an equipment lease agreement and the facility's lease agreement.

The D&TC is currently licensed for Medical Services – Primary Care and Dental, as well as several non-physician/non-dental services including podiatry, audiology, optometry, and physical, occupational and speech pathology therapy services. There will be no change to the certified services upon the change in ownership. Dr. Lodha, who is Board-Certified in Internal Medicine,

will serve a Medical Director. Dr. Lodha has admitting privileges at Flushing Hospital Medical Center and the D&TC will have a Transfer and Affiliation agreement with the hospital, which is located 5.5 miles (15 minutes travel) from the facility. Upon approval by the Public Health and Health Planning Council (PHHPC), the facility will be known as New York Preventive Health Center.

**OPCHSM Recommendation  
Approval**

**Need Summary**

Ajay 28, LLC proposes to become the new operator of an existing Article 28 diagnostic and treatment center in Queens County, currently operated by E & A Medical Solutions, LLC with no change in services. The number of projected visits is 12,430 for Year One.

**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 included in this application. The purchase price for the operations is \$870,000 and will be met via equity. Dr. Lodha provided \$300,000 towards the purchase price at execution of the APA. The remaining \$570,000 balance is due at closing. The proposed budget will be as follows:

|             | <u>Year One</u>  |
|-------------|------------------|
| Revenues    | \$1,183,197      |
| Expenses    | <u>\$901,323</u> |
| Gain/(Loss) | \$281,874        |

## 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Program Description

Ajay 28, LLC, a recently formed New York limited liability company, requests approval to be established as the new operator of the main clinic site of Forest Hills Health Center, an existing Article 28 diagnostic and treatment center located at 68-60 Austin Street in Forest Hills (Queens County). E&A Medical Solutions, LLC (E&A) is the current operator.

E&A also operates an extension clinic known as Bronx Health Center, located at 253 East 142<sup>nd</sup> Street in the Bronx, which is not included in this transfer of ownership request. Upon conclusion of this transaction, the Bronx extension site will become E&A Medical Solutions' main site.

There are no changes to the certified services upon this change in ownership of the Forest Hills clinic. Upon approval, the clinic will be known as New York Preventive Health Center.

|   |   |   |
|---|---|---|
| <b>Proposed Operator</b>  | Ajay 28, LLC  |   |
| <b>To Be Named</b>  | New York Preventive Health Center   |   |
| <b>Site Address</b>   | 68-60 Austin Street<br>Forest Hills, NY 11375 (Queens County)                                 |   |
| <b>Services</b>   | Medical Services – Primary Care<br>Speech Language Pathology Therapy<br>Podiatry<br>Audiology | Dental<br>Occupational Therapy<br>Physical Therapy<br>Optometry |
| <b>Hours of Operation</b>   | Monday through Thursday 9 AM to 8 PM<br>Friday through Sunday 9 AM to 5 PM                    |   |
| <b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>                     | 11.2 FTEs / 12.5 FTEs   |   |
| <b>Medical Director(s)</b>  | Ajay K. Lodha, M.D.   |   |
| <b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b> | Will be provided by<br>Flushing Hospital Medical Center<br>5.5 miles / 15 minutes             |   |

The primary service area is Queens County. The population of Queens County in 2010 was 2,230,722. Per PAD projection data from the Cornell Program on Applied Demographics, the population of the county is estimated to grow to 2,378,066 by 2025, an increase of 6.6%. The applicant plans to continue to provide the scope of services which are currently available at this site. The applicant will work closely with the current operator to ensure that the transfer of ownership will take place with minimal disruption to the provision of health care services. In recognition of the large percentage of residents of the primary service area who have a limited English proficiency, the new operator will employ staff with a number of language skills including Spanish, Russian, Hindi and Bengali. The number of projected visits is 12,430 for Year One and 15,803 for Year Three.

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

### Character and Competence

The sole member and manager of Ajay 28, LLC is Ajay Kumar Lodha, M.D.

**Dr. Lodha** has been a practicing physician for over 25 years. He attended medical school in India and completed his residency at Flushing Hospital Medical Center. He is Board-Certified in Internal Medicine and works as a primary care provider and administrator/operator at Queens Medical Services, PLLC in Jackson Heights. Dr. Lodha, who will serve as the center's medical director, has admitting privileges at Flushing Hospital Medical Center, the affiliated acute care facility.

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.

In his initial application, dated April 26 and May 15, 2018, Dr. Lodha made no disclosures. Following Department inquiry, Dr. Lodha submitted additional information and disclosed a settled malpractice case in 2013, in the amount of \$87,500, for an alleged delay in treatment dating back to 2011 and the following pending malpractice cases:

- Case alleging failure to diagnose a myocardial infarction (in 2013) which resulted in greater cardiac muscle damage than would otherwise have been caused. A trial date has been set and counsel for Dr. Lodha and the co-defendant (a Queens hospital) have been in active settlement discussions.
- Case involving care rendered in 2012 to a hospitalized patient that led to bedsores, blisters and rashes. The deposition is not done, and discovery is just beginning.
- Case involving a nonagenarian nursing home resident with multiple co-morbidities who developed pressure ulcers in 2013. The deposition is complete and the case is nearing the completion of the discovery phase.
- Case alleging a nursing home resident had a fracture of the right femur and developed multiple pressure wounds in 2016. The case is in its earliest stages (no depositions or discovery).

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.

**Dr. Lodha** disclosed a 33.33% ownership interest in **Hilaire Farm Nursing Home** in Suffolk County which has the following enforcement history:

- On May 4, 2016, the Department issued a Stipulation and Order (S&O) and assessed a \$12,000 fine against Hilaire connected to a complaint investigation that concluded on October 6, 2015. The S&O specifically related to deficient practice in the following areas: Notification of Changes/Significant Changes – Complications and/or Life Threatening, and Quality of Care – Highest Practicable Potential. According to the complaint, after a family member reported a change in the resident's condition to a licensed practical nurse on the morning of August 25, 2015, there was no documented evidence of an assessment or that the nursing supervisor or physician was notified. At 7:40 am the following morning, the resident was found without a heartbeat and respirations. The Certificate of Death documented immediate cause of death was cerebrovascular accident (CVA or stroke).

#### Conclusion

Approval of this project will provide for continued access to a variety of medical services to the residents of Queens County. 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

### Asset Purchase Agreement

The applicant submitted an executed APA to acquire the operating interests of the D&TC, which will become effective upon PHHPC approval. The terms are summarized below:

|                                |   |
|--------------------------------|---|
| Date:                          | March 27, 2018  |
| Seller:                        | E & A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC  |
| Buyer:                         | Ajay K. Lodha, M.D.   |
| Asset Acquired:                | All of Seller's right, title and interest in and to all its assets and properties relating to the Clinic, whether real or personal, tangible or intangible ("Included Assets").   |
| Excluded Assets:               | Relating to the Clinic: Any claims, refunds to Seller, rights, actions, litigation by Seller, and proceeds thereof, irrespective of the date on which any such claim or right may arise or accrue; Seller's books/records, tax records/returns, accounting records, general ledger or books of account; trade names used by Seller/Clinic, including, without limitation, the names "E&A Medical Solutions", "Forest Hills Health Center" or any variation thereof; any security or deposits paid by Seller in connection with Clinic office leases and leases of personal property; contracts/contract rights assigned to the Buyer by agreement of the parties; insurance policies/prepaid premiums, other prepaid expenses; Seller's Federal Tax ID Number, and government and non-government provider agreements and supplier agreements and numbers. |
| Assumed Liabilities:           | Liabilities for payment of any applicable federal, state or local taxes, if any (including any interest or penalties thereon); any liability or obligation arising out of a breach or default by Seller of any contract or governmental permit or license, any liability or obligation in respect of the Excluded Assets, accounts payable arising or accruing as of the Closing Date attributable to the operation of the Clinic prior to the Closing Date, including, audit liabilities attributable to actions or inactions of Buyer and extrapolated, in whole or in part, to an audit period prior to Closing, and any liability arising from the operation of the Clinic prior to Closing, except as specifically provided herein.  |
| Assumed Contracts:             | (1) Equipment Purchase Agreement for MyLab Five System, dated 3/8/15, between Esaote North America, Inc., and Forest Hills Health Center.<br>(2) Equipment Lease Agreement for Gaby Urodynamics System, dated 4/2/15, between Laborie Medical Technologies Corp., and E&A Medical Solutions, LLC.<br>(3) The Lease Agreement, dated 5/31/95, as amended, between 68-60 Austin Street Realty Corp., and Forest Hills Health Center (previously B&L Realty Corp.)   |
| Purchase Price:                | \$870,000.00  |
| Payment of the Purchase Price: | \$100,000 to escrow agent; \$200,000 deposit to escrow agent on date of execution; \$570,000 due to seller at closing.  |

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 and 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 liabilities.

Assignment and Assumption Agreement (all contracts of seller)

The applicant has submitted an executed assignment and assumption agreement, summarized below:

|                  |   |
|------------------|---|
| Date:            | March 27, 2018  |
| Assignor:        | E & A Medical Solutions, LLC d/b/a Forest Hills Health Center   |
| Assignee:        | Ajay Kumar Lodha, M.D.  |
| Assigned Assets: | Assignor's obligations, rights, title and interests in and to the Assumed Contracts.  |
| Terms:           | Terms of the APA, including Assignor's and Assignee's respective representations, warranties, covenants, agreements and indemnities, are incorporated herein by this reference. The parties acknowledge/agree that the representations, warranties, covenants, agreements and indemnities in the APA shall not be superseded hereby, but shall remain in full force and effect in the event of any conflict or inconsistency. |

Amendment to Lease Agreement

The applicant has submitted an executed Amendment to the Lease Agreement for the site, which extends the term of the lease. The terms are summarized below:

|                 |  |
|-----------------|--|
| Date:           | May 7, 2018  |
| Premises:       | 3,000 sq. ft. at 68-60 Austin Street, Forest Hills, New York, Stores 9 & 10  |
| Owner/Landlord: | 68-60 Austin Realty Corporation  |
| Lessee/Tenant:  | E&A Medical Solutions, LLC d/b/a Forest Hills Medical Center   |
| Assignment:     | Tenant may assign lease to any entity that may purchase E&A Medical Solutions LLC d/b/a. Forest Hills Health Center  |
| Term:           | 5/7/18 to 6/30/28; or Until Asset Purchase Agreement between E&A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC & Ajay 28, LLC is terminated |
| Rental          | \$168,549 annual rent plus 5.0% increments per year  |
| Provisions      | triple net lease   |

Assignment of Lease and Consent to Assignment

The applicant has submitted an executed Lease Assignment Agreement for the proposed site, the terms of which are summarized below:

|                     |   |
|---------------------|---|
| Date:               | March 27, 2018 (Date of Assignment and Assumption Agreement)  |
| Premises:           | 3,000 sq. ft. at 68-60 Austin Street, Forest Hills, New York, Stores 9 & 10   |
| Owner               | 68-60 Austin Realty Corporation   |
| Assignor            | E&A Medical Solutions LLC dba Forest Hills Medical Center   |
| Assignee:           | Ajay 28, LLC  |
| Date of Assignment: | To be determined  |
| Provisions          | Assignor assigns all rights, title, interest and obligations in the lease and leasehold premises to assignee.                         |
| Term                | Until Asset Purchase Agreement between E&A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC & Ajay 28, LLC is terminated. |
| Rental              | \$168,549 annual rent plus 5.00% increments per year  |
| Provisions          | triple net lease  |

The applicant has submitted a Lease Affidavit dated April 11, 2018, attesting to the lease assignment and that the lease is an arm's length agreement in that the landlord and the tenant are not related in any way.

## Operating Budget

The applicant has submitted the current year budget (main site) and first year operating budget, in 2018 dollars, summarized below:

| <u>Revenues</u>          | <u>Current Year 2017</u> |                  | <u>Year One 2019</u> |                  |
|--------------------------|--------------------------|------------------|----------------------|------------------|
|                          | <u>Per Diem</u>          | <u>Total</u>     | <u>Per Diem</u>      | <u>Total</u>     |
| Medicaid FFS             | \$118.99                 | \$163,258        | \$118.99             | \$163,258        |
| Medicaid MC              | \$93.75                  | \$653,035        | \$93.73              | \$709,196        |
| Medicare FFS             | \$142.67                 | \$76,186         | \$144.78             | \$97,584         |
| Medicare MC              | \$100.32                 | \$65,308         | \$100.32             | \$65,308         |
| Commercial FFS           | \$79.44                  | \$76,187         | \$79.44              | \$84,126         |
| Private Pay              | \$93.50                  | <u>\$54,419</u>  | \$93.44              | <u>\$63,725</u>  |
| Total Revenues           |                          | \$1,088,393      |                      | \$1,183,197      |
| <br><u>Expenses</u>      |                          |                  |                      |                  |
| Operating                | \$61.32                  | \$698,465        | \$57.96              | \$720,394        |
| Capital                  | <u>\$15.18</u>           | <u>172,908</u>   | <u>\$14.56</u>       | <u>180,929</u>   |
| Total Expenses           | \$76.50                  | \$871,373        | \$72.51              | \$901,323        |
| <br>Net Income (Loss)    |                          | <u>\$217,020</u> |                      | <u>\$281,874</u> |
| <br>Utilization (Visits) |                          | 11,390           |                      | 12,430           |
| Cost Per Visit           |                          | \$76.50          |                      | \$72.51          |

Utilization by payor for the current year and first year after the change in operator is summarized below:

| <u>Payor</u>   | <u>Current Year</u> | <u>Year One</u> |
|----------------|---------------------|-----------------|
| Medicaid FFS   | 12.05%              | 11.04%          |
| Medicaid MC    | 61.16%              | 60.87%          |
| Medicare FFS   | 4.69%               | 5.42%           |
| Medicare MC    | 5.72%               | 5.24%           |
| Commercial FFS | 8.42%               | 8.52%           |
| Private Pay    | 5.11%               | 5.49%           |
| Charity Care   | <u>2.85%</u>        | <u>3.42%</u>    |
| Total Visits   | 100.00%             | 100.00%         |

Utilization and expense assumptions are based on the historical experience of the operations of the main site.

## Capability and Feasibility

There are no project costs included in this application. The purchase price of \$870,000 will be met by equity. Dr. Lodha has already provided \$300,000 towards the purchase price leaving a \$570,000 balance due at closing.

Working capital requirements are estimated at \$150,221, which is equivalent to two months of first year expenses. The working capital requirement will be met via equity from the personal funds of Dr. Lodha. BFA Attachment A, the net worth statement of the applicant member, indicates the availability of sufficient funds for the equity contributions for the purchase price and the working capital requirement. BFA Attachment D is the pro forma balance sheet of Ajay 28, LLC as of the first day of operation, which indicates a positive net asset position of \$362,801.

BFA Attachment B is the 2016 certified financial statements and the 2017 internal financial statements of E&M Medical Solutions, LLC. As shown, the entity had an average negative working capital position and an average negative net asset position from 2016 through 2017. The applicant indicated that the reasons for the negative positions are increased current period payments on loans and substantial cash and infrastructure investments in the Bronx extension clinic site. The negative working capital balance is attributed to advance rent, utilities, contractors, and purchases of medical and office equipment for the extension site that did not receive approval to open until January 16, 2018. Also, the entity achieved average net income of \$56,640 from 2016 through 2017.

BFA Attachment C is the internal financial statements of E&A Medical Solutions, LLC as of March 31, 2018. As shown, the entity had a negative working capital position and a negative net asset position through March 31, 2018. The reasons for the negative positions are increased current period payments on loans and substantial cash and infrastructure investments in the Bronx extension clinic site as previously noted. The entity achieved a net income of \$40,939 through March 31, 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 | Net Worth Statement of Dr. Ajay K. Lodha - Sole Member                  |
| BFA Attachment B | 2016 & 2017 internal financial statements of E&A Medical Solutions, LLC |
| BFA Attachment C | March 31, 2018 internal financial statements of E&A Medical Solutions   |
| BFA Attachment D | Pro Forma Balance Sheet   |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 Ajay 28, LLC as the new operator of the main site of E&A Medical Solutions, LLC, known as Forest Hills Health Center, located at 68-60 Austin Street, Forest Hills, 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:

181307 E

Ajay 28 LLC d/b/a New York Preventative  
Health Center

APPROVAL CONTINGENT UPON:

N/A

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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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 # 182012-B  
Ditmas Park Dialysis Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** July 10, 2018

**Executive Summary**

**Description**

This application amends and supersedes CON 092169. Ditmas Park Dialysis Center, LLC (the Center), a New York limited liability company, requests approval to establish and construct a 21-station, Article 28 chronic renal dialysis center on-site at Ditmas Park Care Center, a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2107 Ditmas Avenue, Brooklyn (Kings County). Ditmas Park Care Rehabilitation and Care Center, LLC is the current RHCF operator. CON 092169 received final Public Health and Health Planning Council (PHHPC) approval in February 2016, and construction is underway with a planned completion date in late 2018. This amendment is required to revise the ownership of the Center due to the death of the previously approved sole member, Sander Oberlander. Under the terms of the decedent's will, ownership of the Center was bequeathed to Mr. Oberlander's children. This amendment also reflects a change in total project cost to include the landlord's contribution toward the construction. The renovations are being performed by Ditmas Park Care Rehabilitation and Care Center, LLC as landlord. Ditmas Park Dialysis Center, LLC will enter into a lease with the RHCF operator for site control. There is a relationship between Ditmas Park Dialysis Center, LLC and Ditmas Park Rehabilitation and Care Center, LLC in that the entities have several members in common. The Center will treat primarily the residents of Ditmas Park Care Center but will be available to serve the general public through a separate dedicated entrance.

The proposed members of Ditmas Park Dialysis Center, LLC are as follows:

| <u>Proposed Members</u>  |        |
|--------------------------|--------|
| Abraham Oberlander       | 11.11% |
| Gitty Gutman             | 14.81% |
| Miriam Harfenes          | 14.81% |
| Shabsey Oberlander       | 11.12% |
| Sholem Oberlander        | 14.82% |
| Zalmen Oberlander        | 11.11% |
| Zissy Indig              | 11.11% |
| BMO Family Holdings LLC: | 11.11% |
| Boruch Oberlander (100%) |        |

Project cost has been revised to include the landlord's cost of construction as required (\$1,752,165), bringing the total project cost to \$2,658,826.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
Currently, the RHCF's residents requiring dialysis services are being transported three times per week to an off-site dialysis facility. There are no changes to the approved construction plans as the result of this amendment. There will not be any additional stations added through this project nor will services or patients in the area be impacted through the approval of this project.

Program Summary

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

Ditmas Park Rehabilitation and Care Center, LLC (sub-landlord). Northfield Bank has provided letters of interest for both loans. The proposed budget is as follows:

Financial Summary

Project cost of \$2,658,826 will be met via \$354,661 in members' equity, a five-year self-amortizing loan for \$552,000 at 8% interest (applicant), and a five-year self-amortizing loan for \$1,752,165 at 8% interest to be paid by

|            | <u>Year One</u>  | <u>Year Three</u> |
|------------|------------------|-------------------|
| Revenues   | \$2,860,575      | \$3,380,680       |
| Expenses   | <u>2,635,568</u> | <u>3,121,265</u>  |
| Net Income | \$225,007        | \$259,415         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment (applicant), acceptable to the Department of Health. [BFA]
3. Submission of an executed construction loan commitment (Sub-landlord), acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of Authority to Do Business in the State of New York for BMO Family Holdings LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed 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]
2. Construction must be completed by December 31, 2018. In accordance with 10 NYCRR Section 710.10(a), if construction is not completed on or before the approved completion date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any change to the completion date. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Description

Ditmas Park Dialysis Center, LLC (the "Center") is submitting an amendment to approved CON 092169, which is currently under construction and expected to be complete by the end of 2018. This amendment is being submitted to revise the ownership of the Center due to the death of the approved sole member, as well as due to a change in the Total Project Cost.

Currently, the RHCF's residents requiring dialysis services are being transported three times per week to an off-site dialysis facility. There are no changes to the approved construction plans as the result of this amendment. There will not be any additional stations added through this project nor will services or patients in the area be impacted through the approval of this project.

|   |   |
|---|---|
| <b>Proposed Operator</b>  | Ditmas Park Dialysis Center, LLC  |
| <b>To Be Known As</b>   | Ditmas Park Dialysis Center   |
| <b>Site Address</b>   | 2107 Ditmas Avenue<br>Brooklyn, NY 11226 (Kings County)   |
| <b>Approved Services</b>  | Chronic Renal Dialysis (21 Stations)  |
| <b>Shifts/Hours/Schedule</b>  | Will operate six days a week with some flexibility or possible expansion in operating hours to accommodate patient needs. |
| <b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>                       | 21.0 FTEs / 25.0 FTEs   |
| <b>Medical Director(s)</b>  | Subodh Saggi M.D.   |
| <b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b> | Will be provided by:<br>Maimonides Medical Center<br>3.0 miles / 18 minutes   |

### Character and Competence

The members and managers of Ditmas Park Dialysis Center, LLC are:

| <b>Name</b>                                     | <b>Percentage</b> |
|---|-------------------|
| Abraham Oberlander                              | 11.11%            |
| Gitty Guttman                                   | 14.81%            |
| Miriam Harfenes                                 | 14.81%            |
| Shabsey Oberlander                              | 11.12%            |
| Sholem Oberlander                               | 14.82%            |
| Zalmen Oberlander                               | 11.11%            |
| Zissy Indig                                     | 11.11%            |
| BMO Family Holdings<br>Boruch Oberlander (100%) | <u>11.11%</u>     |
| <b>Total</b>                                    | <b>100.00%</b>    |

**Abraham Oberlander** has a 20% ownership interest in Ditmas Park Care Center since January 2009 which has provided an opportunity to be involved in decision-making and experience in the operation of a health care facility. In addition, he has also had past responsibility for coordinating patient satisfaction surveys at the facility.

**Gitty Guttman** disclosed past work experience as a human resource manager for a healthcare staffing company as well as account executive for a credit card processing company.

**Miriam Harfenes** disclosed past work experience assisting with accounts payable and human resources for Fine Management Services Company (FMSC), the payroll company for Ditmas Park Care Center.

**Shabsey Oberlander** has a 40% ownership interest in Ditmas Park Care Center since January 2009 and serves as its Chief Executive Officer (CEO). As an owner of Ditmas Park Care Center, Mr. Oberlander is familiar with the needs of the residents of that facility and the elderly in general.

**Sholem Oberlander** is self-employed. For the last 25 years, he has owned Goodfine Diamond, LLC, a diamond manufacturing and wholesale business.

**Zalmen Oberlander** is the owner/operator of Apex Rehab Care Center. Between 1997 and 2005, he was the Assistant Administrator for Ditmas Park Care Center.

**Zissy Indig** has a 20% ownership interest in Ditmas Park Care Center since January 2009. Currently, she is the Director of Business Development for FMSC. Additional responsibilities include following up on discharged patients' feedback and addressing concerns and opening new markets for the facility. From 2008 to 2016, Ms. Indig worked at Southside Staffing Agency as a nursing staffing coordinator.

**Boruch Oberlander**, has a 20% ownership interest in Ditmas Park Care Center since January 2009 which has provided an opportunity to be involved in decision-making and experience in the operation of a health care facility. In addition, since May 2006, Mr. Oberlander has been the President and CEO of BHM Financial Group. Prior to that, he served for over 14 years as the President and CEO of Martex Textiles in Montreal.

Disclosure information was submitted and reviewed for the proposed Medical Director, **Subodh Saggi, MD**. Dr. Saggi has over 30 years of experience in the care and treatment of dialysis patients. He earned his medical degree in India and completed a nephrology fellowship at Mount Sinai and is board-certified in Internal Medicine with sub-certification in Nephrology. Since August 2008, Dr. Saggi has served as the Medical Director of SUNY Ambulatory Parkside Dialysis Center. In addition, he served for eight years as an advisory board member of IPRO/ESRD Network Region 2 and for three years on the Dialysis Advisory Committee with the American Society of Nephrology. Dr. Saggi is also a professor of medicine at SUNY Downstate Medical Center where he conducts clinical research and teaches medical students, residents and renal fellow in the pathophysiology of kidney diseases, acute kidney injury and renal replacement therapies.

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

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

#### Conclusion

The amended application results in no changes other than the members of the applicant corporation. 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

### Total Project Cost and Financing

The total project cost for construction and fees is estimated at \$2,658,826, broken down as follows:

|                            |               |
|----------------------------|---------------|
| New Construction           | \$1,343,061   |
| Renovation & Demolition    | 177,926       |
| Design Contingency         | 148,187       |
| Construction Contingency   | 82,990        |
| Architect/Engineering Fees | 217,124       |
| Other Fees                 | 70,000        |
| Movable Equipment          | 506,765       |
| Telecommunications         | 30,000        |
| Financing Costs            | 5,520         |
| Interim Interest Expense   | 60,720        |
| Application Fees           | 2,000         |
| Additional Processing Fees | <u>14,533</u> |
| Total Project Cost         | \$2,658,826   |

The project is under construction with a March 7, 2016 start date and is expected to be completed by December 31, 2018.

The financing for this project will be as follows:

|  |                  |
|--|------------------|
| Members of Center - Equity                     | \$354,661        |
| Center's Loan (8% interest, 5-year term)       | 552,000          |
| Sub-Landlord's Loan (8% Interest, 5-year term) | <u>1,752,165</u> |
| Total  | \$2,658,826      |

Northfield Bank has provided letters of interest for both loans. BFA Attachments A and B are, respectively, the net worth summaries of the proposed members of Ditmas Park Dialysis Center, LLC and the 2017 Certified Financial Statement of Ditmas Park Rehabilitation and Care Center, LLC, which show sufficient resources to meet the equity requirement.

### Lease Rental Agreements

The applicant has submitted executed lease rental agreements for the proposed site. The terms are summarized below:

Lease:

|             |  |
|-------------|--|
| Date:       | June 25, 1980 (with various term extensions, latest December 1, 2016)  |
| Premises:   | Premises located at 2107 Ditmas Avenue, Brooklyn, NY                   |
| Landlord:   | Gotham Associates predecessor to Dithold Associates, LLC               |
| Tenant:     | Ditmas Park Rehabilitation and Care Center, LLC                        |
| Term:       | Lease extended to December 31, 2026.                                   |
| Rental:     | \$1,200,000 per year.  |
| Provisions: | Tenant is responsible for taxes, utilities, insurance and maintenance. |

Sub-Lease:

|               |  |
|---------------|--|
| Date:         | November 4, 2015   |
| Premises:     | 5610 sq. ft. on the 1st floor of premises located at 2107 Ditmas Avenue, Brooklyn, NY                              |
| Landlord:     | Gotham Associates predecessor to Dithold Associates, LLC   |
| Sub-Landlord: | Ditmas Park Rehabilitation and Care Center, LLC  |
| Lessee:       | Ditmas Park Dialysis Center, LLC   |
| Term:         | Ends at midnight on the last date of the main lease.   |
| Rental:       | \$278,502 per year (based on \$25 per sq. ft. or \$140,250 plus debt service of \$138,252)                         |
| Provisions:   | Sub tenant is responsible for their portion of taxes, insurance, utilities and maintenance for subleases premises. |

The applicant has submitted an affidavit attesting to the relationship between the property owner (Dithold Associates, LLC), the sub-landlord (Ditmas Park Rehabilitation & Care Center, LLC), and the tenant (Ditmas Park Dialysis Center, LLC) in that the entities have several members in common. The applicant has also submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, for Years One and Three, as summarized below:

|                         | <u>Year One</u>  |                  | <u>Year Three</u> |                  |
|-------------------------|------------------|------------------|-------------------|------------------|
| <u>Revenues</u>         | <u>Per Visit</u> | <u>Total</u>     | <u>Per Visit</u>  | <u>Total</u>     |
| Medicaid-FFS            | \$259.11         | \$123,077        | \$258.81          | \$145,454        |
| Medicare-FFS            | \$293.98         | 2,430,933        | \$294.00          | 2,872,921        |
| Commercial-FFS          | \$321.13         | 122,031          | \$321.20          | 144,219          |
| Commercial MC           | \$600.25         | 228,096          | \$600.37          | 269,568          |
| All Other-Bad Debt      |                  | <u>-43,562</u>   |                   | <u>-51,482</u>   |
| Total Revenue           |                  | \$2,860,575      |                   | \$3,380,680      |
| <u>Expenses</u>         |                  |                  |                   |                  |
| Operating               | \$225.75         | \$2,145,490      | \$236.28          | \$2,653,935      |
| Capital                 | <u>51.56</u>     | <u>490,078</u>   | <u>41.61</u>      | <u>467,330</u>   |
| Total                   | \$277.31         | \$2,635,568      | \$277.89          | \$3,121,265      |
| Net Income              |                  | <u>\$225,007</u> |                   | <u>\$259,415</u> |
| Total Treatments/visits |                  | 9,504            |                   | 11,232           |
| Cost per                |                  | \$277.31         |                   | \$277.89         |

Utilization by payor source for Year One and Year Three is as follows:

|                | <u>Year One</u> |             | <u>Year Three</u> |             |
|----------------|-----------------|-------------|-------------------|-------------|
| <u>Payor</u>   | <u>Visits</u>   | <u>%</u>    | <u>Visits</u>     | <u>%</u>    |
| Medicaid-FFS   | 475             | 5.0%        | 562               | 5.0%        |
| Medicare-FFS   | 8,269           | 87.0%       | 9,772             | 87.0%       |
| Commercial-FFS | 380             | 4.0%        | 449               | 4.0%        |
| Commercial MC  | <u>380</u>      | <u>4.0%</u> | <u>449</u>        | <u>4.0%</u> |
| Total          | 9,504           | 100.0%      | 11,232            | 100.0%      |

The following is noted with respect to the submitted budget:

- Revenue assumptions by payor are based on the experience of similar chronic renal dialysis providers in Kings County.
- Utilization assumptions are based on the approved budget for CON 092169. The Center expects their patients will come primarily from Ditmas Park Rehabilitation Care Center, the RHCF where the dialysis center is located.
- Expense assumptions are based on the previously approved budget, updated to 2018 dollars. Expenses were calculated based on estimates as follows:
  - Medical and Pharmacy supplies at \$75 per treatment,
  - Offices Supplies at \$2 per treatment and Insurance cost at \$3 per treatment,
  - Repairs, maintenance, waste and housekeeping costs at \$2.50 per treatment.
  - Depreciation, rent and interest are based on projected costs.
- The breakeven utilization is approximately 8,756 treatments in Year One.

#### Capability and Feasibility

Project cost of \$2,658,826 will be met via \$354,661 in members' equity, a five-year self-amortizing loan for \$552,000 at 8% interest (applicant), and a five-year self-amortizing loan for \$1,752,165 at 8% interest to be paid by Ditmas Park Rehabilitation and Care Center, LLC (sub-landlord). Northfield Bank has provided letters of interest for both loans.

Working capital requirements are estimated at \$520,211 based on two months of third year expenses. Funding for working capital will be provided as follows: \$270,211 from members equity with the remaining balance of \$250,000 being satisfied through a five-year loan with interest at 8%. Northfield Bank has provided a letter of interest. BFA Attachments A and B, the members' personal net worth statements and the 2017 certified financial statements of the Ditmas Park Rehabilitation and Care Center, LLC, respectively, show sufficient liquid resources to meet all the projects equity requirements.

BFA Attachment C is the pro-forma balance sheet for Ditmas Park Dialysis Center, LLC, which shows the operation will start with \$2,377,038 in members' equity.

The submitted budget projects a net income of \$225,007 and \$259,415 during years one and three of operations, respectively. Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for dialysis treatment. The budget appears reasonable.

BFA Attachment B is the 2017 certified financial statements of Ditmas Park Rehabilitation and Care Center, which shows positive working capital position, positive equity position and positive net income position.

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 - Proposed Members of Ditmas Park Dialysis Center, LLC          |
| BFA Attachment B | 2017 Certified Financial Statements - Ditmas Park Rehabilitation & Care Center, LLC |
| BFA Attachment C | Pro-Forma balance sheet of Ditmas Park Dialysis 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 11th day of October 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 and construct a 21-station chronic renal diagnostic and treatment center in leased space at Ditmas Park Care Center, a residential health care facility located at 2107 Ditmas Avenue, Brooklyn (Amends and Supercedes CON #092169), 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:

182012 B

Ditmas Park Dialysis Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment (applicant), acceptable to the Department of Health. [BFA]
3. Submission of an executed construction loan commitment (Sub-landlord), acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of Authority to Do Business in the State of New York for BMO Family Holdings LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed 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]
2. Construction must be completed by December 31, 2018. In accordance with 10 NYCRR Section 710.10(a), if construction is not completed on or before the approved completion date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any change to the completion date. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

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



**Project # 181419-B  
Ulster Dialysis, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Ulster  
**Purpose:** Establishment and Construction    **Acknowledged:** June 21, 2018

**Executive Summary**

**Description**

Ulster Dialysis, LLC, an existing New York limited liability company, requests approval to establish and construct a 13-station end stage renal dialysis (ESRD) Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 900 Miron Lane, Kingston (Ulster County). The applicant requests certification for chronic renal dialysis (13-stations including one isolation station), home hemodialysis training and support, and home peritoneal dialysis training and support services. The members of the applicant are all local Nephrologists serving both the local community and ESRD population in Ulster and adjacent counties.

The proposed members of the Center are as follows:

| <u>Proposed Operator</u> |          |
|--------------------------|----------|
| Ulster Dialysis, LLC     |          |
| <u>Members</u>           | <u>%</u> |
| Shawn Dhupar, M.D.       | 25%      |
| Paul Feldman, M.D.       | 25%      |
| Beth Stefanchik, D.O.    | 25%      |
| Geoffrey Lee, M.D.       | 25%      |

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There is a current need projection of 18 dialysis stations in the county. This project will provide residents with in center Hemodialysis, Peritoneal Dialysis, Home Hemodialysis and training and education for all modalities.

**Program Summary**

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

**Financial Summary**

Total project costs of \$1,935,578 will be met via equity of \$193,558 from the proposed members' personal resources and a bank loan of \$1,742,020 at 5.25% interest for a 15-year term. Rhinebeck Bank has provided a letter of interest. The proposed budget is as follows:

|             | <u>Year One</u>    | <u>Year Three</u>  |
|-------------|--------------------|--------------------|
| Revenues    | \$1,506,934        | \$3,121,507        |
| Expenses    | <u>\$1,717,051</u> | <u>\$2,971,153</u> |
| Gain/(Loss) | (\$210,117)        | \$150,354          |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
6. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

**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]
2. Construction must start on or before January 15, 2019 and construction must be completed by April 15, 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]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis

The primary service area for the new facility will be Ulster County, which had a population estimate of 179,417 for 2017. The percentage of the population aged 65 and over was 19.3%. The nonwhite population percentage was 12.6%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Ulster County and New York State are shown below.

|                  | Ulster County | New York State |
|------------------|---------------|----------------|
| Ages 65 and Over | 19.3%         | 15.9%          |
| Nonwhite         | 12.6%         | 30.4%          |

Source: U.S. Census 2017

There are two freestanding dialysis centers currently operating in Ulster County. A four-station center in Olivera NY, approximately 38.3 miles from the applicant, and a 30-station center also in Kingston.

## Capacity

Below are the Department's guidelines to estimate capacity for chronic dialysis stations:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free-standing station per year is 156.
- One hospital-based station represents 499 treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the number of annual treatments per hospital station is 499. One hospital-based station can treat 3 patients per year.

## Need Projections

| <b>Ulster County:<br/>Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021</b>  |                    |                   |                         |                 |                 |                                   |                           |
|---|--------------------|-------------------|-------------------------|-----------------|-----------------|-----------------------------------|---------------------------|
| County  | Existing Resources | Pending Resources | Total Current Resources | Total Need 2021 | Unmet Need 2021 | County-wide Stations Under Review | Unmet Need After Approval |
|   | a                  | b                 | c                       | d               | e               | f                                 | g                         |
|   |                    |                   | ( a + b )               |                 | ( d - c )       |                                   | ( e - f )                 |
| <b>Ulster</b>   | <b>34</b>          | <b>10</b>         | <b>434</b>              | <b>52</b>       | <b>8</b>        | <b>13</b>                         | <b>-5</b>                 |
| <b>Effective September 24, 2018</b>   |                    |                   |                         |                 |                 |                                   |                           |
| <b>Column (a): Existing Resources: Stations in Operation</b>  |                    |                   |                         |                 |                 |                                   |                           |
| <b>Column (b): Pending Resources: Includes Stations with Contingent Approval per the Bureau of Project Management and Stations with Recommendations of Approval by the Bureau of Public Need Review, but not yet Contingently Approved in the Bureau of Project Management.</b> |                    |                   |                         |                 |                 |                                   |                           |
| <b>Column (f): Stations Under Review include applications submitted but pending an OPCHSM recommendation.</b>   |                    |                   |                         |                 |                 |                                   |                           |

Currently four of the existing 34 Ulster County stations are used specifically for pediatric purposes. They are specialty use and will have no impact on adult renal dialysis clinics and are therefore discounted from the need numbers when considering net new stations. Below are additional local factors in support of this application.

- All four of the members of Ulster Dialysis, LLC are local Nephrologist that are and have been vested in the community. Dr. Lee and Dr. Stefanchik are the only full-time active practicing Nephrologist located in Ulster County. These Nephrologist provide close to 100% of the community's nephrology care and have additional available capacity. The current situation is not a lack of access to high quality and caring Nephrologist. Rather, the lack of accessibility to available outpatient dialysis slots.
- Although Ulster County has a population exceeding 180,000 persons, it currently has only one provider of outpatient dialysis at one sole location. The residents of the County have no alternate or back-up choice for outpatient dialysis care in the area.
- The applicant states the current, sole provider in Ulster County has an approximate 15-patient wait list and is not accepting new patients, and that 20 Ulster County dialysis patients are forced to seek care outside of the county. These conditions contribute to extended LOS in the hospital.

**Conclusion**

The addition of these 13 stations will help provide needed services in Ulster County.

**Recommendation**

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

|                         |
|-------------------------|
| <b>Program Analysis</b> |
|-------------------------|

**Program Description**

|   |   |
|---|---|
| <b>Proposed Operator</b>  | Ulster Dialysis, LLC  |
| <b>Doing Business As</b>  | Ulster Dialysis   |
| <b>Site Address</b>   | 900 Miron Lane<br>Kingston, NY 12401 (Ulster County)  |
| <b>Approved Services</b>  | Chronic Renal Dialysis (13 Stations)<br>Home Hemodialysis Training and Support<br>Home Peritoneal Dialysis Training and Support |
| <b>Hours of Operation</b>   | Monday through Saturday, 7 AM to 4 PM   |
| <b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>                     | 9.77 FTEs / 16.39 FTEs  |
| <b>Medical Director(s)</b>  | Beth Stefanchik, DO   |
| <b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b> | Will be provided by<br>Vassar Brothers Medical Center<br>21 mi. / 34 minutes  |

**Character and Competence**

The members of Ulster Dialysis, LLC are:

| <u>Name</u>         | <u>Interest</u> |
|---------------------|-----------------|
| Shawn Dhupar, MD    | 25%             |
| Paul Feldman, MD    | 25%             |
| Beth Stefanchik, DO | 25%             |
| Geoffrey Lee, MD    | 25%             |

Each of the four members is a practicing physician, board-certified in internal medicine with sub-certification in nephrology. Dr. Beth Stefanchik will serve as the center's medical director. She has seven years of experience as a full-time nephrologist specializing in the care of patients on hemodialysis.

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

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

**Conclusion**

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

**Recommendation**

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

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

**Lease Rental Agreement**

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

|            |   |
|------------|---|
| Premises:  | 8,025 square feet located at 900 Miron Lane Kingston, NY 12401.   |
| Lessor:    | Dena Marie II, LLC  |
| Lessee:    | Ulster Dialysis, LLC  |
| Term:      | 12 years with three (3) five-year renewal options   |
| Rental     | Years 1-5: \$114,356.25 annually (\$14.25 per sq. ft.);<br>Years 6-10: \$126,393.75 annually (\$15.75 per sq. ft.); and<br>Years 11-12: \$139,073.25 annually (\$17.33 per sq. ft.) |
| Provisions | The lessee shall be responsible for maintenance, insurance and real estate taxes.   |

The applicant has submitted an affidavit indicating that the lease will be an arm's length lease arrangement. The applicant has submitted letters from two NYS realtors attesting to the reasonableness of the per square foot rental.

**Total Project Cost and Financing**

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$1,935,579, further broken down as follows:

|                            |                    |
|----------------------------|--------------------|
| New Construction           | \$1,105,318        |
| Design Contingency         | 110,532            |
| Construction Contingency   | 55,266             |
| Fixed Equipment            | 163,200            |
| Planning Consultant Fees   | 7,650              |
| Architect/Engineering Fees | 97,528             |
| Other Fees                 | 30,000             |
| Moveable Equipment         | 340,615            |
| Interest Expense           | 12,893             |
| CON Fees                   | <u>12,577</u>      |
| Total Project Cost         | <b>\$1,935,579</b> |

Project costs are based on a December 15, 2018 construction start date and a three-month construction period.

The applicant's financing plan appears as follows:

|  |             |
|--|-------------|
| Equity   | \$193,559   |
| Bank Loan (5.25% interest rate for a 15-year term) | \$1,742,020 |

The equity will be provided via the proposed members personal resources. BFA Attachment A indicates the applicant has sufficient resources for the equity contribution. Rhinebeck Bank had provided a letter of interest at the stated terms regarding the financing.

### Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, during the first and third years of operation, summarized below:

|                    | <u>Year One</u>  |                    | <u>Year Three</u> |                  |
|--------------------|------------------|--------------------|-------------------|------------------|
| <u>Revenues</u>    | <u>Per Visit</u> | <u>Total</u>       | <u>Per Visit</u>  | <u>Total</u>     |
| Medicaid FFS       | \$269.17         | \$58,680           | \$268.92          | \$121,522        |
| Medicare FFS       | \$279.63         | \$977,034          | \$279.62          | \$2,023,857      |
| Commercial FFS     | \$750.23         | \$393,120          | \$749.83          | \$814,320        |
| Commercial MC      | \$596.18         | <u>\$78,100</u>    | \$596.97          | <u>\$161,778</u> |
| Total Revenues     |                  | \$1,506,934        |                   | \$3,121,507      |
| <u>Expenses</u>    |                  |                    |                   |                  |
| Operating          | \$300.16         | \$1,310,785        | \$284.53          | \$2,574,100      |
| Capital            | <u>93.03</u>     | <u>406,266</u>     | <u>43.89</u>      | <u>397,053</u>   |
| Total Expenses     | \$393.19         | \$1,717,051        | \$328.41          | \$2,971,153      |
| Net Income         |                  | <u>(\$210,117)</u> |                   | <u>\$150,354</u> |
| Visits             |                  | 4,367              |                   | 9,047            |
| Cost Per Treatment |                  | \$393.19           |                   | \$328.41         |

The increase in projected visits from Year One to Year Three includes ramp-up and population growth factors. Specifically, the population to be served will be inclusive of the current 15 patients on the waiting list of the current sole dialysis provider in the County, an estimated ten additional patients migrating from the County for care, and future residents requiring dialysis estimated at approximate 3% due to annual growth in dialysis patients.

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

| <u>Payor</u>   | <u>Year One</u> | <u>Year Three</u> |
|----------------|-----------------|-------------------|
| Medicaid FFS   | 12.0%           | 12.0%             |
| Medicare MC    | 3.0%            | 3.0%              |
| Commercial FFS | 80.0%           | 80.0%             |
| Commercial MC  | 5.0%            | 5.0%              |

Expense and utilization assumptions are based on the historical experience of other D&TCs providing similar services in the geographical area. Revenue assumptions utilized renal dialysis reimbursement rates based on the following payors for similar scope D&TC services: Medicaid APG reimbursement, Medicaid Managed Care rates, Medicare Fee Schedule rates, and commercial payor rates.

### Capability and Feasibility

Total estimated project cost of \$1,935,578 will be met with members' equity of \$193,558 and a bank loan of \$1,742,020 at 5.25% interest for a 15-year term. Rhinebeck Bank has provided a letter of interest at the stated terms.

Working capital requirements are estimated to be \$495,192, which is equivalent to two months of third year expenses. The applicant will provide equity from the proposed members personal resources to meet the working capital requirement. BFA Attachment A presents the personal net worth statements of the proposed members of Ulster Dialysis, LLC, which indicates the availability of sufficient resources to fund the working capital and project cost equity requirements for this project. BFA Attachment B is the pro forma balance sheet of Ulster Dialysis, LLC as of the first day of operation, which indicates a positive members' equity position of \$888,770.

The submitted budget indicates a net loss of \$210,117 in Year One and a net income of \$150,354 in Year Three. The first-year loss will be offset from working capital funds. Revenues are based on current reimbursement methodologies for ESRD diagnostic and treatment services. The submitted budget appears reasonable.

Recommendation

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

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## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Net Worth Statement of the Proposed Members of Ulster Dialysis, LLC |
| BFA Attachment B | Pro Forma Balance Sheet of Ulster Dialysis, 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 11th day of October 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 and construct a 13-station chronic renal dialysis diagnostic and treatment center to be located at 900 Miron Lane, Kingston, 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:

181419 B

FACILITY/APPLICANT:

Ulster Dialysis, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
6. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

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]
2. Construction must start on or before January 15, 2019 and construction must be completed by April 15, 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]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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 # 172385-E
Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: December 20, 2017

Executive Summary

Description

Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck, a New York limited liability company, requests approval to be established as the new operator of Grace Plaza Nursing and Rehabilitation Center, a 214-bed, proprietary, Article 28 residential health care facility (RHCF) located at 15 St. Paul's Place, Great Neck (Nassau County). Pinegrove Manor II, LLC, a proprietary entity, is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the facility will be named The Grand Rehabilitation and Nursing at Great Neck. There will be no change in beds or services provided.

On November 22, 2017, Pinegrove Manor II, LLC entered into an Asset Purchase Agreement (APA) with Grand Great Neck, LLC for the sale and acquisition of the RHCF's operating interests for the assumption of certain liabilities valued at \$370,005 as of August 10, 2018, plus execution of the lease. The RHCF's real property is owned by Pinegrove Manor, LLC, which has members in common with the current operating entity. The applicant will enter into an arms-length lease with Pinegrove Manor, LLC for site control of the facility.

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

Table with 2 columns: Members, Percentage. Title: Current Operator Pinegrove Manor II, LLC. Members: Benjamin Landa (50%), Howard Fensterman (37%), Robert Fensterman (13%).

Table with 2 columns: Members, Percentage. Title: Proposed Operator Great Grand Neck, LLC. Members: Jeremy Strauss\* (95%), Meryl Strauss (5%).

\*Manager of the facility

At the PHHPC meeting held on the June 7, 2018, the applicant members of Great Grand Neck, LLC were contingently approved to acquire the operating interests in the following RHCFs:

- Batavia Health Care Center, LLC (62 beds, Genesee County, CON 172293);
Mohawk Valley Health Care Center (120 beds, Herkimer County, CON 172292); and
Heritage Health Care Center (220 beds, Oneida County, CON 181218).

Currently under review, the applicant members are seeking approval to acquire the operating interest in South Point Plaza Nursing and Rehabilitation Center, a 185-bed RHCF located in Nassau County (CON 172387).

OPCHSM Recommendation  
Contingent Approval

Need Summary

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

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

Great Grand Neck, LLC will acquire the RHCF operations for the assumptions of certain liabilities, estimated at \$370,005 as of August 10, 2018, plus execution of the lease. The applicant will lease the premises from Pinegrove Manor, LLC, a non-related entity. There are no project costs associated with this application.

The projected budget is as follows:

|            | <u>Year One</u>   | <u>Year Three</u> |
|------------|-------------------|-------------------|
| Revenues   | \$25,088,632      | \$25,617,837      |
| Expenses   | <u>24,817,775</u> | <u>24,883,829</u> |
| Net Income | \$270,857         | \$734,008         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Assignment of Lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

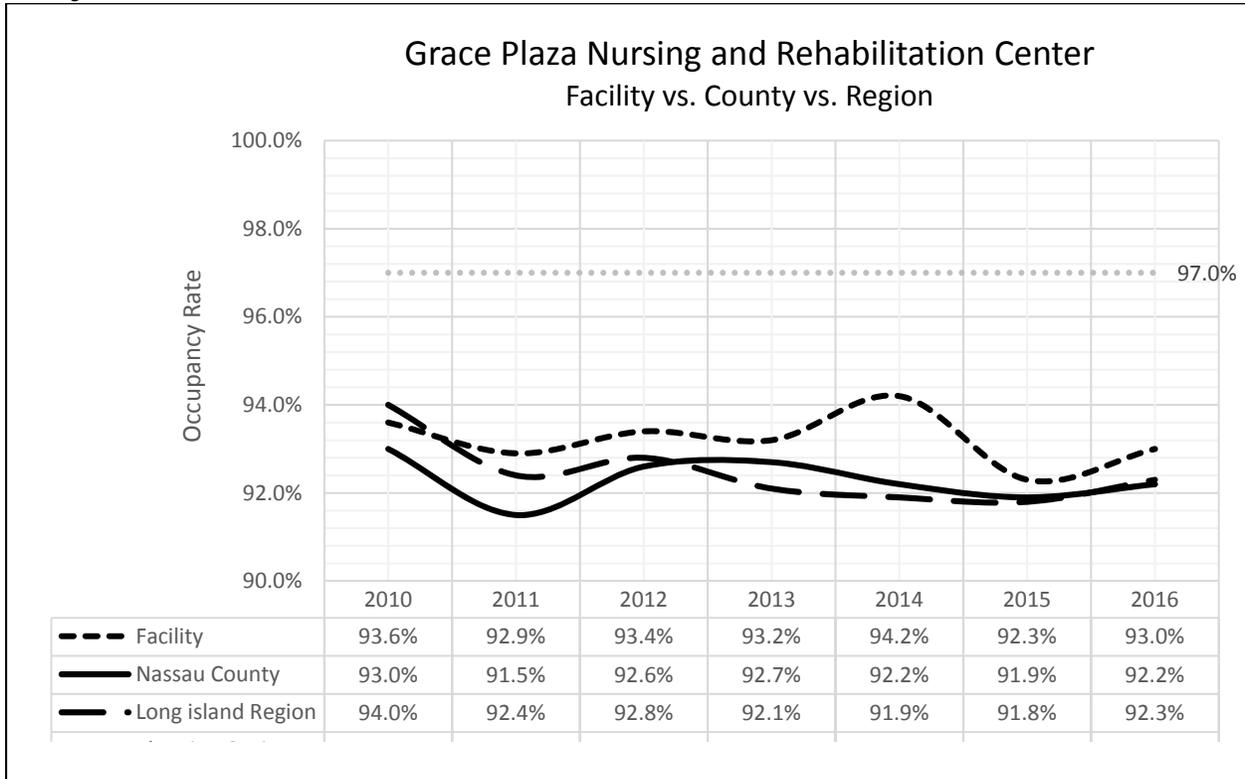
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis



## 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.

Grace Plaza Nursing and Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Nassau County rate, as demonstrated in the table below.

| <b>Percent of New RHCF Admissions that are Medicaid</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|---|-------------|-------------|-------------|
| Nassau County 75% Threshold                             | 9.4%        | 11.1%       | 9.2%        |
| Grace Plaza Nursing and Rehabilitation Center           | 18.9%       | 28.6%       | 27.3%       |

## Conclusion

There will be no change to beds or services in Nassau County through completion of this project.

## Recommendation

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

## Program Analysis

### Facility Information

|                       | <b>Existing</b>                               | <b>Proposed</b>  |
|-----------------------|---|--|
| Facility Name         | Grace Plaza Nursing and Rehabilitation Center | The Grand Rehabilitation and Nursing at Great neck   |
| Address               | 15 St. Paul's Place<br>Great Neck, NY 11021   | Same   |
| RHCF Capacity         | 214   | Same   |
| ADHC Program Capacity | N/A   | N/A  |
| Type of Operator      | Proprietary                                   | Same   |
| Class of Operator     | LLC   | Same   |
| Operator              | Pinegrove Manor II, LLC                       | Grand Great Neck, LLC<br><br>*Jeremy Strauss                      95%<br>Meryl Strauss                        5%<br><br>*Managing Member |

### Character and Competence - Background

#### Facilities Reviewed

|   |                     |
|---|---------------------|
| The Grand Rehabilitation & Nursing at Pawling               | 08/2008 to present  |
| The Grand Rehabilitation & Nursing at Queens                | 08/2008 to present  |
| Brooklyn Center for Rehabilitation & Residential Healthcare | 08//2008 to 12/2015 |
| Bushwick Center for Rehabilitation & Health Care            | 05/2011 to 12/2015  |
| The Grand Rehabilitation & Nursing Center at Rome           | 05/2011 to present  |
| The Grand Rehabilitation & Nursing Center at Chittenango    | 05/2011 to present  |
| Boro Park Center for Rehabilitation & Heath Care            | 05/2011 to 03/2016  |
| Fulton Center for Rehabilitation                            | 04/2012 to 12/2015  |
| Richmond Center for Rehabilitation and Specialty Healthcare | 04/2012 to 12/2015  |
| Waterfront Center for Rehabilitation                        | 01/2013 to 12/2015  |
| Holliswood Center for Rehabilitation                        | 05/2013 to 03/2016  |
| Corning Center for Rehabilitation                           | 07/2013 to 02/2016  |
| Washington Center for Rehabilitation                        | 02/2014 to 12/2015  |
| Essex Center for Rehabilitation                             | 03/2014 to 12/2015  |
| Steuben Center for Rehabilitation                           | 07/2014 to 05/2016  |
| The Grand Rehabilitation & Nursing Center at Guilderland    | 11/2014 to present  |
| The Grand Rehabilitation & Nursing Center at River Valley   | 09/2016 to present  |
| The Grand Rehabilitation & Nursing at Barnwell              | 12/2017 to present  |
| Senior Care EMS   | 08/2008 to present  |
| Washington Center Adult Home                                | 02/2014 to 05/2016  |

#### Individual Background Review

**Jeremy Strauss** discloses employment as Executive Director of The Grand Rehabilitation of Pawling since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University. Mr. Strauss discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| The Grand Rehabilitation & Nursing at Pawling (98%)            | 01/2004 to present |
| The Grand Rehabilitation & Nursing at Queens (95%)             | 06/2004 to present |
| Brooklyn Center for Rehab (5%)                                 | 03/2007 to 12/2015 |
| Bushwick Center for Rehabilitation & Health Care (10%)         | 05/2011 to 12/2015 |
| The Grand Rehabilitation & Nursing Center at Rome (98%)        | 05/2011 to present |
| The Grand Rehabilitation & Nursing Center at Chittenango (67%) | 05/2011 to present |

|   |                    |
|---|--------------------|
| Boro Park Center for Rehabilitation & Health Care (2%)          | 05/2011 to 03/2016 |
| Fulton Center for Rehabilitation (25%)                          | 04/2012 to 12/2015 |
| Richmond Center for Rehabilitation & Specialty Healthcare (5%)  | 04/2012 to 12/2015 |
| Waterfront Center for Rehabilitation (30%)                      | 01/2013 to 12/2015 |
| Holliswood Center for Rehabilitation (7.5%)                     | 05/2013 to 03/2016 |
| Corning Center for Rehabilitation (25%)                         | 07/2013 to 02/2016 |
| Washington Center for Rehabilitation (30%)                      | 02/2014 to 12/2015 |
| Essex Center for Rehabilitation (30%)                           | 03/2014 to 12/2015 |
| Steuben Center for Rehabilitation (29%)                         | 07/2014 to 05/2016 |
| The Grand Rehabilitation & Nursing Center at Guilderland (95%)  | 11/2014 to present |
| The Grand Rehabilitation & Nursing Center at River Valley (95%) | 09/2016 to present |
| The Grand Rehabilitation & Nursing at Barnwell (95%)            | 12/2017 to present |
| Senior Care EMS (23%)   | 05/2005 to present |
| Washington Center Adult Home (30%)                              | 02/2014 to 05/2016 |

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Mrs. Strauss discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| The Grand Rehabilitation & Nursing Center at Guilderland (5%)  | 11/2016 to present |
| The Grand Rehabilitation & Nursing Center at River Valley (5%) | 09/2016 to present |
| The Grand Rehabilitation & Nursing Center at Rome (2%)         | 08/2016 to present |
| The Grand Rehabilitation & Nursing Center at Chittenango (2%)  | 07/2016 to present |
| The Grand Rehabilitation & Nursing at Barnwell (5%)            | 12/2017 to present |

#### Character and Competence – Analysis

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 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 Stipulation and Order NH-16-.034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*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.*

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

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on

July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

*An assessment of the underlying causes of the 2015 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.*

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 Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*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.*

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 19, 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 the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being

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 federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

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

- 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 review of operations for the above nursing homes indicates there were only single enforcements, and the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

The review of operations of the other nursing homes and the Senior Care Emergency Ambulance Services, Inc, for the time periods indicated above reveals that there were no enforcements.

#### Quality Review

| Provider Name                                      | Ownership Since | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile              |
|--|-----------------|---------|-------------------|------------------|----------|---------------------------|
| The Grand Rehabilitation & Nursing at Pawling      | 01/2004         | *****   | ****              | *****            | ***      | 4                         |
| The Grand Rehabilitation & Nursing at Queens       | 06/2004         | *****   | ****              | *****            | **       | 5                         |
| The Grand Rehabilitation & Nursing at Rome         | 05/2011         | **      | *                 | *****            | **       | 5                         |
| The Grand Rehabilitation & Nursing at Chittenango  | 05/2011         | **      | *                 | *****            | **       | 3                         |
| The Grand Rehabilitation & Nursing at Guilderland  | 11/2014         | *       | *                 | ****             | **       | Information not available |
| The Grand Rehabilitation & Nursing at River Valley | 09/2016         | **      | **                | ****             | ***      | 5                         |
| The Grand Rehabilitation & Nursing at Barnwell     | 12/2017         | *       | *                 | ***              | *        | 5                         |

*Notes: The Guilderland Staffing Rating is not available via Medicare.gov website. The star ratings for Barnwell are not applicable due to the recent acquisition.*

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates the low star ratings, in general, are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicant stated they responded by implementing staffing incentives to recruit and retain employees. The incentives include enhanced training and education, and housing to augment staff recruitment and retention. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight. The applicant also mentions that two of the facilities provide care to clinically complex residents that other facilities are unwilling or unable to accept, and this can affect the performance rating for quality measures.

Regarding the nursing homes with low staffing ratings, the applicant states, especially upstate area nursing homes, there is a difficulty in recruiting and retaining staff. This difficulty in recruiting and retaining direct care staff has forced the facilities to rely on agency staffing. While agency staffing satisfies an immediate need, extended reliance is not in the best interest of residents. Agency staff are not invested in either the operations of the facility or the residents and frequent utilization is disruptive to continuity of care.

The applicant's plan for corrective action to improve low staffing ratings is by implementing a decrease in reliance on agency staffing, implementing a global staffing initiative designed to improve quality and performance on staff at each of the facilities within the Grand Healthcare System. The operator, at some facilities, has implemented the following recruitment and retention initiatives by hiring a full-time recruiter dedicated to direct care staff, provision of longevity pay and bonuses, established a mentoring program for new and existing direct care staff to promote development, enhancement and refinement of skills.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that one of their 2-star facilities have been owned for less than two years.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016 the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the 2017 enforcement at this facility the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

In response to the most recent October 2017 enforcement at The Grand Rehabilitation and Nursing at Chittenango the root cause was inconsistency and inadequate monitoring by the nursing and medical staff. The facility has taken steps which include immediate re-education of nurses on the proper procedure for documenting all labs, quality assurance monitoring and the review of lab audits by the quality assurance committee.

#### Conclusion

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Health Care System, a related entity with Jeremy Strauss as CEO. The applicant also intends to utilize staffing agencies upon assumption of ownership. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, to be effective upon PHHPC approval. The terms are summarized below:

|                            |  |
|----------------------------|--|
| Date:                      | November 22, 2017  |
| Seller:                    | Pinegrove Manor II, LLC  |
| Buyer:                     | Great Grand Neck, LLC  |
| Asset Acquired:            | Rights, title and interest in business assets clear of liens including: tangible assets, inventory, supplies, books & records related to facility, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Pinegrove Manor II"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patients & employee records, manuals and computer software, phone and telefax numbers, and non-excluded accounts receivables. |
| Excluded Assets:           | Seller's rights, title and interest on closing date in all insurance policies; all cash, deposits, refunds prior to closing date; amounts due from affiliates; any claims and refunds owned by seller; all rate increases from any source; all claims, rights, cause of action, rights of recovery, rights of set-off and recoupment against any third parties; accounts receivables; all accounts payable; Universal Settlement, rate appeals, audits, and real estate including FF&E which is the subject of the real estate contract.   |
| Assumption of Liabilities: | Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date; plus, assumptions of certain liabilities totaling \$370,005 as of August 10, 2018.  |
| Purchase Price:            | Assumed liabilities of \$370,005 as of August 10, 2018.  |

BFA Attachment A is the net worth summary of the Great Grand Neck, LLC members, which reveals sufficient resources to meet the equity requirements for funding the assumed liabilities.

Jeremy Strauss has provided a letter of interest from Harborview Capital Partners issued to Strauss Ventures, LLC for a credit line of up to \$25,000,000 at 6% interest for a five-year term. Strauss Ventures, LLC is 100% owed by Jeremy and Meryl Strauss. Mr. Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. BFA Attachment B provides additional details on the assumed liabilities of \$370,005 as of August 10, 2018.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 14, 2018, the facility has no outstanding Medicaid liabilities.

## Lease Agreement

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

|             |   |
|-------------|---|
| Premises:   | 214-bed located at 15 St. Paul's Place, Great Neck, (Nassau County)   |
| Landlord:   | Pinegrove Manor, LLC  |
| Lessee:     | Great Grand Neck, LLC   |
| Term:       | 25-year lease   |
| Rental:     | Years 1-5: \$250,000 per month<br>Years 6-10: \$250,000 plus adjusted by the consumer price index (CPI)<br>Years 11-15: \$250,000, plus adjusted by (CPI)<br>Years 16-20: \$250,000, plus adjusted by (CPI)<br>Years 21-25: \$205,000, plus adjusted by (CPI) |
| Provisions: | CPI index will be used for increase in Northern NY, NJ-Long Island  |

The lease arrangement is an arm's length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers attesting that the lease cost per square foot is at fair market value.

## Consulting Services Agreement

The applicant has provided a draft Consulting Services Agreement, with terms summarized below:

|             |   |
|-------------|---|
| Contractor: | Strauss Ventures, LLC d/b/a The Grand Health Care System  |
| Facility:   | Great Grand Neck, LLC   |
| Services:   | Advisory services related to administration and operational functions, including assistance with regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of accounts receivable functions, billing/analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing. |
| Term:       | One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.  |
| Fee:        | \$85,000 per month. Periodically adjusted based on quarterly review of fairness and appropriateness of the fees.  |

Jeremy Strauss, a member of the applicant, is CFO of the Strauss Ventures, LLC. The draft Consulting Service Agreement provides that Grand Great Neck, LLC retains ultimate authority, responsibility, and control in all the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement (ASA) and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that the applicant willfully engages in any illegal delegation and understands that the Department will hold the applicant accountable.

## Operating Budget

The applicant has provided the current year (2017) results and first and third year operating budget after the change in ownership, in 2018 dollars, summarized as follows:

| Revenues        | Current Year   |                    | Year One       |                  | Year Three     |                  |
|-----------------|----------------|--------------------|----------------|------------------|----------------|------------------|
|                 | Per Diem       | Total              | Per Diem       | Total            | Per Diem       | Total            |
| Commercial-FFS  | \$599.09       | \$265,995          | \$599.09       | \$266,595        | \$599.09       | \$272,586        |
| Medicare-FFS    | \$493.14       | \$3,974,707        | \$493.14       | \$4,014,160      | \$493.14       | \$4,098,980      |
| Medicare-MC     | \$493.14       | \$1,499,145        | \$493.14       | \$1,514,926      | \$493.14       | \$1,546,980      |
| Medicaid-FFS    | \$290.11       | \$11,560,709       | \$275.73       | \$11,101,717     | \$275.73       | \$11,335,536     |
| Medicaid-MC     | \$290.11       | \$4,788,485        | \$290.11       | \$4,839,325      | \$290.11       | \$4,941,154      |
| Private Pay     | \$599.09       | \$3,318,949        | \$599.09       | \$3,351,909      | \$599.09       | \$3,422,601      |
| Other Income*   |                | <u>\$570,904</u>   |                | <u>\$0</u>       |                | <u>\$0</u>       |
| Total Revenue   |                | \$25,978,894       |                | \$25,088,632     |                | \$25,617,837     |
| <b>Expenses</b> |                |                    |                |                  |                |                  |
| Operating       | \$330.04       | \$24,238,169       | \$287.05       | \$21,298,261     | \$282.69       | \$21,416,501     |
| Capital         | <u>\$30.38</u> | <u>2,231,183</u>   | <u>\$47.44</u> | <u>3,519,514</u> | <u>\$45.77</u> | <u>3,467,328</u> |
| Total Expenses  | \$360.42       | \$26,469,352       | \$334.49       | \$24,817,775     | \$328.46       | \$24,883,829     |
| Net Income      |                | <u>(\$490,458)</u> |                | <u>\$270,857</u> |                | <u>\$734,008</u> |
| Patient Days    |                | 73,440             |                | 74,196           |                | 75,760           |
| Occupancy       |                | 94.02%             |                | 94.98%           |                | 96.99%           |

\* Other Income consists of barber/beauty shops, unrestricted investment income, and other misc., which are discontinued in year one and three.

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2017 revenues and expenses.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2017 and used for projections. The Commercial and Private pay rates are based on the current operator's average rates for 2017.
- Expenses and staffing assumptions were based on the current operator's model and adjusted based on the applicant's experience.
- Projected utilization for Year One is 94.98% and 96.99% for Year Three. It is noted that utilization for the past three years has averaged around 92.23% and occupancy was at 94.02% for 2017. Current occupancy was reported at 89.3% as of August 8, 2018.
- Breakeven utilization is projected at 93.96% in the first year.
- Utilization by payor source is summarized below for the first and third year after change in ownership is summarized below:

| Payor          | Current      | Years One    |
|----------------|--------------|--------------|
|                | Year         | & Three      |
| Medicaid-FFS   | 54.27%       | 54.27%       |
| Medicaid-MC    | 22.48%       | 22.48%       |
| Medicare-FFS   | 10.97%       | 10.97%       |
| Medicare-MC    | 4.14%        | 4.14%        |
| Commercial-FFS | .60%         | .60%         |
| Private Pay    | <u>7.54%</u> | <u>7.54%</u> |
| RHCF Total     | <u>100%</u>  | <u>100%</u>  |

## Capability and Feasibility

Great Grand Neck, LLC will acquire the RHCF operations for the assumptions of certain liabilities, estimated at \$370,005 as of August 10, 2018, plus the execution of the lease. The applicant will lease the premises from Pinegrove Manor, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at \$4,506,301 based on two months of first year expense of \$4,136,296, plus assumed liabilities of \$370,005 as of August 10, 2018. The applicant will provide \$2,253,150 from a working capital loan at 5% for a term of five-years. The remaining \$2,253,151 will be funded via members' equity of \$938,000 and \$1,315,151 from a credit line issued to Strauss Ventures, LLC. Strauss Ventures, LLC is 100% owned by Jeremy Strauss and Meryl Strauss. Harborview Capital Partners has provided a letter of interest for a credit line of up to \$25,000,000 at 6% interest for a five-year term. Harborview Capital Partners has provided a letter of interest for a working capital loan for a five-year term at 5% interest.

BFA Attachment A, proposed members net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to ownership interest for the two RHCFs (this application and CON 172387 concurrently under review). As the result of potential equity shortfall, Jeremy Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his membership interest making up another member's equity shortfall. Jeremy Strauss has provided a letter of interest for a \$25,000,000 credit line issued to his company, Strauss Ventures, LLC, at the above stated terms.

The submitted budget projects a first-year and third year net income of \$270,857 and \$734,008 after the change in ownership. Overall expense reductions include purchased services, employee benefits and professional fees, as the applicant will renegotiate these contracts. Expense reductions in Year One compared to the current year total \$1,651,577.

BFA Attachment C is Grand Great Neck, LLC's pro forma balance sheet, which shows the entity will start with \$4,653,420 in member's equity (which includes \$370,005 assumed liabilities). The budget appears reasonable.

BFA Attachment D is the 2015 - 2017 Financial Summary of Pinegrove Manor II, LLC d/b/a Grace Plaza Nursing and Rehabilitation Center. The RHCF had average positive working capital and net asset positions for the period and generated an average positive net income. In 2017, the facility had a net loss of \$490,458 for operations due to decreasing net patient revenue while overall general operating expenses (salary and benefits) increased. BFA Attachment E is their internal financial statement as of March 31, 2018, which shows positive net asset and working capital position. The facility incurred a net loss of \$354,314 for the period shown due to nursing and medical staff increases and general and administration cost increases.

BFA Attachment F is the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. All the RHCFs have maintained positive net income, working capital, and net assets for the periods shown, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a negative working capital position in 2015 but turned the working capital position to positive in 2016.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. The cumulative effect of both transactions will result in a positive position in 2017.

- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows negative working capital, negative net assets and an operating loss during 2016 and 2017. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Net Worth of Proposed members of Grand Great Neck, LLC    |
| BFA Attachment B | Details of Assumed Liabilities as of August 10, 2018      |
| BFA Attachment C | Pro Forma Balance Sheet (Grand Great Neck, LLC)           |
| BFA Attachment D | Financial Summary 2015 thru 2017 of Great Grand Neck, LLC |
| BFA Attachment E | March 31, 2018 Internal Financial Statement               |
| BFA Attachment F | Proposed Members' Ownership Interest in Affiliated RHCfs  |
| BFA Attachment G | Owners of Pinegrove Manor, LLC (Realty Interest)          |

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 11th day of October 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 Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck as the new operator of Grace Plaza Nursing and Rehabilitation Center, a 214-bed residential health care facility located at 15 St. Paul's Place, Great Neck, 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:

172385 E

Grand Great Neck, LLC d/b/a The Grand  
Rehabilitation and Nursing at Great Neck

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Assignment of Lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and executed lease 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*.



## MEMORANDUM

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

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

**Date:** September 18, 2018

**Subject:** Faxton-St. Luke's Healthcare Foundation: Restated Certificate of Incorporation

---

Faxton – St. Luke's Healthcare Foundation (Foundation) is a not-for-profit tax-exempt corporation established and operated to solicit, receive and maintain contributions to support Faxton- St. Luke's Healthcare (FSLH) and St. Lukes Home Residential Health Care Facility Inc. (SLH). FSLH and SLH exist under an active parent, Mohawk Valley Health System (MVHS). St. Elizabeth Medical Center (SEMC) also exists under the active parent of MVHS.

MVHS, FSLH and SEMC have decided to unify their fundraising activities to a single entity and to change the name to the FSLH Foundation to the "Mohawk Valley Health Systems Foundation."

The proposed Restated Certificate of Incorporation would reflect this name change, in addition to adding SEMC, MVHS, and such other Article 28 not-for-profit corporations that may be established as beneficiaries to the Foundation.

PHHPC approval is required pursuant to Not-for-Profit Corporation Law § 804 and 10 NYCRR § 600.11(a)(2).

There is no legal objection to the proposed Restated Certificate of Incorporation nor is there an objection to the name change. The proposed Restated Certificate of Amendment is in legally acceptable form.

Attachments.



Scott H. Perra, FACHE, President/CEO

Mohawk Valley Health System  
PO Box 479 | Utica, NY 13503-0479  
(315) 624-6000 | www.mvhealthsystem.org

Traci A. Boris  
Vice President and General Counsel

315-624-5164

Heather A. Haglund  
Assistant General Counsel

Fax 315-624-5055

**facsimile**  
TRANSMITTAL

to: **General Counsel – NYS Department of Health**  
fax #: (518) 473-2802  
from: **Heather A. Haglund, Esq.**  
re: **Faxton-St. Luke's Healthcare Foundation**  
Date: **September 12, 2018**  
pages: **109** page(s) total, including this cover sheet  
cc:

**THIS MATERIAL BEING TRANSMITTED IS CONFIDENTIAL, IS SUBJECT TO PRIVILEGE, AND IS SOLELY FOR THE PERSON OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE DO NOT READ THE COMMUNICATION. IF YOU HAVE RECEIVED THE MATERIAL IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE COMMUNICATION TO US AT THE ADDRESS BELOW BY MAIL, OR DESTROY SAME.**

---

**Message:**

Please find attached Faxton-St. Luke's Healthcare Foundation's Request for a Letter of Consent and supporting documentation.

Please contact our offices should you have any questions concerning receipt of this transmission or the provided letter and documentation.

Thank you.



Scott H. Perra, FACHE, President/CEO

September 12, 2018

Mohawk Valley Health System  
PO Box 479 | Utica, NY 13503-0479  
(315) 624-6000 | www.mvhealthsystem.org

Richard J. Zahnleuter, Esq. *(Via Facsimile (518) 473-2802)*  
General Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower, Room 2438  
Empire State Plaza  
Albany, New York 12237

**Re: Faxton-St. Luke's Healthcare Foundation Request for a Letter of Consent**

Dear Mr. Zahnleuter:

We write on behalf of Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation" or the "Corporation") to request the Public Health and Health Planning Council issue a letter of consent to permit the filing with the Secretary of State of the Restated Certificate of Incorporation attached hereto as Exhibit A.

FSLH Foundation is a not-for-profit tax exempt corporation established and operated to solicit, receive, and maintain contributions to support Faxton-St. Luke's Healthcare ("FSLH") and St. Lukes Home Residential Health Care Facility, Inc. ("SLH"). FSLH is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SLH is a not-for-profit tax exempt corporation that operates a duly licensed residential health care facility that is also located in Utica, New York.

FSLH and SLH exist under an active parent, Mohawk Valley Health System ("MVHS"). MVHS is a not-for-profit tax exempt Article 28 corporation. St. Elizabeth Medical Center ("SEMC") also exists under the active parent MVHS. SEMC is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SEMC is the supported beneficiary of St. Elizabeth Medical Center Foundation ("SEMC Foundation"), which is also a not-for-profit tax exempt corporation.

#### **The "New Hospital" and Plan to Unify Fundraising Activities**

MVHS, FSLH, and SEMC are in the process of planning for, financing, and constructing a new, state-of-the-art hospital in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

MVHS, FSLH, and SEMC have determined that the most expedient and efficient way to promote fundraising for the New Hospital, and to best support the charitable beneficiaries of FSLH

September 12, 2018  
Richard J. Zahnleuter, Esq.  
General Counsel  
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Foundation and SEMC Foundation, is to unify the fundraising activities of the two Foundations to a single entity. To accomplish this, we plan to change the name of FSLH Foundation to "Mohawk Valley Health System Foundation" ("MVHS Foundation") and to expand its supported beneficiaries to include MVHS, SEMC, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital. The attached Restated Certificate of Incorporation is drafted to effectuate these changes.

With respect to SEMC Foundation, the plan is that upon approval of SEMC as a beneficiary of the MVHS Foundation, the fundraising activities of the SEMC Foundation shall be suspended and the corporation shall be maintained until such time as its existing funds and/or assets are distributed to SEMC and, at that time, dissolve or merge it into the MVHS Foundation. Any such dissolution or merger shall be accomplished in compliance with all legal requirements, including the applicable requirements of the Not-for-Profit Corporation Law.

#### **Approval Request**

We request Public Health and Health Planning Council approval of the attached Restated Certificate of Incorporation per the requirements of subsections (o) and (t) of Section 404 of the Not-for-Profit Corporation Law and 10 NYCRR § 600.11(a)(2). To support this request, we provide the following information and documents:

##### **1. Restated Certificate of Incorporation**

A photocopy of the signed and dated proposed Restated Certificate of Incorporation of FSLH Foundation is attached hereto as Exhibit A.

Paragraph "FIRST" of the proposed Restated Certificate of Incorporation changes the name to "Mohawk Valley Health System Foundation".

Paragraph "THIRD" of the proposed Restated Certificate of Incorporation adds to the named beneficiaries of the Corporation: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "FOURTH" of the proposed Restated Certificate of Incorporation adds to the named beneficiaries on behalf of which the Corporation has the power to carry on activities and perform acts to benefit: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "SEVENTH" of the proposed Restated Certificate of Incorporation adds to the named distributees of the Corporation: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "TWELTH" of the proposed Restated Certificate of Incorporation changes the address for service of process on the Corporation.

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Richard J. Zahnleuter, Esq.  
General Counsel  
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## 2. Current Certificate of Incorporation

A photocopy of the current filed Restated Certificate of Incorporation of FSLH Foundation is attached hereto as **Exhibit B**.

## 3. Board Resolutions Authorizing Plan

Photocopies of (i) Resolutions of the Board of Directors of MVHS, FSLH, and SEMC, adopted at their respective meetings held December 15, 2016, and (ii) Resolutions of FSLH Foundation and SEMC Foundation, adopted at their respective meetings held October 27, 2016, all of which authorize the herein plan, are attached hereto as **Exhibit C**.

## 4. Bylaws

A photocopy of the Bylaws of the renamed Mohawk Valley Health System Foundation, approved by Members of the Board of the Corporation at a regular meeting conducted December 13, 2016, are attached hereto as **Exhibit D**.

## 5. Generalized Description of Fundraising Activities

The Corporation's purposes shall be exclusively charitable, educational, and scientific in nature, to wit:

- A. To solicit, receive and maintain funds, real or personal property and to develop and maintain philanthropic relations for the benefit of FSLH, SLH, MVHS, SEMC, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital (the "Beneficiaries");
- B. To maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of the Beneficiaries;
- C. Any funds or real or personal property raised for the specific benefit of the Beneficiaries shall at all times be exclusively used for the benefit of such entity; and
- D. Such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

Over the course of the next few years, it is anticipated that the fundraising activities of the renamed MVHS Foundation will include annual solicitation efforts aimed at securing philanthropic donations toward the New Hospital. This includes a Comprehensive Campaign to raise money to build the New Hospital and truly transform healthcare in our community. The Campaign will consist of regular communications and personal outreach to the community. Beyond the New Hospital project, however, Foundation programs include, but are not limited to:

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General Counsel  
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our Children's Miracle Network, the Grateful Patient program, annual Employee Giving, Lights of Love to honor loved ones who have passed, and Stomp Out Cancer which helps fund our battle against this terrible disease. These efforts focus on raising money to help support specific needs of the hospital allowing us to help provide the best patient care possible.

6. Information regarding the Corporation's Board of Directors

Attached as Exhibit E is a list of the following information regarding the Corporation's Board of Directors: (1) Name and address; (2) occupation; and (3) employer name and address.

7. Identification of the Organizational Relationship between the Corporation and the Supported Beneficiaries

FSLH Foundation is a separately incorporated not-for-profit corporation. MVHS is the Corporation's sole Corporate Member. MVHS is the active parent over FSLH and SLH, the current supported beneficiaries of the Corporation.

MVHS is also the active parent over SEMC and is intended to be the active parent over any Article 28 not-for-profit corporation as may be established to operate the New Hospital, which are proposed supported organizations to be added pursuant to the proposed Restated Certificate of Incorporation attached hereto as Exhibit A.

8. Affiliates; Entities which Control, or are Controlled by, the Corporation

- Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation" or the "Corporation"), the requestor herein, is a not-for-profit tax exempt corporation established and operated to solicit, receive, and maintain contributions to support Faxton-St. Luke's Healthcare ("FSLH") and St. Lukes Home Residential Health Care Facility, Inc. ("SLH").
- FSLH is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. FSLH is the sole corporate member of FSLH Foundation. FSLH is one of the supported beneficiaries of FSLH Foundation.
- SLH is a not-for-profit tax exempt corporation that operates a duly licensed residential health care facility located in Utica, New York. SLH is one of the Corporation's supported beneficiaries.
- St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a separately incorporated not-for-profit corporation. St. Elizabeth Medical Center ("SEMC") is its supported beneficiary.
- SEMC is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SEMC is the sole corporate member of SEMC Foundation and is its supported beneficiary.
- Mohawk Valley Health System ("MVHS") is a not-for-profit tax exempt Article 28 corporation. MVHS is the active parent of:
  - FSLH;
  - SLH;

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Richard J. Zahnleuter, Esq.  
General Counsel  
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- o SEMC;
- o Mohawk Valley Home Care, LLC, a licensed home care services agency;
- o Senior Network Health, LLC, a Medicare Long Term Care Plan;
- o Visiting Nurse Association of Utica and Oneida County, Inc., a certified home health agency.

Accordingly, we respectfully request that this matter be processed at the September 27, 2018 meeting of the Public Health and Health Planning Council. Please forward to the undersigned the Public Health and Health Planning Council's approval of the filing of the Restated Certificate as soon as this action is taken. If you need any further information, please contact me at (315) 624-5164 (office phone) or (315) 624-5166 (direct line).

Sincerely,



Heather A. Haglund, Esq.  
Assistant General Counsel

Enclosures

***EXHIBIT "A"***

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION**

Pursuant to Section 805 of the Not-for-Profit Corporation Law.

We, the undersigned, being respectively the President and Secretary of Faxton-St. Luke's Healthcare Foundation, certify:

1. The name of the corporation is: Faxton-St. Luke's Healthcare Foundation. The Corporation was originally formed under the name of St. Luke's-Memorial Hospital Center Foundation.

2. The corporation's Certificate of Incorporation was filed in the Department of State on the 8<sup>th</sup> day of December 1989, pursuant to the Not-for-Profit Corporation Law. A Restated Certificate of Incorporation was filed in the Department of State on the 23<sup>rd</sup> day of December, 1999.

3. The corporation's Certificate of Incorporation, as previously filed, is hereby further amended to effectuate the following:

A. To change the name of the Corporation to Mohawk Valley Health System Foundation;

B. To change the description of the Corporation from a type B not-for-profit corporation to a charitable corporation, pursuant to the 2014 amendment of section 201 of the Not-for-Profit Corporation Law, as provided in paragraph "SECOND" of the Certificate of Incorporation.

C. To add St. Elizabeth Medical Center, Mohawk Valley Health System, and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as named beneficiaries of the Corporation's funds and activities as provided in Paragraph "THIRD" of the Certificate of Incorporation;

D. To add St. Elizabeth Medical Center, Mohawk Valley Health System, and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as beneficiaries for which the Corporation has the power to carry on activities and perform acts to benefit as provided in Paragraph "FOURTH" of the Certificate of Incorporation;

E. To add St. Elizabeth Medical Center, Mohawk Valley Health System and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as named distributees of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation.

F. To change the address for service of process of the Corporation as provided in Paragraph "TWELFTH" of the Certificate of Incorporation.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as herein set forth in full:

FIRST: The name of the corporation is: Mohawk Valley Health System Foundation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a charitable corporation under Section 201 of the said Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational, and scientific in nature, to wit:

A. To solicit, receive and maintain a fund of real or personal property, or both, exclusively for the benefit of: Faxton-St. Luke's Healthcare ("Faxton"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; St. Lukes Home Residential Health Care Facility, Inc. ("St. Luke's Home"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; St. Elizabeth Medical Center ("St. Elizabeth"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; Mohawk Valley Health System ("MVHS"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System established pursuant to the New York State Not-for-Profit Corporation, which are exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and

B. To maintain, use and apply this fund of property and the income therefrom exclusively for the benefit of Faxton, St. Luke's Home, St. Elizabeth, MVHS, and

such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any provision of this paragraph FOURTH, the Corporation shall not have the power to carry on any activity or do any act which is not in furtherance of the purpose of benefiting Faxton, St. Luke's Home, St. Elizabeth, MVHS, or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System, and which is not permitted to be carried on or done by a corporation exempt from Federal income taxation under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law (hereinafter referred to as the "Code").

FIFTH: No part of the activities of the Corporation shall include carrying on propaganda, or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any campaign on behalf of any candidate for public office.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation).

SEVENTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses, be distributed to Faxton, St. Luke's Home, St. Elizabeth, MVHS, and/or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System if at that time they qualify as exempt organizations under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or if Faxton, St. Luke's Home, St. Elizabeth, MVHS, and/or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System do not qualify, to another corporation exempt under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or to the federal, state or local government for a public purpose, subject to the approval of a Justice of the

Supreme Court of the State of New York. Any assets raised specifically for the benefit of any of these entities shall, upon dissolution, be distributed to that entity.

EIGHTH: 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 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) made any investments in such manner as to subject to Corporation to tax under Code Section 5944; or (D) made any taxable expenditures as defined in Code Section 4945 (d) or corresponding provisions of any subsequent Federal tax laws.

NINTH: Nothing contained herein shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related service or to operate a certified home health agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan as defined in Articles 28, 36, 40 and 44, respectively of the Public Health Law.

TENTH: The office of the Corporation is to be in the County of Oneida, State of New York.

ELEVENTH: The territory in which the Corporation's activities are principally to be conducted is in Oneida County, New York.

TWELFTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him/her is:

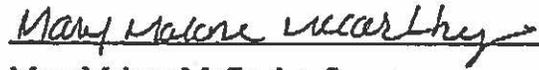
Mohawk Valley Health System Foundation  
1656 Champlin Avenue  
New Hartford, New York 13413.

5. This Restated Certificate of Incorporation, and the foregoing amendments of the Certificate of Incorporation, were authorized by a unanimous vote of all the Members of the Corporation in accordance with the provisions of the New York State Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned have subscribed this Restated Certificate of Incorporation this 11 day of September, 2018, and hereby affirm that the statements contained herein are true under the penalties of perjury.



Terry Mielnicki, President



Mary Malone McCarthy, Secretary

***EXHIBIT "B"***

09-12-18;12:27PM;

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PURPOSES NAME PROVISIONS RESTATED

COUNTY: ONEI

SERVICE COMPANY: SERVICO --

SERVICE CODE: 35

=====

FILED:12/23/1999 DURATION:\*\*\*\*\* CASH#:991223000710 FILM #:991223000681

ADDRESS FOR PROCESS  
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REGISTERED AGENT  
-----



| FILER              | FEES     |       | PAYMENTS |       |
|--------------------|----------|-------|----------|-------|
| -----              | -----    | 55.00 | -----    | 55.00 |
| THOMAS SOJA        | FILING   | 30.00 | CASH     | 0.00  |
| ST. LUKES MEMORIAL | TAX      | 0.00  | CHECK    | 0.00  |
| P.O. BOX 479       | CERT     | 0.00  | CHARGE   | 0.00  |
| UTICA, NY 13503    | COPIES   | 0.00  | DRAWDOWN | 55.00 |
|                    | HANDLING | 25.00 | BILLED   | 0.00  |
|                    |          |       | REFUND   | 0.00  |
|                    |          |       | -----    |       |

13358

DOS-1025 (11/89)

State of New York }  
Department of State } ss:

*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 seal of the Department of State on*

DEC 24 1999



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line.

*Special Deputy Secretary of State*

F 991223000681

**SERVICO 35** RESTATED  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**ST. LUKE'S-MEMORIAL HOSPITAL CENTER FOUNDATION**

Pursuant to Section 805 of the Not-For-Profit Corporation Law.

We, the undersigned, being the President and Secretary of St. Luke's-Memorial Hospital Center Foundation, hereby certify:

1. The name of the Corporation is *St. Luke 's-Memorial Hospital Center Foundation.*
2. The Corporation's Certificate of Incorporation was filed by the Department of State on the 8th day of December 1989, pursuant to the Not-For-Profit Corporation Law.
3. The Corporation's Certificate of Incorporation, as previously filed, is hereby amended to affect the following amendments:
  - A. To change the name of the Corporation to Faxton-St. Luke's Healthcare Foundation;
  - B. To add Faxton Hospital as a named beneficiary of the Corporation's funds and activities as provided in paragraph "THIRD" of the Certificate of Incorporation;
  - C. To add Faxton Hospital as a named distributee of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation;

D. To add St. Lukes Home Residential Health Care Facility, Inc. as a named beneficiary of the Corporation's funds and activities, as provided in paragraph "THIRD" of the Certificate of Incorporation;

E. To add St. Lukes Home Residential Health Care Facility, Inc. as a named distributee of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation; and

F. To delete unnecessary material regarding the initial directors and the incorporator, as provided in paragraphs "TWELFTH" and "FOURTEENTH," respectively, of the Certificate of Incorporation.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as herein set forth in full:

FIRST: The name of the corporation is Faxton-St. Luke's Healthcare Foundation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York and is a Type B corporation under Section 201 of the said Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature, to wit:

A. To solicit, receive and maintain a fund of real or personal property, or both, exclusively for the benefit of: St. Luke's-Memorial Hospital Center (St. Luke's), a New York State Not-For-Profit Corporation which is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; Faxton Hospital (Faxton), a New York State Not-For-Profit Corporation which

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is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the Home), a New York State Not-For-Profit Corporation which is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; and

B. To maintain, use and apply this fund of property and the income therefrom exclusively for the benefit of St. Luke's, Faxton, and the Home.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any provision of this paragraph FOURTH, the Corporation shall not have the power to carry on any activity or do any act which is not in furtherance of the purpose of benefiting St. Luke's, Faxton or the Home, and which is not permitted to be carried on or done by a corporation exempt from Federal income taxation under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law (hereinafter referred to as the "Code").

FIFTH: No part of the activities of the Corporation shall include carrying on propaganda, or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any campaign on behalf of any candidate for public office.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation).

SEVENTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses, be distributed to St. Luke's, Faxton and/or the Home if at that time they qualify as exempt organizations under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or if St. Luke's, Faxton and/or the Home do not qualify, to another corporation exempt under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or to the federal, state or local government for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York. Any assets raised specifically for the benefit of any of these entities shall, upon dissolution, be distributed to that entity.

EIGHTH: 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 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) or corresponding provisions of any subsequent Federal tax laws.

NINTH: Nothing contained herein shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related service or to operate a certified home health agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan as defined in Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

TENTH: The office of the Corporation is to be located in the Town of New Hartford, County of Oneida, State of New York.

ELEVENTH: The territory in which the Corporation's activities are principally to be conducted is in Oneida County.

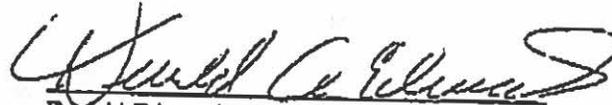
TWELFTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is as follows:

Faxton-St. Luke's Healthcare Foundation  
Champlin Avenue  
New Hartford, New York 13413

This restated Certificate of Incorporation, and the foregoing amendments of the Certificate of Incorporation, were authorized by a unanimous vote of all of the Members of the Corporation in accordance with the provisions of the New York State Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned have subscribed this restated Certificate of Incorporation this 4th day of January, 1999, and hereby affirm that the statements contained herein are true under the penalties of perjury.

5



Donald Edmunds, President



Rocco Arcuri, Secretary

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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July 1, 1999

Mr. Thomas S. Soja  
Counsel  
St. Luke's - Memorial  
The Hospital Center  
P.O. Box 479  
Utica, New York 13503-0479

Re: Restated Certificate of Incorporation of St. Luke's - Memorial Hospital Center  
Foundation

Dear Mr. Soja:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of June, 1999, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of St. Luke's - Memorial Hospital Center Foundation Hereafter to be known as Faxton - St. Luke's Healthcare Foundation, dated January 4, 1999.

Sincerely,

Karen S. Westervelt  
Executive Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 25<sup>th</sup> day of June, 1999, approves the filing of the Restated Certificate of Incorporation of St. Luke's-Memorial Hospital Center Foundation, for the purpose of changing its name to Faxton-St. Luke's Healthcare Foundation and to amend and expand its purposes to solicit funds for two additional Article 28 facilities: Faxton Hospital, a general hospital located in Oneida County, and St. Luke's Home Residential Healthcare Facility, a residential health care facility also located in Oneida County dated January 4, 1999.

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CHIT... .. 1374

**STATE OF NEW YORK  
SUPREME COURT COUNTY OF ONEIDA**

In the Matter of the Application of St. Luke's-Memorial  
Hospital Center Foundation for Permission to file a  
Certificate of Amendment of its Certificate of  
Incorporation Pursuant to Sections 803 and 804 of the  
New York State Not-For-Profit Corporation Law.

**ORDER**

Index No.  
RI No. 32-99-8350C

Upon reading the Petition of St. Luke's-Memorial Hospital Center Foundation  
(the Foundation), by Thomas S. Soja, Esq., duly verified the 16th day of December 1999,  
the undersigned, a Justice of the Supreme Court of the State of New York for the Fifth  
Judicial District, in which the office of the Foundation is located, does hereby approve  
the Amendment to the Certificate of Incorporation and the Restated Certificate of  
Incorporation of St. Luke's-Memorial Hospital Center Foundation, and consents to its  
filing.

Dated: December <sup>17<sup>th</sup></sup>, 1999  
Utica, New York

FILED  
ONEIDA COUNTY  
CLERK  
99 DEC 20 AM 10:34

ENTER

*Anthony F. Shaheen*

Hon. Anthony F. Shaheen  
Justice of the Supreme Court

09-12-18; 12:27PM;



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
(518) 473-4863

ELIOT SPITZER  
Attorney General

DETTRICH L. SNELL  
Deputy Attorney General  
Division of Public Advocacy

April 19, 1999

St. Luke's-Memorial  
The Hospital Center  
Thomas S. Soja, Esq.  
PO Box 479  
Utica, NY 13503-0479

RE: Approval of Amendment to the Certificate of Incorporation of  
St. Luke's-Memorial Hospital Center Foundation

Dear Mr. Soja:

Thank you for your April 8, 1999 letter in response to our letter of March 2, 1999 with amendments to the proposed Restated Certificate of Amendment, and a supporting affidavit from Donald Edmunds, President of St. Luke's-Memorial Center Foundation regarding the segregation of funds before and after the certificate amendment, distribution of funds upon dissolution, and allocation of administrative expenses in the future, as they may relate to each of the benefited corporations.

Based upon a review of the said affidavit of Donald Edmunds, the proposed Restated Certificate of Incorporation of St. Luke's-Memorial Hospital Center Foundation, containing the requested changes, and the Certificate of Incorporation and bylaws of Mohawk Valley Network, Inc., as requested in my said letter, please be advised that the Attorney General has no objection to the entry of an order of the Supreme Court, Oneida County, approving the Restated Certificate of Incorporation of your client. Please provide our office with proof of filing of the restated certificate so we may close our file in this matter.

Thank you for your cooperation and courtesies extended to this office throughout this matter.

Very truly yours,

DONALD P. SEGAL  
Assistant Attorney General

cc: Frederick Degan, Esq.

DPS/saz

**BY-LAWS**  
**OF**  
**FAXTON - ST. LUKE'S**  
**HEALTHCARE FOUNDATION**

***Amended as of February 25, 2010***

**BY-LAWS  
FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION**

**ARTICLE I**

**NAME.**

The name of the Corporation is *Faxton-St. Luke's Healthcare Foundation*, hereinafter referred to as the "*Foundation*."

**ARTICLE II**

**PURPOSES.**

The purposes for which the Foundation is formed are exclusively charitable, educational, and scientific in nature, to wit:

a. to solicit, receive and maintain funds, real or personal property for the benefit of Faxton - St. Luke's Healthcare ("Healthcare"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the Home), a New York State not-for-profit corporation which is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; and

b. to maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of Healthcare and the Home.

c. any funds or real or personal property raised for the specific benefit of Healthcare or the Home shall at all times be exclusively used for the benefit of such entity.

d. such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

**ARTICLE III**

**MEMBERSHIP.**

**Section 1. - Members.**

The Chairperson, President, Secretary and Treasurer of Healthcare shall be the sole Members of this Foundation. At such time that a Member is no longer the Chairperson, President, Secretary or Treasurer of Healthcare then he or she shall immediately cease to

be a Member of this Foundation, and his or her successor shall automatically, without vote or appointment, become a Member of this Foundation.

Section 2. - Annual Meeting.

The Annual Meeting of the Members of the Foundation shall be held in April of each year at such place in Oneida County as may be designated by the President of the Board.

Section 3. - Notice of the Annual Meeting.

Notice of the time, date and place of the Annual Meeting of the Members of the Foundation shall be served either personally or by first class mail on each Member of the Foundation not less than ten (10) days nor more than thirty (30) days before the meeting, and if served by mail, shall be addressed to the Member at the Member's address as it appears on the records of the Foundation.

Section 4. - Special Meeting.

A Special Meeting of the Members of the Foundation may be held from time to time as necessary at such place in Oneida County as may be designated by the caller(s) of the meeting. A Special Meeting may be called by the Chairperson of Healthcare or by a majority of the Members at any time.

Section 5. - Notice of Special Meetings of Foundation.

Notice of the time, date, place and purpose of Special Meetings of the Members shall be served personally or by first class mail, facsimile or, where authorized by the Member, by e-mail, not less than three (3) days nor more than thirty (30) days before the meetings, and if served by mail, shall be addressed to the Member at the Member's address as it appears on the records of the Foundation. The notice shall also indicate by whom it is issued or at whose direction.

Section 6. - Quorum.

At all Annual and Special Meetings of the Members there shall be present in person at least three (3) Members of the Foundation entitled to vote at such meeting in order to constitute a quorum for the transaction of business, but less than a quorum may adjourn a meeting from time to time without notice until a quorum is present.

Section 7. - Vote.

At any meeting of the Members, the vote of two-thirds of the members present at the time of the vote, if a quorum is present at that time, shall be the act of the Members.

Section 8. - Presence at Meetings.

Any one or more Members of the Foundation may participate in a meeting of the Members by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 9. - Written Action.

Any action required or permitted to be taken by the Members under any provision of law, the Articles of Incorporation, or these By-Laws may be taken without a meeting by the unanimous written consent of the Members, setting forth the action so taken. Such written consent shall be filed with the proceedings of the members. Such action by written consent shall have the same force and effect as a unanimous vote of the Members at a meeting.

Section 10. - Membership Termination.

Membership in this Foundation may only be terminated as provided in Section 1 of this Article.

ARTICLE IV

BOARD OF DIRECTORS.

Section 1. - Number.

The Board of Directors shall consist of the President of Healthcare, and not less than three (3) additional Directors ("*Elected Directors*"). The Board of Directors of the Foundation shall hereinafter be referred to as the "Board."

Section 2. - Term.

a. Healthcare President

At such time that the President of Healthcare no longer holds that office, then his or her membership on the Board shall cease immediately and his or her successor shall become immediately, without vote or appointment, a Director of this Foundation.

b. Elected Directors.

The Elected Directors shall be divided into three classes of approximately equal size. The term of office of the first class shall expire at the First Annual Meeting of the Foundation after their election, the term of the second class shall expire at the second succeeding Annual Meeting, and the third class at the third succeeding Annual Meeting. At each Annual Meeting after the election of the first classified board, Elected Directors

shall be elected for a term of three years to replace those whose terms shall expire. No Elected Director shall serve more than three consecutive terms of three years..

Section 3. - Election of Elected Directors.

Elected Directors of the Foundation shall be elected at the Annual Meeting of the Members each year by a plurality of the votes of the Members.

Section 4. - Vacancies.

Newly created Directorships resulting from an increase in the number of Elected Directors and vacancies among the Elected Directors for any reason, shall be elected at any meeting properly called and convened by the Members by a plurality of the votes of the Members.

Section 5. - Powers and Duties.

The Board shall have charge, control, and management of the property, funds, and affairs of the Foundation and shall be responsible for the establishment of its policies and the management and operation of the Foundation.

Section 6. - Dismissal.

Any Elected Director of the corporation may be removed, with or without cause, at any meeting of the Members by an affirmative vote of two-thirds of the Members present, if a quorum is present at the time of the vote.

Section 7. - Annual Meeting of the Board.

The Annual Meeting of the Board shall be held in April each year following the Annual Meeting of the Members of the Foundation.

Section 8. - Regular Meetings of the Board.

The Board shall hold at least eight (8) regular meetings annually. All regular meetings of the Board shall be held at the office of the Foundation or such other place in the County of Oneida as may be designated by the President of the Board.

Section 9. - Special Meetings of the Board.

A Special Meeting of the Board may be called as necessary from time to time by the President of the Board or by a majority of the Directors of the Foundation to be held at the Office of the Foundation or such other place within the County of Oneida as may be designated by the caller(s) of the meeting.

Section 10. - Notice of Meetings of the Board.

Notice of the time, date and place of the annual and regular meetings of the Board shall be served by first class mail, facsimile or, where authorized by the Director, by e-mail, at least ten (10) days nor more than thirty (30) days before the date of such meeting, and in the case of special meetings not less than three (3) days, and shall be addressed to the Director at the Director's address as it appears on the records of the Foundation.

Section 11. - Quorum.

At any meeting of the Board there shall be at least ten (10) members present in person entitled to vote at such meeting to constitute a quorum for the transaction of business, but less than a quorum may adjourn such meeting from time to time without notice until a quorum is present.

Section 12. - Vote.

The vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Section 13. - Presence at Meetings.

Any one or more members of the Board, or any Committee thereof, may participate in a meeting of the Board or such Committee by means of a conference telephones or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 14. - Attendance at Meetings.

The Board shall establish requirements for attendance by Directors at meetings of the Board and Board Committees. Failure, without good cause, to satisfy those requirements shall be grounds for removal from the Board, or the Committee, or both.

**ARTICLE V**

**OFFICERS OF THE BOARD.**

Section 1. - Officers.

The Board shall have a President, a Vice President, a Secretary and a Treasurer.

Section 2. - Term.

All Officers shall be chosen at the Annual Meeting of the Board. Each Officer shall hold office until the next Annual Meeting or until his or her successor shall have been duly elected and qualified. Any vacancy in any of the Offices may be filled for the unexpired portion of the term by the Board at any Regular or Special Meeting.

Section 3. - President of the Board.

The President of the Board shall be the Chief Executive Officer of the Foundation and shall preside at all meetings of the Board, and shall be an ex officio member of all committees. He or she shall have general management authority over the affairs of the Foundation and shall also perform all other acts and duties incidental to the office.

Section 4. - Vice-President.

In the absence or inability to act of the President of the Board, or if the office of President of the Board is vacant, the Vice-President may exercise all the power of the President of the Board.

Section 5. - Secretary.

The Secretary shall be responsible for keeping the Minutes of Members and the Board. He or she shall be responsible for the giving and serving of all notices of meetings of the Members and the Board. He or she shall be the custodian of the Foundation records and of the Corporate Seal of the Foundation, and shall see that the Corporate Seal is affixed to all documents, execution of which, on behalf of the Foundation under its Seal, is duly authorized, and when so affixed may attest the same. He or she shall also perform all other acts and duties usually incident to the office of the Secretary and such other duties as may, from time to time, be assigned by the Board.

Section 6. - Treasurer.

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Foundation, except as expressly provided otherwise, and shall deposit and invest the same or cause the same to be deposited and invested in the name of the Foundation as directed by the Board. He or she shall keep or cause to be kept, full and accurate accounts of all receipts and disbursements of the Foundation and whenever required by the Board, he or she shall render, or cause to be rendered, financial statements of the Foundation. He or she shall also perform all such other acts or duties usually incident to the Office of the Treasurer and such other duties as may from time to time be assigned by the Board.

Section 7. - Bonds.

The Board shall have power to require any officer or employee of the Foundation to give bond for the faithful discharge of his or her duties in such form and with such surety as the Board may deem advisable.

Section 8. - Dismissal.

Any Officer of the Foundation may be removed with or without cause at any Regular or Special Meeting of the Board.

ARTICLE VI

COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. - Structure.

There shall be five (5) standing committees of the Board: Executive Committee, Finance Committee, Annual Giving Committee, Planned Giving Committee, and Nominating Committee. The Board may, by resolution, create such other standing or special committees as it shall, from time to time, deem appropriate. Any Committee may, by resolution, create such subcommittees as it shall, from time to time, deem appropriate.

Section 2. - Powers.

Each Board Committee shall have and exercise only such Board delegated powers and authority as are granted in these By-Laws, or in a resolution adopted by the full Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Board. Unless powers have been delegated by the Board, actions and recommendations of a Committee shall be subject to Board approval.

Section 3. - Committee Members.

a. Tenure. Each member of a Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected., unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.

b. Resignation. Any member of a Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation shall take effect on the date of receipt, or at such later time as may be specified therein.

c. Removal. Any member of a Board Committee may be removed at any time by a resolution adopted by a majority of the Board of Directors. Any member of a Board Committee who is a member by virtue of holding a designated position or office

shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.

d. **Vacancies.** Any vacancy on any Board Committee resulting from resignation, removal, or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the President of the Board, subject to the approval of the Board.

**Section 4. - Advisors/Ex Officio Members.**

The Chairperson of any Board Committee may invite additional individuals with expertise in a pertinent area to meet with and assist the Board Committee either as advisors or ex officio members of the Committee. Such advisors and/or ex officio members shall not vote or be counted in determining the existence of a quorum and may be excluded from any Executive session of the Committee by a majority vote of the Committee members present. Advisors and ex officio members need not be Directors of the Foundation.

**Section 5. - Manner of Action.**

a. **Meetings.** Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Board Committee shall be called by the President of the Board, the Chairperson of the Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Board Committee shall be given, except in an emergency, at least 72 hours prior to the meeting.

b. **Agenda/Minutes.** There shall be an agenda prepared for Committee meetings, and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Board of Directors when requested or as required.

c. **Quorum.** A majority of the voting members of a Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

d. **Action.** The act of a majority of the members of a Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members file written consents to a resolution authorizing the action with the relevant Minutes of the Committee.

e. **Conference Telephone.** Any one or members of any Committee may participate in any meeting of the Committee by conference telephone or similar

communications equipment allowing all participants in the meeting to hear each other. Participation by this means shall constitute actual presence at the meeting.

Section 6. - Executive Committee.

a. **Composition.** The Executive Committee shall be composed of the President, Vice President, Secretary, Treasurer and such additional voting Directors as shall be selected by the President of the Board.

b. **Functions.** When the Board is not in session the Executive Committee shall have and exercise the powers and authorities of the Board to transact all regular business of the Foundation, subject to any prior limitations imposed by the Board, these By-Laws, or statute. The Executive Committee shall review the activities of the other Board Committees and shall review future programs and activities of the Foundation.

c. **Meetings.** The Executive Committee shall meet as necessary to conduct the business of the Foundation while the full Board is not in session.

Section 7. - Finance Committee.

a. **Composition.** The Finance Committee shall consist of the Treasurer of the Foundation, as Committee Chairperson, the President, and at least five (5) voting Directors. The Senior Vice President/Finance of the Hospitals shall serve as an advisor to the Committee.

b. **Functions.** The Finance Committee shall be responsible for monitoring the financial operations of the Foundation which shall include the establishment of an income budget, the review of expenditures, and performance of such other financial duties/responsibilities as may be directed by the Foundation Board. The Committee shall prepare and submit financial reports to the Board and Finance Committee of Healthcare and Mohawk Valley Network, Inc. as requested.

c. **Meetings.** The Finance Committee shall meet as needed, but not less than two (2) times per year.

Section 8. - Annual Giving Committee.

a. **Composition.** The Annual Giving Committee shall consist of not less than five (5) voting members of the Board of Directors.

b. **Functions.** The Annual Giving Committee shall be responsible for generating funds for the Foundation through individual and corporate contributions.

c. **Meetings.** The Annual Giving Committee shall meet as needed, but not less than two (2) times per year.

Section 9. - Planned Giving Committee.

- a. **Composition.** The Planned Giving Committee shall consist of not less than five (5) Directors.
- b. **Function.** The Planned Giving Committee is responsible for working with potential donors who wish to make major gifts or planned gifts to the Foundation.
- c. **Meetings.** The Planned Giving Committee shall meet as needed, but not less than two (2) times per year.

Section 10. - Nominating Committee.

- a. **Composition.** The Nominating Committee shall consist of not less than five (5) members of the Board of Directors as appointed by the President of the Board.
- b. **Functions.** The Nominating Committee shall receive the names of potential candidates for membership on the Board, review such nominations and, if approved, forward the names to the President of the Board for submission to the Members. The Nominating Committee shall also be responsible for submitting a recommended slate of officers for election at the Annual Meeting. The Nominating Committee shall also be responsible for monitoring the attendance records of Foundation Board Members.
- c. **Meetings.** The Nominating Committee shall meet as necessary to perform its functions.

**ARTICLE VII**

INDEMNIFICATION AND INSURANCE.

Section 1. - Indemnification.

It is expressly provided that any and every person or his or her estate that has made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a Director or officer of this Foundation, or served such other corporation in any capacity at the request of this Foundation, will be completely indemnified by the Foundation to the full extent permitted by law. If permitted by law, this indemnification shall include, but shall not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

Section 2. - Insurance.

The Foundation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Foundation has the power to indemnify him or her against such liability under the laws of this or any other State.

**ARTICLE VIII**

**CONFLICT OF INTEREST.**

**Section 1. - Policy.**

Any Director, officer, key employee or Committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a Committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or Committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Foundation's interests.

**Section 2. - Effect.**

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in any Board approved conflicts of interest policy, or these By-Laws, may be observed, if so, such person shall not vote, nor use his or her personal influence on, nor participate (other than by presenting factual information or responding to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The Minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

**Section 3. - Conflict of Interest Policy.**

The Board may adopt a formal Conflict of Interest Policy requiring disclosure of potential or existing conflicts of interest, mechanisms for addressing actual and potential conflicts of interest, and corrective and disciplinary action with respect to transgressions of such policies.

**ARTICLE IX**

**AMENDMENTS TO BY-LAWS.**

The Bylaws may only be amended or repealed by an affirmative vote of the majority of the Members of this Foundation provided the proposed amendment shall have been set forth in the notice calling the meeting. The Board of Directors of the Foundation may recommend amendments to the Members, but shall not have the power to amend or repeal these Bylaws.

***EXHIBIT "C"***

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
MOHAWK VALLEY HEALTH SYSTEM  
(hereinafter the "Corporation" or "MVHS")**

**Adopted at a Meeting Held December 15, 2016**

**RECITALS:**

1. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").
2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.
3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.
4. MVHS is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.
5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").
6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.
7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.
8. FSLH is the sole corporate member of the FSLH Foundation.
9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").
10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

- a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
- b. To change the name of the FSLH Foundation to the MVHS Foundation;
- c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
- d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of, among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH and SEMC Foundations did each individually approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolutions are attached hereto (hereinafter the "FSLH Foundation Resolution" and "SEMC Foundation Resolution").

**NOW, THEREFORE**, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

**RESOLVED**, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

**RESOLVED**, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

**RESOLVED**, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

**RESOLVED**, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be,

and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

  
Gregory Evans, Secretary

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
FAXTON-ST. LUKE'S HEALTHCARE  
(hereinafter the "Corporation" or "FSLH")**

**Adopted at a Meeting Held December 15, 2016**

**RECITALS:**

1. FSLH is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").
2. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.
3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.
4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.
5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").
6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.
7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.
8. FSLH is the sole corporate member of the FSLH Foundation.
9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").
10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.
11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

- a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
- b. To change the name of the FSLH Foundation to the MVHS Foundation;
- c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
- d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of, among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "FSLH Foundation Resolution").

**NOW, THEREFORE**, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

**RESOLVED**, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

**RESOLVED**, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

**RESOLVED**, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

**RESOLVED**, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

**This Resolution shall take effect immediately.**

  
\_\_\_\_\_  
Gregory Evans, Secretary

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
ST. ELIZABETH MEDICAL CENTER  
(hereinafter the "Corporation" or "SEMC")**

**Adopted at a Meeting Held December 15, 2016**

**RECITALS:**

1. SEMC is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").
2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.
3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.
4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.
5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").
6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.
7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.
8. FSLH is the sole corporate member of the FSLH Foundation.
9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").
10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.
11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

- a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
- b. To change the name of the FSLH Foundation to the MVHS Foundation;
- c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
- d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of, among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The SEMC Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "SEMC Foundation Resolution").

**NOW, THEREFORE**, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

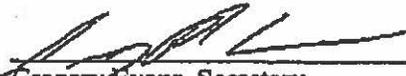
**RESOLVED**, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

**RESOLVED**, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

**RESOLVED**, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

**RESOLVED**, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

**This Resolution shall take effect immediately.**

  
\_\_\_\_\_  
Gregory Evans, Secretary

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION  
(hereinafter the "Corporation" or the "FSLH Foundation")**

**Adopted at a Meeting Held October 27, 2016**

**RECITALS:**

1. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").
2. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.
3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.
4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.
5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").
6. FSLH Foundation is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.
7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.
8. FSLH is the sole corporate member of the FSLH Foundation.
9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").
10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

- a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
- b. To change the name of the FSLH Foundation to the MVHS Foundation;
- c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
- d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of, among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

**NOW, THEREFORE**, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

**RESOLVED**, that the officers of the Corporation are hereby authorized and directed to seek and obtain the approvals of PHHPC, the New York State Supreme Court (on Notice to the New York State Attorney General), and the New York State Secretary of State; and it is further

**RESOLVED**, that the officers of the Corporation are hereby authorized and directed to prepare and file such documents, and undertake such other activities as shall be necessary to obtain such approvals; and it is further

**RESOLVED**, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

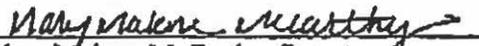
**RESOLVED**, that upon receipt of all required approvals that the officers of the Corporation are authorized and directed to file with the New York State Secretary of State an Amended and Restated Certificate of Incorporation of the FSLH Foundation setting forth its new purposes; and it is further

**RESOLVED**, that these Resolutions be presented to the Boards of Directors of MVHS, FSLH and SEMC for their consideration and approval; and it is further

**RESOLVED**, that any funds heretofore raised for the benefit of FSLH, SLH or SEMC shall be maintained, distributed or used for the benefit of the beneficiary for whom the funds were raised; and it is further

**RESOLVED**, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

  
Mary Malone McCarthy, Secretary

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
ST. ELIZABETH MEDICAL CENTER FOUNDATION  
(hereinafter the "Corporation" or "SEMC Foundation")**

**Adopted at a Meeting Held October 27, 2016**

**RECITALS:**

1. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").
2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.
3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.
4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.
5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").
6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.
7. SEMC Foundation is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.
8. FSLH is the sole corporate member of the FSLH Foundation.
9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").
10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

- a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
- b. To change the name of the FSLH Foundation to the MVHS Foundation;
- c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
- d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of, among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "FSLH Foundation Resolution").

**NOW, THEREFORE**, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

**RESOLVED**, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

**RESOLVED**, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

**RESOLVED**, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

**RESOLVED**, that upon SEMC being added as a named beneficiary of the MVHS Foundation, independent fundraising activities by this Corporation for the benefit of SEMC shall be suspended; and it is further

**RESOLVED**, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

  
Barbara Brodock, Secretary

***EXHIBIT "D"***

**BY-LAWS  
MOHAWK VALLEY HEALTH SYSTEM FOUNDATION**

**ARTICLE I  
NAME**

The name of the Corporation is *Mohawk Valley Health System Foundation*, hereinafter referred to as the "*Foundation*."

**ARTICLE II  
PURPOSES**

The purposes for which the Foundation is formed are exclusively charitable, educational, and scientific in nature, to wit:

a. to solicit, receive and maintain funds, real or personal property and to develop and maintain philanthropic relations for the benefit of Mohawk Valley Health System ("MVHS"); a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954; Faxton-St. Luke's Healthcare ("Healthcare"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the "Home"), a New York State not-for-profit corporation which is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended; and St. Elizabeth Medical Center ("SEMC"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and such other Article 28 not-for-profit 501(c)(3) corporation as may be established by MVHS to operate a New Hospital in Oneida County, New York (the "New Hospital Corporation"); and any other 501(c)(3) entity that is owned or controlled by MVHS; ("The Beneficiaries"); and

b. to maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of The Beneficiaries.

c. any funds or real or personal property raised for the specific benefit of The Beneficiaries shall at all times be exclusively used for the benefit of such entity.

d. such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

**ARTICLE III  
CORPORATE MEMBERSHIP**

**Section 3.1.Member.**

The sole Corporate Member (hereinafter referred to as "MVHS" or the "Corporate Member") shall be Mohawk Valley Health System.

Section 3.2. – Reserved Powers.

MVHS shall retain unto itself the reserved powers which are set out in the Foundation's Certificate of Incorporation.

Section 3.3. - Annual Meeting.

The Annual Meeting of the Corporate Member of the Foundation shall be held in April or May of each year at such place as may be designated by the President of the Board.

Section 3.4. - Notice of the Annual Meeting.

Notice of the time, date and place of the Annual Meeting of the Corporate Member shall be served either personally, by first class mail or, if authorized by the Corporate Member, by facsimile, email or other communication method not less than ten (10) days nor more than thirty (30) days before the meeting, and if served by mail, shall be addressed to the Corporate Member at the Corporate Member's address as it appears on the records of the Foundation.

Section 3.5. - Special Meeting.

A Special Meeting of the Corporate Member of the Foundation may be held from time to time as necessary at such place as may be designated by the Chairperson of the Member.

Section 3.6. - Notice of Special Meetings of Corporate Member of Foundation.

Notice of the time, date, place and purpose of Special Meetings of the Corporate Member shall be served personally or by first class mail, facsimile or, where authorized by the Corporate Member, by e-mail or other communication method, not less than two (2) days nor more than thirty (30) days before the meetings, and if served by mail, shall be addressed to the Corporate Member at the Corporate Member's address as it appears on the records of the Foundation. The notice shall also indicate by whom it is issued or at whose direction.

Section 3.7. - Quorum.

At all Annual and Special Meetings of the Corporate Member there shall be present in person at least a majority of the Board of Directors of the Corporate Member of the Foundation, entitled to vote at such meeting in order to constitute a quorum for the transaction of business, but less than a quorum may adjourn a meeting from time to time without notice until a quorum is present.

Section 3.8. - Vote.

At any meeting of the Corporate Member, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at that time, shall be the act of the Corporate Member.

Section 3.9. - Presence at Meetings.

Any one or more individuals on the Board of Directors of the Corporate Member may participate in a meeting of the Corporate Member by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear/communicate with each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 3.10. - Written Action.

Any action required or permitted to be taken by the Corporate Member under any provision of law, the Articles of Incorporation, or these By-Laws may be taken without a meeting by the unanimous written consent of the Board of Directors of the Corporate Member, setting forth the action so taken. Such written consent shall be filed with the proceedings of the members. Such action by written consent shall have the same force and effect as a vote of the Corporate Member taken at a meeting.

**ARTICLE IV**  
**FOUNDATION BOARD OF DIRECTORS**

Section 4.1. - Number.

The Board of Directors shall consist of the President of MVHS, and not less than eight (8) additional Directors ("*Elected Directors*"). The Board of Directors of the Foundation shall hereinafter be referred to as the "Board."

Section 4.2. - Term.

a. MVHS President

At such time that the President of MVHS no longer holds that office, then his or her membership on the Foundation Board shall cease immediately and his or her successor shall become immediately, without vote or appointment, a Director of this Foundation.

b. Elected Directors.

The Elected Directors shall be divided into three classes of approximately equal size. The term of office of the first class shall expire at the First Annual Meeting of the Foundation after their election; the term of the second class shall expire at the second succeeding Annual Meeting; and the third class at the third succeeding Annual Meeting. At each Annual Meeting after the election of the first classified board, Elected Directors

shall be elected for a term of three years to replace those whose terms shall expire. No Elected Director shall serve more than three consecutive terms of three years.

Directors and ex-officio members of the Foundation Board of Directors shall serve without compensation except for reimbursement of reasonable expenses incurred on behalf of and pursuant to legitimate business purposes of the Foundation.

Section 4.3. - Election of Elected Directors.

Elected Directors of the Foundation shall be elected at the Annual Meeting of the Corporate Member.

Section 4.4. - Vacancies.

Newly created Directorships resulting from an increase in the number of Elected Directors and vacancies among the Elected Directors for any reason, shall be elected at any meeting properly called and convened by the Corporate Member.

Section 4.5. - Powers and Duties.

The Foundation Board shall have charge, control, and management of the property, funds, and affairs of the Foundation and shall be responsible for the establishment of its policies and the management and operation of the Foundation.

Section 4.6. - Dismissal.

Any Elected Director of the Foundation may be removed, with or without cause, at any meeting of the Corporate Member by an affirmative vote of two-thirds of the Board of Directors of the Corporate Member present at the meeting if a quorum is present at the time of the vote.

Section 4.7. - Annual Meeting of the Foundation Board.

The Annual Meeting of the Foundation Board shall be held in April or May of each year following the Annual Meeting of the Corporate Member of the Foundation.

Section 4.8. - Regular Meetings of the Foundation Board.

The Foundation Board shall hold at least six (6) regular meetings annually. All regular meetings of the Foundation Board shall be held at the office of the Foundation or such other place as may be designated by the President of the Foundation Board.

Section 4.9. - Special Meetings of the Foundation Board.

A Special Meeting of the Foundation Board may be called as necessary from time to time by the President of the Foundation Board or by a majority of the Directors of the

Foundation to be held at the Office of the Foundation or such other place as may be designated by the caller(s) of the meeting.

Section 4.10. - Notice of Meetings of the Foundation Board.

Notice of the time, date and place of the annual and regular meetings of the Foundation Board shall be served by first class mail, facsimile, e-mail, or other communication method at least three (3) day nor more than thirty (30) days before the date of such meeting, and in the case of special meetings not less than three (3) days, and shall be addressed to the Director at the Director's address as it appears on the records of the Foundation.

Section 4.11. - Quorum.

At any meeting of the Foundation Board there shall be at least a majority of the Directors present entitled to vote at such meeting to constitute a quorum for the transaction of business, but less than a quorum may adjourn such meeting from time to time without notice until a quorum is present.

Section 4.12. - Action.

The vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Foundation Board.

Any action required or permitted to be taken by the Foundation Board may be taken without a meeting if all Members of the Foundation Board consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his/her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

Section 4.13. - Presence at Meetings.

Any one or more members of the Foundation Board, or any Committee thereof, may participate in a meeting of the Foundation Board or such Committee by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear/communicate with each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 4.14. - Attendance at Meetings.

The Foundation Board may establish requirements for attendance by Directors at meetings of the Foundation Board and Foundation Board Committees. Failure, without

good cause, to satisfy those requirements shall be grounds for removal from the Foundation Board, or the Committee, or both.

**ARTICLE V**  
**OFFICERS OF THE FOUNDATION BOARD**

**Section 5.1. - Officers.**

The Foundation Board shall have a President, a Vice President, a Secretary and a Treasurer.

**Section 5.2. - Term.**

All Officers shall be chosen at the Annual Meeting of the Foundation Board. Each Officer shall hold office until the next Annual Meeting or until his or her successor shall have been duly elected and qualified. Any vacancy in any of the Offices may be filled for the unexpired portion of the term by the Foundation Board at any Regular or Special Meeting.

**Section 5.3. - President of the Foundation Board.**

The President of the Foundation Board shall be the Chief Executive Officer of the Foundation and shall preside at all meetings of the Foundation Board, and shall be an ex officio member of all committees. He or she shall have general management authority over the affairs of the Foundation and shall also perform all other acts and duties incidental to the office.

**Section 5.4. - Vice-President.**

In the absence or inability to act of the President of the Foundation Board, or if the office of President of the Foundation Board is vacant, the Vice-President may exercise all the power of the President of the Foundation Board.

**Section 5.5. - Secretary.**

The Secretary shall keep, or cause to be kept, the minutes of the Foundation Board of Directors. The Secretary shall have custody of the seal of the Foundation and shall affix and attest the same to documents when duly authorized by the Board of Directors. The Secretary shall attend to the giving and serving of all notices of the Foundation, and shall have charge of such books and papers as the Foundation Board of Directors may direct; the Secretary shall attend to such correspondence as may be assigned to the Office of the Secretary, and perform all the duties incidental to the Secretary's office.

**Section 5.6. - Treasurer.**

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Foundation, except as expressly provided otherwise, and shall deposit and invest the same or cause the same to be deposited and invested in the name of the Foundation as directed by the Foundation Board. He or she shall keep or cause to be kept, full and accurate accounts of all receipts and disbursements of the Foundation and whenever required by the Foundation Board, he or she shall render, or cause to be rendered, financial statements of the Foundation. He or she shall also perform all such other acts or duties usually incident to the Office of the Treasurer and such other duties as may from time to time be assigned by the Foundation Board.

Section 5.7. - Bonds.

The Foundation Board shall have power to require any officer or employee of the Foundation to give bond for the faithful discharge of his or her duties in such form and with such surety as the Foundation Board may deem advisable.

Section 5.8. - Dismissal.

Any Officer of the Foundation may be removed with or without cause at any Regular or Special Meeting of the Foundation Board, by an affirmative vote of two-thirds (2/3) of the Foundation Board of Directors present at the meeting, if a quorum is present at the time of the vote.

**ARTICLE VI**  
**COMMITTEES OF THE FOUNDATION BOARD OF DIRECTORS**

Section 6.1. - Structure.

There shall be two (2) standing committees of the Foundation Board: Executive Committee and Nominating Committee. The Foundation Board may, by resolution, create such other standing or special committees as it shall, from time to time, deem appropriate. Any Committee may, by resolution, create such subcommittees as it shall, from time to time, deem appropriate.

Section 6.2. - Powers.

Each Foundation Board Committee shall have and exercise only such Foundation Board delegated powers and authority as are granted in these By-Laws, or in a resolution adopted by the full Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Foundation Board. Unless powers have been delegated by the Board, actions and recommendations of a Committee shall be subject to Foundation Board approval.

Section 6.3. - Committee Members.

a. **Tenure.** Each member of a Foundation Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected, unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.

b. **Resignation.** Any member of a Foundation Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation shall take effect on the date of receipt, or at such later time as may be specified therein.

c. **Removal.** Any member of a Foundation Board Committee may be removed at any time by a resolution adopted by a majority of the Foundation Board of Directors. Any member of a Foundation Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.

d. **Vacancies.** Any vacancy on any Foundation Board Committee resulting from resignation, removal, or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the President of the Foundation Board, subject to the approval of the Board.

#### Section 6.4. - Advisors/Ex Officio Members.

The Chairperson of any Foundation Board Committee may invite additional individuals with expertise in a pertinent area to meet with and assist the Foundation Board Committee either as advisors or ex officio members of the Committee. Such advisors and/or ex officio members shall not vote or be counted in determining the existence of a quorum and may be excluded from any Executive session of the Committee by a majority vote of the Committee members present. Advisors and ex officio members need not be Directors of the Foundation.

#### Section 6.5. - Manner of Action.

a. **Meetings.** Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Foundation Board Committee shall be called by the President of the Foundation Board, the Chairperson of the Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Foundation Board Committee shall be given, except in an emergency, at least three (3) days prior to the meeting.

b. **Agenda/Minutes.** There shall be an agenda prepared for Committee meetings, and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Foundation Board of Directors when requested or as required.

c. **Quorum.** A majority of the voting members of a Foundation Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

d. **Action.** The act of a majority of the members of a Foundation Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members consent to a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his/her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

e. **Conference Telephone.** Any one or more members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear / communicate with each other. Participation by this means shall constitute actual presence at the meeting.

#### Section 6.6. - Executive Committee.

a. **Composition.** The Executive Committee shall be composed of the President, Vice President, Secretary, Treasurer and such additional voting Directors as shall be selected by the Foundation Board.

b. **Functions.** When the Foundation Board is not in session the Executive Committee shall have and exercise the powers and authorities of the Foundation Board to transact all regular business of the Foundation, subject to any prior limitations imposed by the Foundation Board, these By-Laws, or statute. The Executive Committee shall review the activities of the other Foundation Board Committees and shall review future programs and activities of the Foundation.

c. **Meetings.** The Executive Committee shall meet as necessary to conduct the business of the Foundation while the full Foundation Board is not in session.

#### Section 6.7. - Nominating Committee.

a. **Composition.** The Nominating Committee shall consist of not less than three (3) members of the Foundation Board of Directors as appointed by the President of the Foundation Board. At least one (1) Member must not be a current officer.

b. **Functions.** The Nominating Committee shall receive the names of potential candidates for membership on the Foundation Board, review such nominations and, if approved, forward the names to the President of the Foundation Board for submission to the Corporate Member. The Nominating Committee shall also be responsible for submitting a recommended slate of officers for election at the Annual Meeting. The Nominating Committee shall also be responsible for monitoring the attendance records of Foundation Board Members.

c. **Meetings.** The Nominating Committee shall meet as necessary to perform its functions.

**ARTICLE VII**  
**INDEMNIFICATION AND INSURANCE**

**Section 7.1. - Indemnification.**

It is expressly provided that any and every person or his or her estate that has made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a Director or officer of this Foundation, or served such other corporation in any capacity at the request of this Foundation, will be completely indemnified by the Foundation to the full extent permitted by law. If permitted by law, this indemnification shall include, but shall not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

**Section 7.2. - Insurance.**

The Foundation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Foundation has the power to indemnify him or her against such liability under the laws of this or any other State.

**ARTICLE VIII**  
**CONFLICT OF INTEREST**

**Section 8.1. - Policy.**

Any Director, officer, key employee or Committee member having an existing or potential interest in a contract or other transaction presented to the Foundation Board of Directors or a Committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Foundation Board or Committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Foundation's interests.

Section 8.2. - Effect.

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in any Foundation Board approved conflicts of interest policy, or these By-Laws, may be observed, if so, such person shall not vote, nor use his or her personal influence on, nor participate (other than by presenting factual information or responding to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The Minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

Section 8.3. - Conflict of Interest Policy.

The Foundation Board shall adopt a formal Conflict of Interest Policy requiring disclosure of potential or existing conflicts of interest, mechanisms for addressing actual and potential conflicts of interest, and corrective and disciplinary action with respect to transgressions of such policies.

**ARTICLE IX**  
**AMENDMENTS TO BY-LAWS**

The Bylaws may only be amended or repealed by an affirmative vote of the majority of the Board of Directors of the Corporate Member provided the proposed amendment shall have been set forth in the notice calling the meeting. The Board of Directors of the Foundation may recommend amendments to the Corporate Member, but shall not have the power to amend or repeal these Bylaws.

***EXHIBIT "E"***

**2018 – 2019 Board of Directors**  
**Mohawk Valley Health System Foundation**  
**1676 Sunset Ave., Utica, NY 13502 – Phone 624-5600**  
Terms limits expire at the Annual Meeting in April

| Name & Address of Board Member  |                      | Occupation                                    | Employer Name & Address  |
|---|----------------------|---|--|
| Terrance J. Mielnicki<br>1603 Main Street<br>P.O. Box 471<br>Sylvan Beach, NY 13157 | Board President      | Social Worker                                 | Midstate Correctional Facility<br>River Road<br>Marcy, NY 13403  |
| John Hobika, Jr.<br>4 Galway Road<br>New Hartford, NY 13413                         | Board Vice President | Regional Insurance Specialist, Vice President | M&T Bank<br>105 South Salina Street<br>Syracuse, NY 13202  |
| Mary Malone McCarthy<br>3310 Fountain Street<br>Clinton, NY 13323                   | Board Secretary      | President/Founder (Staffing Firm)             | M3 Business Service Network<br>P.O. Box 205<br>Clinton, NY 13323   |
| Stephen Surace<br>251 Ramblewood Drive<br>Deerfield, NY 13502                       | Board Treasurer      | Chief Financial Officer                       | Adjusters International, Inc.<br>126 Business Park Drive<br>Utica, NY 13502  |
| Marlene Anderson<br>15 Mallard Brook Lane<br>New Hartford, NY 13413                 | Board Member         | Director of Client Relations                  | Adirondack Financial Services<br>185 Genesee Street<br>Utica, NY 13501   |
| Sam F. Berardino<br>206 Bittern Court<br>New Hartford, NY 13413                     | Board Member         | Financial Advisor                             | Morgan Stanley<br>106 Business Park Drive<br>Utica, NY 13502   |
| William M. Borrill<br>10 Eagle Ridge Drive<br>New Hartford, NY 13413                | Board Member         | Attorney                                      | Law Offices of William M. Borrill<br>23 Oxford Road<br>New Hartford, NY 13413<br><br>City of Utica<br>1 Kennedy Plaza<br>Utica, NY 13501<br>(Corporate Counsel's Office) |
| Barbara Brodock<br>798 Higby Road<br>New Hartford, NY 13413                         | Board Member         | Chief Operating Officer                       | Brodock Press, Inc.<br>502 Court Street<br>Utica, NY 13413   |

|   |              |                                       |   |
|---|--------------|---------------------------------------|---|
|   |              | Owner/President                       | CBB Realty, LLC<br>502 Court Street<br>Utica, NY 13413                                  |
| Valerie T. Brown<br>18 Jonathan Court<br>Whitesboro, NY 13492           | Board Member | Assistant Vice<br>President           | Utica National Insurance<br>Group<br>180 Genesee Street<br>New Hartford, NY 13413       |
| Blair N. Jones<br>1021 Hedge Row<br>Clinton, NY 13323                   | Board Member | Partner<br>(Management<br>Consultant) | Semler Brossy Consulting<br>Group, LLC<br>11755 Wilshire Blvd.<br>Los Angeles, CA 90025 |
| Joseph Latella<br>26 Kingsley Court<br>Whitesboro, NY 13492             | Board Member | Regional Sales<br>Manager             | Astellas Pharma US<br>1 Astellas Way<br>Northbrook, IL 60062                            |
| William Anthony Mandour<br>13 Hubbardton Road<br>New Hartford, NY 13413 | Board Member | Urologist<br>(Retired)                | AMP<br>2 Ellinwood Road<br>New Hartford, NY 13413                                       |
| David M. Manzelmann<br>6 Wildwood Road<br>New Hartford, NY 13413        | Board Member | Market President                      | M&T Bank<br>233 Genesee Street<br>Utica, NY 13501                                       |
| James P. McCarthy<br>5180 Leverett Lane<br>Fayetteville, NY 13066       | Board Member | President                             | Northland Communications<br>9560 Main Street<br>Holland Patent, NY 13354                |
| Stephen G. Teti<br>5970 Cooper Street<br>Vernon, NY 13476               | Board Member | President                             | SGT Consulting Services<br>5970 Cooper Street<br>Vernon, NY 13476                       |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of October 2018, approves the filing of the Restated Certificate of Incorporation of Faxton-St. Luke's Healthcare Foundation dated September 11, 2018.



Project # 181333-E
Lynbrook SC, LLC d/b/a Lynbrook Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Nassau
Acknowledged: May 10, 2018

Executive Summary

Description

Lynbrook SC, LLC d/b/a Lynbrook Surgery Center, a New York limited liability company, is requesting to be established as the new operator of South Shore Ambulatory Surgery Center, LLC (the Center), a multi-specialty, proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 444 Merrick Road, 4th Floor, Lynbrook (Nassau County). South Shore Ambulatory Surgery Center, LLC (SSASC) is the current licensed operator of the facility, which that opened in October 2002. The business operation is not being sold. Rather, upon Public Health and Health Planning Council (PHHPC) approval, SSASC will close, Lynbrook SC, LLC will purchase certain assets used to operate the Center from the current entity that owns them, and the facility will be renamed Lynbrook Surgery Center. The FASC's existing lease agreement will remain in place and will be assigned to Lynbrook SC, LLC. The applicant is not proposing to add or change any services or to relocate or renovate the facility.

South Shore Operating Company, LLC (SSOC), a Delaware limited liability company, became the administrative service provider to the Center under the terms of an Administrative Services Agreement signed on July 31, 2002. ASC Interests, LLC, a New York limited liability company, owns 77.7% membership interest in SSOC. SSOC and ASC Interest, LLC own substantially all of the physical assets used in operating the FASC. On May 3, 2018, SSOC and ASC Interest, LLC, collectively the Sellers, entered into an Asset Purchase Agreement with Lynbrook SC, LLC for the sale of the physical assets for a net purchase price of \$16,873,719 (\$17,905,000 less \$1,031,281

working capital adjustment). It is noted that the financial results of SSASC and SSOC are combined in the certified financial statements as required under generally accepted accounting principles (GAAP). Upon PHHPC approval of this application, SSOC will cease to provide administrative services to the FASC and SSASC will cease to exist (closure plan to be submitted to the Department under separate cover).

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

Table with 2 columns: Name, Percentage. Title: Current Operator South Shore Ambulatory Surgery Center, LLC. Members: George Petrossian, M.D. (33.4%), Jefferey Stahl, M.D. (33.3%), Robert Hamby, M.D. (33.3%)

Table with 2 columns: Name, Percentage. Title: Proposed Operator Lynbrook SC, LLC. Member: Northwell Lynbrook ASC Ventures, LLC (100%)

The sole member of Lynbrook SC, LLC is Northwell Lynbrook ASC Ventures, LLC, whose sole member is North Shore University Hospital (NSUH), an 804-bed, voluntary not-for-profit, Article 28 hospital located at 300 Community Drive in Manhasset, (Nassau County). NSUH's sole member is Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., an integrated healthcare delivery system comprised of numerous hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long-term care and hospice services. Also, NSUH is a member of

the Northwell Health Obligated Group, which was formed to provide its members with an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The number of projected visits is 7,500 in Year One with Medicaid at 4.50% and Charity Care at 0.51%.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Summary

Lynbrook SC, LLC will acquire physical assets used to operate South Shore Ambulatory Surgery Center, LLC for \$16,873,719 funded by liquid resources from Northwell Health, Inc. Funding was confirmed via a letter. There are no project costs associated with this application. The projected budget is as follows:

|             | <u>Year One</u>     | <u>Year Three</u>   |
|-------------|---------------------|---------------------|
| Revenues    | \$13,207,825        | \$14,018,304        |
| Expenses    | <u>\$11,249,538</u> | <u>\$12,187,109</u> |
| Gain/(Loss) | \$1,958,287         | \$1,831,195         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval, contingent upon:**

1. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption of lease, acceptable to the Department of Health. [BFA]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a photocopy of the Restated Articles of Organization of Lynbrook SC, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an Assignment and Assumption of Lease, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

**October 11, 2018**

## Need Analysis

### Analysis

The primary service area is Nassau County. South Shore Ambulatory Surgery Center has been in operation since 2002. The center provides the following types of surgery: orthopedic, pain management, ophthalmology, plastic and podiatry services. The new operator expects to provide similar surgery types.

The table below shows the Medicaid and Charity Care utilization under the current operators of the ASC.

| Payor        | 2015  | 2016  | 2017  |
|--------------|-------|-------|-------|
| Medicaid     | 0.69% | 0.59% | 0.43% |
| Charity Care | 0.00% | 0.00% | 0.00% |
| Total        | 0.69% | 0.59% | 0.43% |

The table below shows the Medicaid utilization of the operating ASC's in Nassau County for 2015 & 2016. Most of the ASC's in Nassau County were opened before the limited life approval process was initiated. The only ASC reporting charity care in the county was Meadowbrook Endoscopy Center which reported 1.6% for 2015 and 0.7% for 2016 for their charity care utilization.

| Name                                      | City            | Type         | Medicaid     |              | Year Opened |
|---|-----------------|--------------|--------------|--------------|-------------|
|   |                 |              | 2015         | 2016         |             |
| Day OP of North Nassau Inc                | Great Neck      | Multi        | 0.09%        | 0.00%        | 1999        |
| Day-OP Center of Long Island Inc          | Mineola         | Multi        | 8.72%        | 1.76%        | 1989        |
| Endoscopy Center of Long Island           | Garden City     | Single       | 0.48%        | 0.67%        | 2003        |
| Garden City Surgi Center                  | Garden City     | Multi        | 6.81%        | 5.60%        | 2008        |
| Island Eye Surgicenter                    | Carle Place     | Single       | 6.98%        | 10.30%       | 1999        |
| Long Island Ctr for Digestive Health      | Garden City     | Single       | 0.00%        | 0.00%        | 2006        |
| Meadowbrook Endoscopy Center              | Westbury        | Single       | 20.68%       | 18.99%       | 2008        |
| Pro Health Ambulatory Surgery Ctr         | Lake Success    | Multi        | 0.00%        | 0.04%        | 1998        |
| <b>South Shore Ambulatory Surgery Ctr</b> | <b>Lynbrook</b> | <b>Multi</b> | <b>0.69%</b> | <b>0.59%</b> | <b>2002</b> |
| <b>Average % for the County</b>           |                 |              | <b>4.94%</b> | <b>4.22%</b> |             |

The number of projected visits is 7,500 in Year One and 7,727 in Year Three. The table below shows the projected payor source utilization for Years One and Three.

| CON 181333 Projections | Year 1 |         | Year 3 |         |
|------------------------|--------|---------|--------|---------|
|                        | Volume | %       | Volume | %       |
| Medicaid- MC           | 338    | 4.50%   | 348    | 4.50%   |
| Medicare- FFS          | 1,733  | 23.11%  | 1,785  | 23.11%  |
| Comm Ins - FFS         | 3,675  | 49.00%  | 3,786  | 49.00%  |
| Private Pay            | 14     | 0.19%   | 15     | 0.19%   |
| Charity Care           | 38     | 0.51%   | 39     | 0.50%   |
| Other                  | 1,702  | 22.69%  | 1,754  | 22.70%  |
| Total                  | 7,500  | 100.00% | 7,727  | 100.00% |

The Center states it is being cautious at projecting Medicaid at 4.5% and charity care at 0.5% based on the fact that no charity care has been provided at this site in the recent past. However, the number of Medicaid enrollees was approximately 13% of the county's population in 2016.

The Center plans to contact with the following Managed Medicaid care plans: United Healthcare Community and Healthfirst. The center plans to reach out to Family Health Center/Long Island FQHC and Advantage Care Health Center to provide service to the underinsured in the service area. For more

outreach, Lynbrook Ambulatory Surgery Center, in partnership with Northwell Health Patient Access Center, will create a dedicated toll-free number, to be used exclusively to engage patients in need of ambulatory surgery.

#### Conclusion

Approval of this project will allow for continued access to multi-specialty surgery services to the residents of Nassau County.

#### Recommendation

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

## Program Analysis

#### Program Proposal

The sole member of Lynbrook is Northwell Lynbrook ASC Ventures, LLC. Northwell Lynbrook ASC Ventures, LLCs sole member is North Shore University Hospital (NSUH), a voluntary, not-for-profit, 804-bed, tertiary care hospital located in Nassau County. The sole member of NSUH is Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc. The boards of NSUH, Northwell Healthcare and Northwell Health, Inc. are mirror boards.

Lynbrook is not proposing to add any services or expand or renovate the Center at this time. Upon approval of this project, Lynbrook SC, LLC will change its name to Lynbrook Surgery Center, LLC.

#### Character and Competence

The proposed Board of Directors for Lynbrook SC, LLC will be comprised of the following individuals:

|                      |                      |                     |
|----------------------|----------------------|---------------------|
| Frank J. Besignano   | Alan I. Greene       | John Mc Govern      |
| Roger A. Blumencranz | Paul B. Guenther     | Ralph A. Nappi      |
| Robert W. Chasanoff  | William O. Hiltz     | Richard B. Nye      |
| Mark L. Claster      | Kenneth Jacoppi      | Sharon Pattterson   |
| Michael J. Dowling   | Saul B. Katz         | Lewis S. Ranieri    |
| Michael A. Epstein   | Cary Kravet          | Robert D. Rosenthal |
| Michael E. Feldman   | Jeffrey B. Lane      | Barry Rubenstein    |
| Catherine C. Foster  | Seth Lipsay          | Michael I. Schwartz |
| Loyd K. Friedlander  | William L. Mack      | Kenneth Taber       |
| Lloyd M. Goldman     | F. J. McCarthy       | Donald Zucker       |
| Richard D. Goldstein | Patrick F. McDermott | Roy J. Zuckerberg   |

The managers of both Lynbrook SC, LLC and Northwell Lynbrook ASC Ventures, LLC are: Adam Boll; Laurence Kraemer; and John McGovern.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted by the board members, managers, and the medical director 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 and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

**Mr. Greene** disclosed an affiliation with Eisenhower Medical Center (EMC) in Rancho Mirage, California. The California Department of Health (CADOH) reported that EMC has been subject to ten administrative penalties and monetary fines. Specifically, California's health regulations require adverse incidents to be reported within five days and a \$100/day fine is assessed for each day late. The CADOH determined that EMC failed to timely report one incident of sexual assault (August 2015) and nine incidents (January 2009

through June 2015) of breach of protected health information (PHI). EMC has paid fines totaling \$6,112 and has appealed four of the breach infractions and \$15,100 of associated fines.

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 information was disclosed regarding Northwell-affiliated facilities:

*In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.*

*In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.*

*In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.*

*In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.*

*In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.*

*In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.*

*In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.*

*In an S&O dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 for deficient practice related to infection control in surgical areas. The facility had 21 OR running and observations in 12 of the rooms revealed 24 staff were not following acceptable of standards of practice related to the use of proper attire and exposure of hair during procedures.*

*In an S&O dated March 6, 2017, Plainview Hospital was fined \$4,000 for deficient practice related to infection control. Specifically, facility staff (including physicians, podiatrists, radiologists, transporters, and physical therapist) failed to use standard infection control practices related to the use of PPE, handwashing, equipment cleaning, and following isolation precautions for patients with identified infectious diseases.*

**Conclusion**

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

**Recommendation**

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

**Financial Analysis**

**Asset Purchase Agreement**

The applicant has submitted an executed APA to acquire physical assets of the FASC, to be effectuated upon PHHCP approval. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | May 3, 2018   |
| Sellers:                   | South Shore Operating Company, LLC & ASC Interests, LLC   |
| Buyer:                     | Lynbrook SC, LLC (together with Northwell Health, Inc. as guarantor)  |
| Asset Acquired:            | Rights, title and interest in the business assets used in operating a surgery center at 444 Merrick Road, Suite 400, Lynbrook, NY, clear of liens including: leasehold title to real property; tangible assets, all furniture/fixtures/equipment, supplies, books, facility records, assigned & assumed contracts, agreements, warranties, intellectual property rights, domain names/addresses, all claims, cause of actions/judgements in favor of seller, assignable licenses and permits, trade name, goodwill, security deposits, patient & employee records, and phone & telefax numbers. |
| Excluded Assets:           | Sellers' rights, title and interest up to the closing date for all cash and cash equivalents and short-term investments, all accounts receivables, all payor contracts not assigned, the purchase price, all medical records and patient billing records, the governing documents, corporate seals, books, and other corporate records, capital stocks, all benefits plans, all tax credits, refunds and recoveries, all intellectual properties not conveyed.  |
| Assumption of Liabilities: | Liabilities and obligations arising with respect to operation of the Facility on and after the closing date.  |
| Purchase Price:            | \$16,873,719 (\$17,905,000 less working capital adjustment \$1,031,281)   |
| Payment of Purchase Price: | \$50,000 Escrow Deposit upon signing.<br>\$16,823,719 due at closing.   |

Northwell Health, Inc. (the guarantor) will fund the entire project from liquid resources. Funding was confirmed via a letter. BFA Attachment D is Northwell Health, Inc.'s 2017 certified financial statement, which indicates sufficient liquid assets to cover the purchase price.

Administrative Services Agreement

Lynbrook SC, LLC has submitted a draft Administrative Service Agreement (ASA) to be effective upon PHHPC approval. The terms are summarized below:

|                          |   |
|--------------------------|---|
| Operator:                | Lynbrook SC, LLC d/b/a Lynbrook Surgery Center, LLC   |
| Contractor:              | Northwell Healthcare, Inc.  |
| Administrative Services: | Administrative services related to management of operator's fund, overseeing collections of accounts, payment of accounts indebtedness, budget and financial planning, accounting and financial records, internal audit, contracts for services, purchases and leases, insurance, managed care contracting, strategic planning and marketing, legal support, health care analytics, recruitment, expansion, human resources advisory services, benefit plans, distributions, compliance with laws, licensing and accreditation. |
| Term:                    | Commence on the effective date. Terminate on third anniversary of the effective date or automatically renew for one-year terms unless either party provide 90 days prior notice in writing to terminate.  |
| Fees:                    | \$300,000 per year. (\$25,000 per month) 3% increase on each anniversary date.  |

Lynbrook SC, LLC will retain ultimate control in all the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Rental Agreement

The applicant has submitted an executed Lease Agreement for the clinic site, the terms of which are summarized below:

|             |  |
|-------------|--|
| Date:       | September 18, 1997   |
| Premises:   | The entire fourth floor (22,500 sq. ft.) on premises located at 444 Merrick Road, Lynbrook, NY 11563         |
| Landlord:   | HP Lynbrook, LLC   |
| Lessee:     | South Shore Ambulatory Surgery Center, LLC   |
| Term:       | Terminates on April 30, 2029. One five-year renewal option.  |
| Rental:     | \$100,974.61 per month effective May 2017.   |
| Provisions: | Tenant responsible for proportionate share (22%) of real estate taxes, insurance, utilities and maintenance. |

The Center's existing lease agreement will not change and will be assigned to Lynbrook SC, LLC.

Assignment and Assumption of Lease

The applicant provided a draft Assignment and Assumption of Lease, the terms are summarized below:

|             |   |
|-------------|---|
| Assignor:   | South Shore Ambulatory Surgery Center, LLC                                      |
| Assignee:   | Lynbrook SC, LLC d/b/a Lynbrook Surgery Center                                  |
| Landlord:   | HP Lynbrook, LLC  |
| Assignment: | All of assignor's rights, title and interest as tenant under agreement of Lease |
| Price:      | \$1   |

The applicant has provided an affidavit stating that the lease agreement is an arm's length agreement. Letters from two independent licensed relators have been provided attesting that the lease cost per square foot is at fair market value.

## Operating Budget

The applicant has submitted the current year of operations (2017) and their operating budget for the first and third years, in 2018/19 dollars, as shown below:

| Revenue         | Current Year |                    | Year One     |                    | Year Three   |                    |
|-----------------|--------------|--------------------|--------------|--------------------|--------------|--------------------|
|                 | Per Proc.    | Total              | Per Proc.    | Total              | Per Proc.    | Total              |
| Medicaid-FFS    | \$1,734      | \$55,491           |              | \$0                |              | \$0                |
| Medicaid-MC     |              | \$0                | \$1,767      | \$597,339          | \$1,822      | \$633,994          |
| Medicare-FFS    | \$1,734      | \$2,967,049        | \$1,769      | \$3,066,340        | \$1,823      | \$3,254,501        |
| Commercial-FFS  | \$1,734      | \$6,615,600        | \$1,770      | \$6,504,357        | \$1,823      | \$6,903,487        |
| Private Pay     | \$1,734      | \$27,746           | \$1,896      | \$26,549           | \$1,879      | \$28,177           |
| All Other *     | \$1,734      | \$3,173,406        | \$1,770      | \$3,013,240        | \$1,823      | \$3,198,145        |
| Other Income    |              | <u>\$185,062</u>   |              | <u>\$0</u>         |              | <u>\$0</u>         |
| Total Revenue   |              | \$13,024,354       |              | \$13,207,825       |              | \$14,018,304       |
| <b>Expenses</b> |              |                    |              |                    |              |                    |
| Operating       | \$1,361      | \$10,077,154       | \$1,323      | \$9,921,425        | \$1,372      | \$10,600,296       |
| Capital         | <u>\$210</u> | <u>\$1,558,418</u> | <u>\$177</u> | <u>\$1,328,113</u> | <u>\$205</u> | <u>\$1,586,813</u> |
| Total Expenses  | \$1,571      | \$11,635,572       | \$1,500      | \$11,249,538       | \$1,577      | \$12,187,109       |
| Net Income      |              | <u>\$1,388,782</u> |              | <u>\$1,958,287</u> |              | <u>\$1,831,195</u> |
| Procedures      |              | 7,404              |              | 7,500              |              | 7,727              |

\*All Other revenue consist of Gov't payor source of Worker's Compensation and No Fault.

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

| Payor          | Current Year |               | Year One     |               | Year Three   |               |
|----------------|--------------|---------------|--------------|---------------|--------------|---------------|
|                | Proc.        | %             | Proc.        | %             | Proc.        | %             |
| Medicaid-FFS   | 32           | 0.43%         | -            | 0.00%         | -            | 0.00%         |
| Medicaid-MC    | -            | 0.0%          | 338          | 4.50%         | 348          | 4.50%         |
| Medicare-FFS   | 1,711        | 23.11%        | 1,733        | 23.11%        | 1,785        | 23.11%        |
| Commercial-FFS | 3,815        | 51.52%        | 3,675        | 49.00%        | 3,786        | 49.00%        |
| Private Pay    | 16           | 0.22%         | 14           | 0.19%         | 15           | 0.19%         |
| Charity Care   | -            | 0.0%          | 38           | 0.51%         | 39           | 0.50%         |
| All Other *    | <u>1,830</u> | <u>24.72%</u> | <u>1,702</u> | <u>22.69%</u> | <u>1,754</u> | <u>22.70%</u> |
| Total          | 7,404        | 100%          | 7,500        | 100%          | 7,727        | 100%          |

\*All Other revenue consist of Gov't payor source of Worker's Compensation and No Fault.

Budget projections are based on the following:

- Revenue, utilization, and expense assumptions are based on the Center's actual results, increased by less than 2% annually.
- Charity Care of 0.50% is based upon a cautious projection. To improve the efforts in treating the underserved population, the Center will comply with and participate in Northwell Health's charity care program and adopt their financial assistant policy. The Department however, expects the Center to make reasonable efforts to achieve a 2% charity care rate.

## Capability and Feasibility

There are no project costs associated with this application. Lynbrook SC, LLC will acquire the physical assets used to operate South Shore Ambulatory Surgery Center, LLC for \$16,873,719 (\$17,905,000 less \$1,031,281, working capital adjustment). Northwell Health, Inc. (the guarantor) will fund the entire project at closing from its liquid resources. Funding was confirmed via a letter.

Working capital requirements are estimated at \$1,874,923 based on two months of first year expenses. Northwell Health Inc. will provide the working capital from its liquid resources, as confirmed via letter.

BFA Attachment D is Northwell Health, Inc.'s 2017 certified financial statement, which indicates sufficient liquid assets to cover the purchase price and working capital needs.

The submitted budget projects first and third year profits of \$1,958,287 and \$1,831,195, respectively. Revenues are based on current reimbursement methodologies for FASC services. Expenses are based on the proposed operators' experience. BFA Attachment E is Lynbrook Surgery Center LLC's Pro Forma Balance Sheet, which shows the entity will start with \$18,748,642 in members' equity. The budget appears reasonable.

BFA Attachment B is South Shore Ambulatory Surgery Center, LLC's financial summary for 2015 through 2017, shows the entity had an average negative working capital of \$830,161, an average negative equity position of \$1,517,912 and an average net income of \$612,884 for the period. The negative working capital during the year 2015 was due to the Center operating at a breakeven level. During the fourth quarter of 2015, the Center went in network with additional insurance carriers which improved patient access to the Center, increased the caseloads, and increased net profits. BFA Attachment C is the internal financial statements for South Shore Ambulatory Surgery Center, LLC as of April 30, 2018, which shows negative working capital, negative net assets and the operating income of \$ 631,467. The negative working capital was due to a high level of accounts payable liabilities and an outstanding loan which will be paid off with the proceeds of the sale from this transaction.

BFA Attachment D is the 2016-2017 certified financial statement and internal financials as of March 31, 2018 of Northwell Health, Inc., which show that the entity maintained a positive working capital position, positive net assets position and generated positive net income. As of March 31, 2018, excess of revenue and gains and losses over expenses was \$70,078,000.

BFA Attachment F is supplemental financial data on Northwell Health's 2017 Joint Venture Ambulatory Surgery Centers (positive net assets of \$82,000,000 and positive operating income of \$16,179,000).

Based on the preceding, 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 | Pre and Post Organizational Chart  |
| BFA Attachment B | 2015-2017 Financial Summary of South Shore Ambulatory Surgery Center, LLC  |
| BFA Attachment C | 2017 Certified Financial and Internal Financial Statement as of April 30, 2018 of South Shore Ambulatory Surgery Center, LLC |
| BFA Attachment D | 2016-2017 Certified Financial Statements and Internal Financial Statement as of March 31, 2018 of Northwell Health, Inc      |
| BFA Attachment E | Pro Forma Balance Sheet  |
| BFA Attachment F | Supplement 2017 certified financial data. Northwell Health Inc. Joint Venture Ambulatory Surgery Centers                     |

## 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 11th day of October 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 Lynbrook Surgery Center, LLC as the new operator of South Shore Ambulatory Surgery Center, LLC located at 444 Merrick Road, Lynbrook 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:

181333 E

FACILITY/APPLICANT:

Lynbrook Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption of lease, acceptable to the Department of Health. [BFA]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a photocopy of the Restated Articles of Organization of Lynbrook SC, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an Assignment and Assumption of Lease, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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 # 181438-E**  
**North County EC, LLC d/b/a The New York Eye Surgical  
Center**

**Program:** Diagnostic and Treatment Center    **County:** Saratoga  
**Purpose:** Establishment    **Acknowledged:** July 6, 2018

**Executive Summary**

**Description**

North County EC, LLC d/b/a The New York Eye Surgery Center (NYESC), a proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 135 North Road, Wilton (Saratoga County), requests approval for indefinite life certification. The Center was approved by the Public Health and Health Planning Council (PHHPC) under CON 112382 as a single specialty FASC specializing in ophthalmology services. PHHPC approval was for a conditional five-year limited life and the Center began operation effective July 31, 2013. The applicant notified the Department before their limited life expiration requesting indefinite life status. There are no changes in services associated with this CON.

**OPCHSM Recommendation  
Approval**

**Need Summary**

Data submission by the applicant, a contingency of CON 112382, has been completed. Based on CON 112382, Medicaid procedures were projected at 2.0 % and Charity Care was

projected at 2.0% for Year Three. In spite of referral relationships with Hudson Headwaters Heath Network, an FQHC, and Glens Falls Hospital Primary Care Network since the start of operations, and in spite of greater than 50% of patient referrals being from the FQHC and the hospital, actual Charity Care was nearly 0% and Medicaid was 2.6% in the third year. The Center's outreach efforts demonstrate reasonable efforts to provide service to the uninsured and under-insured in their service area.

**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 budget is as follows:

|            |                    |
|------------|--------------------|
|            | <u>Year One</u>    |
| Revenues   | \$4,217,900        |
| Expenses   | <u>\$3,580.392</u> |
| Net Income | \$637,508          |

## 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

**October 11, 2018**

## Need Analysis

### Analysis

The primary service area is Saratoga County. 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 112382.

| <b>CON 112382- Procedures</b> | <b>Year 1 (2014)</b> |        | <b>Year 3 (2016)</b> |        |
|-------------------------------|----------------------|--------|----------------------|--------|
| <b>NY Eye Surgical Center</b> | Projected            | Actual | Projected            | Actual |
| Total                         | 2,622                | 1,885  | 2,780                | 3,380  |

The table below provides Year Three utilization, projections and actual, by payor, for CON 112382, and projections for year one following approval.

| <b>Payor</b>      | <b>CON 112382<br/>Projected Year<br/>3 (2016)</b> | <b>CON 112382<br/>Actual Year 3<br/>(2016)</b> | <b>CON 181438<br/>Projections<br/>Year 1</b> |
|-------------------|---|--|--|
| Commercial FFS/MC | 18.0%   | 33.3%  | 19.0%  |
| Medicare FFS/MC   | 77.0%   | 63.8%  | 76.6%  |
| Medicaid FFS/MC   | 2.0%  | 2.6%   | 4.0%   |
| Private Pay       | 1.0%  | 0.3%   | 0.3%   |
| Charity Care      | 2.0%  | 0.0%   | 0.1%   |
| Total             | 100.0%  | 100.00%  | 100.00%                                      |

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: Blue Shield of Northeastern NY, Capital District Physicians' Health Plan (CDPHP), Empire Blue Cross Blue Shield, Fidelis Care NY, MVP Health Plan, Inc. This center was opened as a joint venture with Glens Fall Hospital (30% membership interest). Glens Falls Hospital has a network of primary care centers which have provided patient referrals to this ASC. Hudson Headwaters operates six (6) health centers within ten miles of the center. The table below shows the number of referrals from these two sources to the ASC since 2015.

| <b>Referrals</b>        | <b>2015</b>  |              | <b>2016</b>  |              | <b>2017</b>  |              |
|-------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
|                         | Volume       | %            | Volume       | %            | Volume       | %            |
| Hudson Headwaters       | 850          | 34.6%        | 914          | 27.0%        | 919          | 24.8%        |
| Glens Falls PC Network  | 861          | 35.1%        | 928          | 27.5%        | 937          | 25.3%        |
| <b>Total Procedures</b> | <b>2,455</b> | <b>69.7%</b> | <b>3,380</b> | <b>54.5%</b> | <b>3,705</b> | <b>50.1%</b> |

Over 50% of patient referrals since 2015 have come from the Federally Qualified Health Center (FQHC), Hudson Headwaters Health Network, and the local hospital. This center's specialty is ophthalmology, which has generated a Medicare utilization above 60% for each year since 2014. The number of uninsured in Saratoga County has declined significantly since the center opened in 2013. In terms of additional outreach efforts, the center's staff attends health fairs in Saratoga, Washington, and Warren Counties and delivers copies of the Center's Financial Assistance brochures to these three counties Department of Public Health and/or their Department of Social Services.

#### Conclusion

The Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care Report indicates that “single specialty freestanding ASCs offering ophthalmology 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.” The center’s Medicare utilization has been above 60% each year of its existence and is projected to be above 75% going forward. Additionally, the Center’s outreach efforts demonstrate reasonable efforts to reach the uninsured and under-insured in their service area.

#### Recommendation

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

## Program Analysis

#### Program Description

There are no anticipated changes in services or staffing. The Center is accredited by The Joint Commission, and Steven Solomon, M.D. will continue to serve as the 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 2017 dollars, as shown below:

|                      | <u>Current Year</u> | <u>Year One</u>  | <u>Year Three</u> |
|----------------------|---------------------|------------------|-------------------|
| <u>Revenues</u>      |                     |                  |                   |
| Commercial           | \$1,686,785         | \$1,720,521      | \$1,754,256       |
| Medicaid FFS + MC    | \$70,473            | \$71,882         | \$73,292          |
| Medicare FFS + MC    | \$2,372,970         | \$2,420,429      | \$2,467,889       |
| Private Pay          | \$5,068             | \$5,068          | \$5,068           |
| Charity Care         | <u>\$0</u>          | <u>\$0</u>       | <u>\$0</u>        |
| Total Revenues       | \$4,135,296         | \$4,217,900      | \$4,300,505       |
| <u>Expenses</u>      |                     |                  |                   |
| Operating            | \$3,158,595         | \$3,253,247      | \$3,442,849       |
| Capital              | <u>\$472,647</u>    | <u>\$327,045</u> | <u>\$266,175</u>  |
| Total Expenses       | \$3,631,242         | \$3,580,392      | \$3,709,024       |
| Net Income           | <u>\$504,054</u>    | <u>\$637,508</u> | <u>\$591,481</u>  |
| Utilization (Visits) | 3705                | 3780             | 3854              |
| Cost Per Visit       | \$980.09            | \$947.19         | \$962.38          |

Utilization by payor during the current year and the first and third years after receiving indefinite life are as follows:

| <u>Payor</u>      | <u>Current Year</u> |             | <u>Year One</u> |             | <u>Year Three</u> |             |
|-------------------|---------------------|-------------|-----------------|-------------|-------------------|-------------|
|                   | <u>Visits</u>       | <u>%</u>    | <u>Visits</u>   | <u>%</u>    | <u>Visits</u>     | <u>%</u>    |
| Commercial FFC/MC | 704                 | 19.0%       | 718             | 19.0%       | 732               | 19.0%       |
| Medicare FFC/MC   | 2,839               | 76.6%       | 2,896           | 76.6%       | 2,953             | 76.6%       |
| Medicaid FFC/MC   | 147                 | 4.0%        | 150             | 4.0%        | 153               | 4.0%        |
| Private Pay/Other | 13                  | 0.4%        | 13              | 0.3%        | 13                | 0.3%        |
| Charity           | <u>2</u>            | <u>0.1%</u> | <u>3</u>        | <u>0.1%</u> | <u>3</u>          | <u>0.1%</u> |
| Total             | 3,705               | 100.0%      | 3,780           | 100.0%      | 3,854             | 100.0%      |

### Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates net income of \$637,508 and \$591,481 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2017 certified financial statements of North Country EC, LLC. As shown, the facility had a negative average working capital position and a positive net asset position in 2016. The negative working capital in 2016 was due to a \$400,000 line of credit balance related to prior year start-up expenditures. An action plan was formed during 2016 to improve collections on receivables, increase revenues and pay down the line of credit. The facility's 2017 financial statements demonstrate positive working capital and net asset positions. Also, the entity achieved net income of \$358,929 and \$504,054 in 2016 and 2017, respectively

BFA Attachment C is the internal financial statements of North Country EC, LLC as of 6/30/2018. As shown, the entity had a positive working capital position and a positive net asset position and achieved a net income of \$215,889 through 6/30/2018.

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

### Recommendation

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

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## Attachments

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- BFA Attachment A Organization chart for North Country EC, LLC
- BFA Attachment B Financial Summary - 2017 certified financial statements of North Country EC, LLC
- BFA Attachment C Financial Summary - Internal financial statements of North Country EC, LLC as of 6/30/2018

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 11th day of October 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 indefinite life for CON # 112382, 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:

181438 E

FACILITY/APPLICANT:

North County EC, LLC  
d/b/a The New York Eye Surgical Center



**Project # 172387-E**  
**Grand South Point, LLC d/b/a The Grand Rehabilitation and  
Nursing at South Point**

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

**County:** Nassau  
**Acknowledged:** December 20, 2017

**Executive Summary**

**Description**

Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point, a New York limited liability company, requests approval to be established as the new operator of South Point Plaza Nursing and Rehabilitation Center, a 185-bed, proprietary, Article 28 residential health care facility (RHCF) located at One Long Beach Road, Island Park (Nassau County). Bayview Manor, LLC is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the facility will be named The Grand Rehabilitation and Nursing at South Point. There will be no change in beds or services provided.

On November 22, 2017, Bayview Manor, LLC entered into an Asset Purchase Agreement (APA) with Grand South Point, LLC for the sale and acquisition of the RHCF operating interests for the assumption of certain liabilities valued at \$304,638 as of August 10, 2018, plus execution of the facility lease. The RHCF's real property is owned by Tzvi Shoel, LLC, whose members are common to the members of the current operating entity. The applicant will enter into an arms-length lease with Tzvi Shoel, LLC for site control of the facility.

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

| <u>Current Operator</u><br>Bayview Manor, LLC |        |
|---|--------|
| <u>Members</u>                                |        |
| Benjamin Landa                                | 56.75% |
| Bent Philipson                                | 27.25% |
| Ronald Stern                                  | 6.00%  |
| Mayer Fischl                                  | 5.00%  |
| Girshas Minster                               | 2.00%  |
| Alan Chopp                                    | 1.00%  |
| Simona Golman                                 | 1.00%  |
| Frank Ianucci                                 | 1.00%  |

| <u>Proposed Operator</u><br>Grand Batavia, LLC |     |
|--|-----|
| <u>Members</u>                                 |     |
| Jeremy Strauss                                 | 95% |
| Meryl Strauss                                  | 5%  |

At the PHHPC meeting held on June 7, 2018, the applicant members of Grand South Point, LLC were contingently approved to acquire the operating interests in the following RHCFs:

- Batavia Health Care Center, LLC (62 beds, Genesee County, CON 172293);
- Mohawk Valley Health Care Center (120 beds, Herkimer County, CON 172292); and
- Heritage Health Care Center (220 beds, Oneida County, CON 181218).

Currently under review, the applicant members are seeking approval to acquire the operating interest in Grace Plaza Nursing and Rehabilitation Center, a 214-bed RHCF located in Nassau County (CON 172385).

OPCHSM Recommendation  
Contingent Approval

Need Summary

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

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

Grand South Point, LLC will acquire the RHCF operations for the assumption of certain liabilities, estimated at \$304,638 as of August 10, 2018, plus execution of the lease. Grand South Point, LLC will lease the premises from Tzvi Shoel, LLC. There are no project costs associated with this application. The projected budget is as follows.

|            | <u>Year One</u>   | <u>Year Three</u> |
|------------|-------------------|-------------------|
| Revenues   | \$20,325,777      | \$20,325,777      |
| Expenses   | <u>19,421,815</u> | <u>19,288,708</u> |
| Net Income | \$903,962         | \$1,037,069       |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment, acceptable to the Department of Health. [BFA]
5. 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)
6. 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)
7. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Agreement of Lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Lease Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

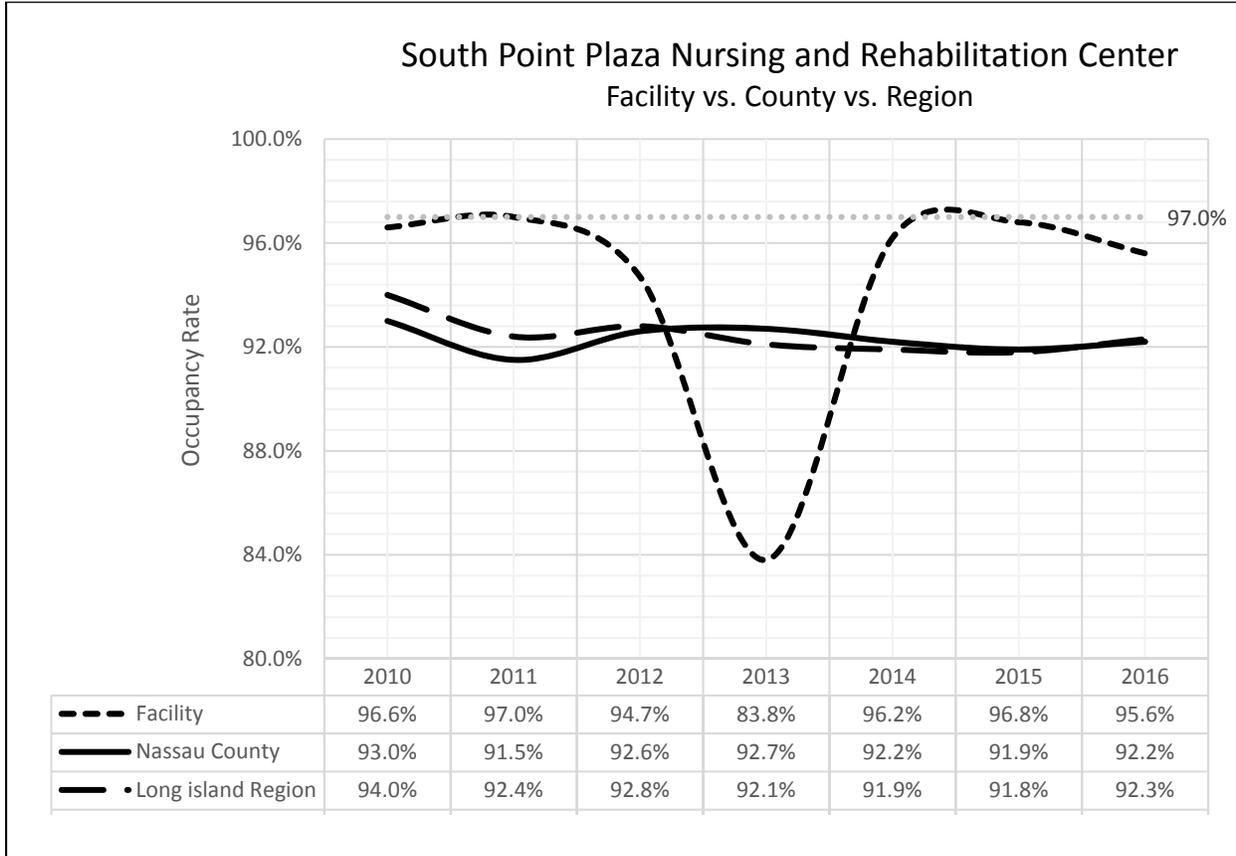
Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis

Utilization has been relatively consistent except for 2013 when the facility was impacted by Superstorm Sandy.



## 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.

South Point Plaza Nursing and Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Nassau County rate, as demonstrated in the table below.

| <b>Percent of New RHCFA Admissions that are Medicaid</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|--|-------------|-------------|-------------|
| Nassau County 75% Threshold                              | 9.4%        | 11.1%       | 9.2%        |
| South Point Plaza Nursing and Rehabilitation Center      | 41.9%       | 33.8%       | 39.4%       |

Conclusion

There will be no change in beds or services in Nassau County through completion of this project.

Recommendation

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

|                         |
|-------------------------|
| <b>Program Analysis</b> |
|-------------------------|

Facility Information

|                       | <b>Existing</b>                                   | <b>Proposed</b>   |
|-----------------------|---|---|
| Facility Name         | South Point Plaza Nursing & Rehabilitation Center | The Grand Rehabilitation & Nursing at South Point   |
| Address               | 1 Long Beach Rd<br>Island Park, NY 11558          | Same  |
| RHCF Capacity         | 185   | Same  |
| ADHC Program Capacity | N/A   | N/A   |
| Type of Operator      | Proprietary                                       | Same  |
| Class of Operator     | LLC   | Same  |
| Operator              | Bayview Manor LLC                                 | Grand South Point, LLC<br><br>*Jeremy Strauss                      95%<br>Meryl Strauss                        5%<br><br>*Managing Member |

Character and Competence - Background

**Facilities Reviewed**

|   |                     |
|---|---------------------|
| The Grand Rehabilitation & Nursing at Pawling               | 08/2008 to present  |
| The Grand Rehabilitation & Nursing at Queens                | 08/2008 to present  |
| Brooklyn Center for Rehabilitation & Residential Healthcare | 08//2008 to 12/2015 |
| Bushwick Center for Rehabilitation & Health Care            | 05/2011 to 12/2015  |
| The Grand Rehabilitation & Nursing Center at Rome           | 05/2011 to present  |
| The Grand Rehabilitation & Nursing Center at Chittenango    | 05/2011 to present  |
| Boro Park Center for Rehabilitation & Heath Care            | 05/2011 to 03/2016  |
| Fulton Center for Rehabilitation                            | 04/2012 to 12/2015  |
| Richmond Center for Rehabilitation and Specialty Healthcare | 04/2012 to 12/2015  |
| Waterfront Center for Rehabilitation                        | 01/2013 to 12/2015  |
| Holliswood Center for Rehabilitation                        | 05/2013 to 03/2016  |
| Corning Center for Rehabilitation                           | 07/2013 to 02/2016  |
| Washington Center for Rehabilitation                        | 02/2014 to 12/2015  |
| Essex Center for Rehabilitation                             | 03/2014 to 12/2015  |
| Steuben Center for Rehabilitation                           | 07/2014 to 05/2016  |
| The Grand Rehabilitation & Nursing Center at Guilderland    | 11/2014 to present  |
| The Grand Rehabilitation & Nursing Center at River Valley   | 09/2016 to present  |
| The Grand Rehabilitation & Nursing at Barnwell              | 12/2017 to present  |
| Senior Care EMS   | 08/2008 to present  |
| Washington Center Adult Home                                | 02/2014 to 05/2016  |

### **Individual Background Review**

**Jeremy Strauss** discloses employment as Executive Director of The Grand Rehabilitation of Pawling since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University. Mr. Strauss discloses the following nursing home ownership interests:

|   |                    |
|---|--------------------|
| The Grand Rehabilitation & Nursing at Pawling (98%)             | 01/2004 to present |
| The Grand Rehabilitation & Nursing at Queens (95%)              | 06/2004 to present |
| Brooklyn Center for Rehab (5%)                                  | 03/2007 to 12/2015 |
| Bushwick Center for Rehabilitation & Health Care (10%)          | 05/2011 to 12/2015 |
| The Grand Rehabilitation & Nursing Center at Rome (98%)         | 05/2011 to present |
| The Grand Rehabilitation & Nursing Center at Chittenango (67%)  | 05/2011 to present |
| Boro Park Center for Rehabilitation & Health Care (2%)          | 05/2011 to 03/2016 |
| Fulton Center for Rehabilitation (25%)                          | 04/2012 to 12/2015 |
| Richmond Center for Rehabilitation & Specialty Healthcare (5%)  | 04/2012 to 12/2015 |
| Waterfront Center for Rehabilitation (30%)                      | 01/2013 to 12/2015 |
| Holliswood Center for Rehabilitation (7.5%)                     | 05/2013 to 03/2016 |
| Corning Center for Rehabilitation (25%)                         | 07/2013 to 02/2016 |
| Washington Center for Rehabilitation (30%)                      | 02/2014 to 12/2015 |
| Essex Center for Rehabilitation (30%)                           | 03/2014 to 12/2015 |
| Steuben Center for Rehabilitation (29%)                         | 07/2014 to 05/2016 |
| The Grand Rehabilitation & Nursing Center at Guilderland (95%)  | 11/2014 to present |
| The Grand Rehabilitation & Nursing Center at River Valley (95%) | 09/2016 to present |
| The Grand Rehabilitation & Nursing at Barnwell (95%)            | 12/2017 to present |
| Senior Care EMS (23%)   | 05/2005 to present |
| Washington Center Adult Home (30%)                              | 02/2014 to 05/2016 |

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Mrs. Strauss discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| The Grand Rehabilitation & Nursing Center at Guilderland (5%)  | 11/2016 to present |
| The Grand Rehabilitation & Nursing Center at River Valley (5%) | 09/2016 to present |
| The Grand Rehabilitation & Nursing Center at Rome (2%)         | 08/2016 to present |
| The Grand Rehabilitation & Nursing Center at Chittenango (2%)  | 07/2016 to present |
| The Grand Rehabilitation & Nursing at Barnwell (5%)            | 12/2017 to present |

### Character and Competence – Analysis

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 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 Stipulation and Order NH-16-.034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*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.*

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

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

*An assessment of the underlying causes of the 2015 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.*

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 Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*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.*

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 19, 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 the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being

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 federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

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

- 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 review of operations for the above nursing homes indicates there were only single enforcements, and the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

The review of operations of the other nursing homes and the Senior Care Emergency Ambulance Services, Inc, for the time periods indicated above reveals that there were no enforcements.

#### Quality Review

| Provider Name                                      | Ownership Since | Overall | Health Inspection | Quality Measures | Staffing | NYS Quintile              |
|--|-----------------|---------|-------------------|------------------|----------|---------------------------|
| The Grand Rehabilitation & Nursing at Pawling      | 01/2004         | *****   | ****              | *****            | ***      | 4                         |
| The Grand Rehabilitation & Nursing at Queens       | 06/2004         | *****   | ****              | *****            | **       | 5                         |
| The Grand Rehabilitation & Nursing at Rome         | 05/2011         | **      | *                 | *****            | **       | 5                         |
| The Grand Rehabilitation & Nursing at Chittenango  | 05/2011         | **      | *                 | *****            | **       | 3                         |
| The Grand Rehabilitation & Nursing at Guilderland  | 11/2014         | *       | *                 | ****             | **       | Information not available |
| The Grand Rehabilitation & Nursing at River Valley | 09/2016         | **      | **                | ****             | ***      | 5                         |
| The Grand Rehabilitation & Nursing at Barnwell     | 12/2017         | *       | *                 | ***              | *        | 5                         |

Notes: The Guilderland Staffing Rating is not available via Medicare.gov website. The star ratings for Barnwell are not applicable due to the recent acquisition.

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates the low star ratings, in general, are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicant stated they responded by implementing staffing incentives to recruit and retain employees. The incentives include enhanced training and education, and housing to augment staff recruitment and retention. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight. The applicant also mentions that two of the facilities provide care to clinically complex residents that other facilities are unwilling or unable to accept, and this can affect the performance rating for quality measures.

Regarding the nursing homes with low staffing ratings, the applicant states, especially upstate area nursing homes, there is a difficulty in recruiting and retaining staff. This difficulty in recruiting and retaining direct care staff has forced the facilities to rely on agency staffing. While agency staffing satisfies an immediate need, extended reliance is not in the best interest of residents. Agency staff are not invested in either the operations of the facility or the residents and frequent utilization is disruptive to continuity of care.

The applicant's plan for corrective action to improve low staffing ratings is by implementing a decrease in reliance on agency staffing, implementing a global staffing initiative designed to improve quality and performance on staff at each of the facilities within the Grand Healthcare System. The operator, at some facilities, has implemented the following recruitment and retention initiatives by hiring a full-time recruiter dedicated to direct care staff, provision of longevity pay and bonuses, established a mentoring program for new and existing direct care staff to promote development, enhancement and refinement of skills.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that one of their 2-star facilities have been owned for less than two years.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016 the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the 2017 enforcement at this facility the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

In response to the most recent October 2017 enforcement at The Grand Rehabilitation and Nursing at Chittenango the root cause was inconsistency and inadequate monitoring by the nursing and medical staff. The facility has taken steps which include immediate re-education of nurses on the proper procedure for documenting all labs, quality assurance monitoring and the review of lab audits by the quality assurance committee.

## Conclusion

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Health Care System, a related entity with Jeremy Strauss as CEO. The applicant also intends to utilize staffing agencies upon assumption of ownership. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

## Recommendation

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

# Financial Analysis

## Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | November 22, 2017   |
| Seller:                    | Bayview Manor, LLC  |
| Buyer:                     | Grand South Point, LLC  |
| Asset Acquired:            | Rights, title and interest in business assets including: tangible assets, inventory, supplies, books & records related to facility, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "South Point Plaza Nursing and Rehabilitation Center"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patients & employee records, manuals & computer software, phone & telefax numbers. |
| Excluded Assets:           | Seller's rights, title and interest on the closing date in all insurance policies; cash and cash equivalents, accounts receivables; Universal Settlement, and tax refunds.  |
| Assumption of Liabilities: | Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; plus, assumption of certain liabilities totaling \$304,638 as of August 10, 2018   |
| Purchase Price:            | Assumed liabilities of \$304,638 as of August 10, 2018.   |

BFA Attachment A is the net worth summary for Grand South Point, LLC members, which reveals sufficient resources to meet the equity requirements for funding the assumed liabilities.

Jeremy Strauss has provided a letter of interest from Harborview Capital Partners issued to Strauss Ventures, LLC for a credit line of up to \$25,000,000 at 6% interest for a five-year term. Strauss Ventures, LLC is 100% owed by Jeremy and Meryl Strauss. Mr. Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. BFA Attachment B provides additional details on the assumed liabilities of \$304,638 as of August 10, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 14, 2018, the facility has no outstanding Medicaid liabilities.

### Lease Agreement

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

|                  |  |
|------------------|--|
| Premises:        | 185-bed RHCF located at One Long Beach Road, Island Park, NY 11558   |
| Landlord/Lessor: | Tzvi Shoel, LLC  |
| Lessee:          | Grand South Point, LLC   |
| Term:            | 30 years   |
| Rent:            | Year 1-5: \$2,500,000 (\$208,334 per month). [CPI adjusted every five years.] Plus reimburse Lessor's monthly payments on a "not to exceed" \$3,000,000 renovation loan. |
| Provisions:      | Triple Net   |

The lease arrangement is an arm's length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers attesting that the lease cost per square foot is at fair market value.

### Consulting Services Agreement

The applicant has provided a draft Consulting Services Agreement, with terms summarized below:

|                                   |  |
|-----------------------------------|--|
| Contractor:                       | Strauss Ventures, LLC d/b/a The Grand Health Care System   |
| Facility:                         | Grand South Point, LLC   |
| Consulting and Advisory Services: | Consulting & advisory services related to administration and operational functions, including assistance with the following: regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of all functions related to accounts receivable, billing and analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing. |
| Term:                             | One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.   |
| Fee:                              | \$85,000 per month. Periodically fees will be adjusted based on quarterly review of fairness and appropriateness of the fees.  |

Jeremy Strauss, a member of the applicant, is CFO of Strauss Ventures, LLC. The draft Consulting Service Agreement provides that Grand South Point, LLC retains ultimate authority, responsibility and control in all the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement (ASA) and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to insure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

### Operating Budget

The applicant has provided the current year (2017) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

| Revenues          | Current Year |                | First Year |              | Third Year |              |
|-------------------|--------------|----------------|------------|--------------|------------|--------------|
|                   | Per Diem     | Total          | Per Diem   | Total        | Per Diem   | Total        |
| Medicaid -FFS     | \$266.11     | \$12,452,415   | \$270.11   | \$12,752,433 | \$270.11   | \$12,752,433 |
| Medicare -FFS     | \$632.95     | 3,479,328      | \$632.95   | 3,498,948    | \$632.95   | 3,498,948    |
| Commercial -FFS   | \$319.31     | 3,662,186      | \$319.31   | 3,695,694    | \$319.31   | 3,695,694    |
| Private           | \$319.31     | 375,511        | \$319.31   | 378,702      | \$319.31   | 378,702      |
| Non-Transferring* |              | <u>577,685</u> |            | <u>0</u>     |            | <u>0</u>     |
| Total Revenues    |              | \$20,547,125   |            | \$20,325,777 |            | \$20,325,777 |

|                   |                |                    |                |                  |                |                    |
|-------------------|----------------|--------------------|----------------|------------------|----------------|--------------------|
| <u>Expenses</u>   |                |                    |                |                  |                |                    |
| Operating         | \$270.12       | \$17,540,614       | \$251.48       | \$16,472,086     | \$251.48       | \$16,472,086       |
| Capital           | <u>\$13.47</u> | <u>874,653</u>     | <u>\$45.03</u> | <u>2,949,729</u> | <u>\$43.00</u> | <u>2,816,622</u>   |
| Total Expenses    | \$283.59       | \$18,415,267       | \$296.51       | \$19,421,815     | \$294.48       | \$19,288,708       |
| Net Income (Loss) |                | <u>\$2,131,858</u> |                | <u>\$903,962</u> |                | <u>\$1,037,069</u> |
| Patient Days      |                | 64,936             |                | 65,500           |                | 65,500             |
| Utilization %     |                | 96.17%             |                | 97.00%           |                | 97.00%             |

\* Nurse Aide Training \$573,142 and Investment Income \$4,543.

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

- The current year reflects the facility's 2017 revenues and expenses.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year and forecasted Medicare rate is the actual daily rate experienced by the facility during 2017. The Commercial and Private Pay rates were based on the current operator's average rates for 2017.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience.
- The facility's projected utilization for Year One and Three is 97.00%. It is noted that utilization for the past three years has averaged around 96.2%, with current occupancy being 92.4% as of August 1, 2018.
- The breakeven utilization is projected at 92.69% in the first year.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

| <u>Payor</u>   | <u>Current Year</u> | <u>Years One &amp; Three</u> |
|----------------|---------------------|------------------------------|
| Medicaid-FFS   | 72.08%              | 72.08%                       |
| Medicare-FFS   | 8.44%               | 8.44%                        |
| Commercial-FFS | 17.67%              | 17.67%                       |
| Private Pay    | <u>1.81%</u>        | <u>1.81%</u>                 |
| Total          | 100%                | 100%                         |

#### Capability and Feasibility

Grand South Point, LLC will acquire the RHCf operations for the assumption of certain liabilities totaling \$304,638 as of August 10, 2018, plus execution of the lease. Grand South Point, LLC will lease the premises from Tzvi Shoel, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at \$3,541,607 based on two months of first year expenses of \$3,236,969, plus \$304,638 in assumed liabilities as of August 10, 2018. Funding will be as follows: \$737,000 from the members' equity, \$1,033,804 from a credit line issued to Strauss Ventures LLC, and \$1,770,803 via a working capital loan. Strauss Ventures, LLC is 100% owned by Jeremy Strauss and Meryl Strauss. Harborview Capital Partners has provided a letter of interest for a credit line of up to \$25,000,000 at 6% interest for a five-year term. Harborview Capital Partners has provided a letter of interest for the working capital loan at 5% interest for a five-year term.

Review of BFA Attachment A, proposed members net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to ownership interest for the two RHCfs (this application and CON 172385 concurrently under review). As the result of potential equity shortfall, Jeremy Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his membership interest making up other member's equity shortfall. Jeremy Strauss has provided a letter of interest for a \$25,000,000 credit line issued to his company, Strauss Ventures, LLC, at the above state terms.

The submitted budget projects a first and third profit of \$903,962 and \$1,037,069, respectively. Revenues are expected to increase by \$356,337 (after excluding \$577,685 in non-transferring revenues as noted above). Overall expenses are expected to increase by \$1,006,548 coming from a \$1,068,528 reduction in operating expense and a \$2,075,076 increase in capital expense (primary from rent). The decline in operating expense is from all categories except salaries and wage, which increased by 1%. Employee benefits dropped \$99,390 (percentage to salaries went from 37.6% to 35.9%), professional

fees dropped \$144,761, purchase services dropped \$397,405, other direct expenses dropped \$313,833, with the \$113,139 balance netted from the remaining categories.

BFA Attachment C is Grand South Point, LLC's pro forma balance sheet, which shows the entity will start with \$9,317,498 in member's equity (which includes \$307,638 in assumed liabilities). Equity includes \$5,297,734 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets are a positive \$4,019,764. The budget appears reasonable.

BFA Attachment D is the Financial Summary of Bayview Manor, LLC d/b/a South Point Plaza Nursing and Rehabilitation Center for 2015 through 2017. The RHCf had an average positive net income of \$2,220,483 and positive average net assets of \$6,593,736. Working capital was turned positive in 2017 beginning the average into positive territory.

BFA Attachment E is the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. All the RHCfs have maintained positive net income, working capital and net assets for the periods shown, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a negative working capital position in 2015 but turned the working capital position to positive in 2016.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. The cumulative effect of both transactions will result in a positive position in 2017.
- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows negative working capital, negative net assets and an operating loss during 2016 and 2017. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Net Worth of Proposed Members of Grand South Point, LLC                                    |
| BFA Attachment B | Details of Assumed Liabilities as of August 10, 2018                                       |
| BFA Attachment C | Pro Forma Balance Sheet, Grand South Point, LLC  |
| BFA Attachment D | Financial Summary 2015 - 2017 and 2017 Certified Financial Statement of Bayview Manor, LLC |
| BFA Attachment E | Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary         |
| BFA Attachment F | Members of Landlord, TZVI Shoel, 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 11th day of October 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 Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point as the new operator of South Point Plaza Nursing and Rehabilitation Center, a 185-bed RHC located at One Long Beach Road, Island Park, 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:

172387 E

Grand South Point, LLC d/b/a The Grand  
Rehabilitation and Nursing at South Point

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment, acceptable to the Department of Health. [BFA]
5. 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)
6. 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)
7. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Agreement of Lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Lease 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 # 181219-E
AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: March 30, 2018

Executive Summary

Description

AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center, a New York limited liability company, is requesting to be established as the new operator of Baird Nursing Home, a 28-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2150 St. Paul Street, Rochester (Monroe County). There will be no change in beds or services provided.

On October 17, 2017, Stephen T. Heard, LLC, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Larry Goldfarb for the sale and acquisition of the RHCF's operating interests. Concurrently, the Parties to the APA entered into a Sale of Real Property Agreement (SRPA) for the sale and acquisition of the RHCF's realty. Mr. Goldfarb will assign his rights, obligations and interests in the APA to AGA Operating LLC (the Assets Assignee) and his rights, obligations and interests in the SRPA to AGAL Realty LLC (the Real Estate Assignee). Per an Amendment to the APA and SRPA dated January 24, 2018, the total purchase price was reduced to \$950,000 allocated as follows: \$100,000 towards the operations and \$850,000 towards the real estate. The applicant will lease the premises from AGAL Realty LLC. There is a relationship between AGA Operating LLC and AGAL Realty LLC in that the entities have identical membership. Upon approval of the proposed transaction, the facility will be known as The Brook at High Falls Nursing and Rehabilitation Center.

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

Table with 2 columns: Member, %
Current Operator: Stephen T. Heard, LLC
Member: Stephen T. Heard, %: 100%

Table with 2 columns: Members, %
Proposed Operator: AGA Operating LLC
Members: Giorgio Mayer (50%), Aryeh Grinspan (25%), Abraham Mayer (25%)

OPCHSM Recommendation
Contingent Approval

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

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. 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 RHCF's realty and operations is \$950,000. Larry Goldfarb will acquire both interests and assign this rights and obligations to AGA Operating LLC (operations) and AGAL Realty LLC (realty) via an Assignment Agreement. AGAL Realty LLC will finance the purchase price with \$312,500 cash equity and a bank loan for \$637,500 at 6% interest for a ten-year term and 25-year amortization period. Eastern Union Healthcare Group has provided a letter of interest at the stated terms. The projected budget is as follows:

|            |                    |
|------------|--------------------|
| Revenues   | \$2,458,600        |
| Expenses   | <u>\$2,211,800</u> |
| Net Income | \$246,800          |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Assignment Agreement to the Asset Purchase (operations) and Sale of Real Property (realty) Agreements, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a photocopy of the applicant's executed Assignment to Asset Purchase Agreement and Agreement for Sale of Real Property, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of documentation that the current operator has completed the work necessary to resolve AER waiver 181W064.

**Approval conditional upon:**

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

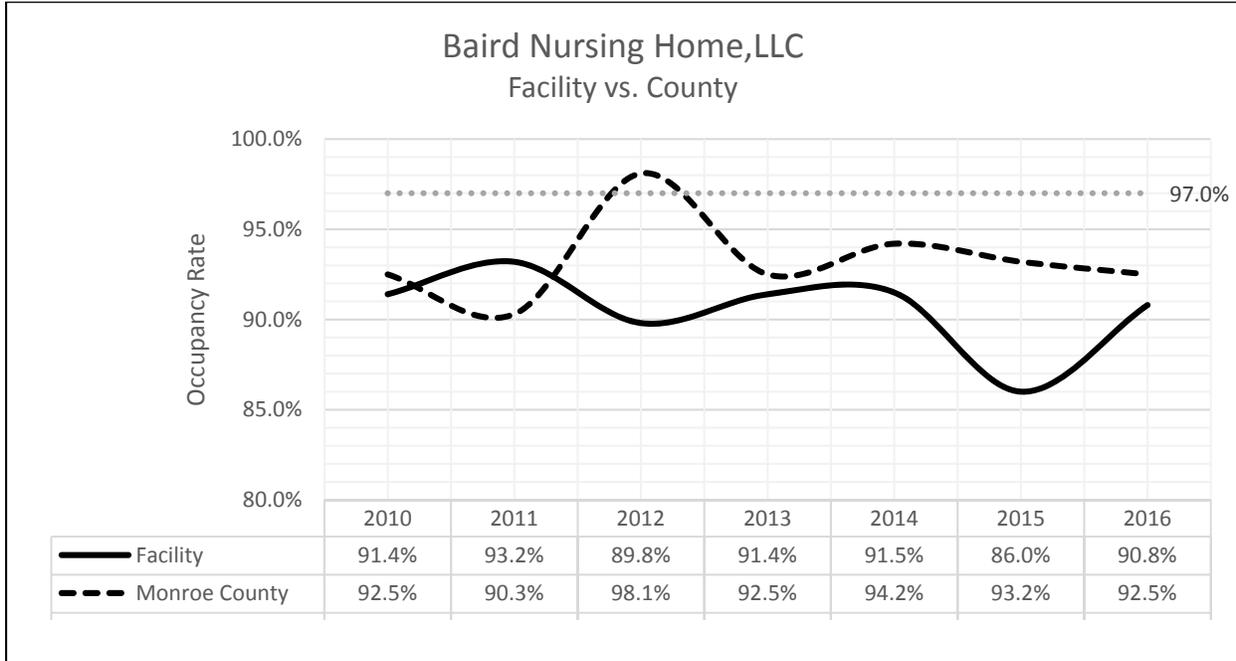
Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis

Certified 2017 occupancy data for the county is not yet available. Based upon weekly census data, occupancy as of May 16, 2018 was 92.9% for the facility and 90.4% for Monroe County.



## 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.

Baird Nursing Home's Medicaid admissions rate has exceeded the threshold of 75% of the Monroe County rate, as demonstrated in the table below.

| Percent of New RHCFA Admissions that are Medicaid | 2014  | 2015  | 2016  |
|---|-------|-------|-------|
| Monroe County 75% Threshold                       | 15.3% | 10.2% | 10.9% |
| Baird Nursing Home                                | 19.1% | 22.9% | 27.6% |

## Conclusion

There will be no change in beds or services in Monroe County 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               | Baird Nursing Home                      | The Brook at High Falls Nursing and Rehabilitation Center                                |
| Address                     | 2150 St. Paul St<br>Rochester, NY 14621 | Same   |
| RHCF Capacity               | 28                                      | Same   |
| ADHC Program Capacity       | N/A                                     | N/A  |
| Current Overall Star Rating | ***                                     | N/A  |
| Type of Operator            | Proprietary                             | Same   |
| Class of Operator           | Limited Liability Corporation           | Same   |
| Operator                    | Stephen T Heard, LLC.                   | AGA Operating LLC<br>Giorgio Mayer* 50.0%<br>Aryeh Grinspan 25.0%<br>Abraham Mayer 25.0% |
|                             |   | *Managing Member   |

### Character and Competence - Background

#### Facilities Reviewed

|   |                    |
|---|--------------------|
| Gold Crest Care Center                      | 09/2008 to present |
| Sunnyside Care Center                       | 09/2008 to present |
| Wellsville Manor Care Center                | 09/2008 to present |
| Valley View Manor Nursing Home              | 09/2008 to present |
| Bethany Gardens Skilled Living Center       | 09/2008 to present |
| Fieldston Lodge Care Center                 | 09/2008 to present |
| Affinity Skilled Living and Rehabilitation  | 09/2008 to present |
| Elm Manor Nursing and Rehabilitation Center | 12/2017 to present |
| Wedgewood Nursing and Rehabilitation Center | 12/2017 to present |
| Whitney Rehabilitation Care Center (CT)     | 03/2015 to present |

#### Individual Background Review

**Giorgio Mayer** is the President of GM Management I LLC in Brooklyn, which is a property management company. He is a licensed Real Estate Broker and his license is valid until Dec. 2021. Mr. Mayer is also a licensed Notary in the State of New York, which expires Dec. 2018. He has a Rabbinical degree from Rabbinical College of Canada. Mr. Mayer discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| Gold Crest Care Center (5.00%)                       | 02/1996 to present |
| Sunnyside Care Center (15.50%)                       | 06/1998 to present |
| Wellsville Manor Care Center (11.125%)               | 12/1999 to present |
| Valley View Manor Nursing Home (18.00%)              | 12/2001 to present |
| Bethany Gardens Skilled Living Center (10.50%)       | 07/2002 to present |
| Fieldston Lodge Care Center (12.35%)                 | 03/2004 to present |
| Affinity Skilled Living and Rehabilitation (7.50%)   | 03/2008 to present |
| Elm Manor Nursing and Rehabilitation Center (10.00%) | 12/2017 to present |
| Wedgewood Nursing and Rehabilitation Center (10.00%) | 12/2017 to present |
| Whitney Rehabilitation Care Center (CT) (50.00%)     | 03/2015 to present |

**Aryeh Grinspan** is a licensed nursing home administrator in good standing. He is currently employed as the Operator/Administrator of Record at ILF Operating LLC/LFG Operating LLC (Elm Manor Nursing and Rehabilitation Center). Mr. Grinspan has two degrees from Brooklyn College. He was the Administrator of Record at Sans Souci Rehabilitation and Nursing, Midway Nursing Home and Little Neck Nursing Home.

Mr. Grinspan discloses the following nursing home ownership interests:

|  |                    |
|--|--------------------|
| Elm Manor Nursing and Rehabilitation Center (15.00%) | 12/2017 to present |
| Wedgewood Nursing and Rehabilitation Center (15.00%) | 12/2017 to present |

**Abraham Mayer** is the owner of AJ Vision, Inc. and Avi Mayer Management, Inc., which are medical staffing agencies. Mr. Mayer has a Talmudic Studies degree from Yeshiva Meor Enaim and discloses the following nursing home ownership interests.

|  |                    |
|--|--------------------|
| Elm Manor Nursing and Rehabilitation Center (10.00%) | 12/2017 to present |
| Wedgewood Nursing and Rehabilitation Center (10.00%) | 12/2017 to present |

#### Character and Competence – Analysis

A review of operations for **Sunnyside Care Center** for the periods identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 12-023 for surveillance findings on January 31, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care- Accidents, 415.14(d)(3) Food in Form to Meet Residents' Needs, 415.26 Administration and 15.27(a-c)- Quality Assurance.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH 16-166 for surveillance findings on September 18, 2014. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care- Accident Free Environment and 415.29(b) Physical Environment Space/Equipment.

*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.*

A review of operations at **Wellsville Manor Care Center** for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 10-061 for surveillance findings on August 6, 2009. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility incurred a Civil Money Penalty of \$4,550 on August 6, 2009.

*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 **Valley View Manor Nursing Home** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-132 for surveillance findings on September 18, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

*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 **Bethany Gardens Skilled Living Center** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-027 for surveillance findings on January 16, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents.

*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 **Fieldston Lodge Care Center** for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to Stipulation and Order NH 12-019 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse and 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Money Penalty of \$22,652 on September 18, 2008.

*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 **Whitney Rehabilitation Care Center** for the period identified above reveals the following:

- The facility was fined \$1,090 by the State of Connecticut for a Survey on July 23, 2015 for F-tag 223 Free from Abuse.
- The facility incurred a Civil Money Penalty of \$7,053 for a Survey on July 13, 2016 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.
- The facility was fined \$2,570 by the State of Connecticut for a Survey on July 13, 2016 for F-tag 323 Free of Accidents Hazards/Supervision/Devices.
- The facility incurred a Civil Money Penalty of \$7,150 for a survey on August 24, 2017 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.

*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.*

A review of operations of **Gold Crest Center, Affinity Skilled Living and Rehabilitation Center, Elm Manor Nursing and Rehabilitation Center and Wedgewood Nursing and Rehabilitation Center** for the period identified above reveals that there were no enforcements.

Quality Review

| <b>Provider Name</b>                           | <b>Ownership Since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|--|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Gold Crest Care Center                         | 02/1996                | ***            | ****                     | ****                   | *               | 2                   |
| Sunnyside Care Center                          | 06/1998                | *              | *                        | ****                   | *               | 5                   |
| Wellsville Manor Care Center                   | 12/1999                | ***            | **                       | *****                  | **              | 2                   |
| Valley View Manor Nursing Home                 | 12/2001                | **             | *                        | *****                  | *               | 4                   |
| Bethany Gardens Skilled Living Center          | 07/2002                | **             | *                        | *****                  | **              | 5                   |
| Fieldston Lodge Care Center                    | 03/2004                | ***            | ***                      | *****                  | *               | 3                   |
| Affinity Skilled Living and Rehabilitation Ctr | 03/2008                | *              | **                       | ****                   | *               | 4                   |
| Elm Manor Nursing and Rehabilitation Center    | 12/2017                | *****          | ****                     | *****                  | ****            | 1                   |
| Wedgewood Nursing Rehabilitation Center        | 12/2017                | ***            | **                       | ****                   | ****            | 3                   |

**CT**

|                                    |         |    |   |       |      |     |
|------------------------------------|---------|----|---|-------|------|-----|
| Whitney Rehabilitation Care Center | 03/2015 | ** | * | ***** | **** | N/A |
|------------------------------------|---------|----|---|-------|------|-----|

*Notes: The star ratings for Elm Manor and Wedgewood are not applicable due to applicant's recent acquisition.*

With regard to the nursing homes with overall quality ratings of 1 or 2, the applicant noted the low ratings were from previous administrators who were not focused on staff retention and recruitment. For example, Fieldston Lodge Care Center, the Assistant Director of Nursing was replaced for HR reasons. He was a factor in staff leaving due to creating a hostile environment. The applicants have stated they have responded by hiring new administrators. These new administrators will focus on staff recruitment and retention, implementing extra funds to allocate for staff development, training, recruitment and advertising. Additional corporate or regional RN's were hired as well to focus on wound care, quality measures and overall nursing support. These steps that have been implemented by five of the related entities that the operators anticipate having a positive impact on the particular facilities as well as improving overall care with an emphasis on staffing.

Whitney Rehabilitation and Care Center low star ratings were attributed from the facility being poorly operated by the prior operator. A change in operator occurred mid-2015. In 2015 the facility was cited for 36 deficiencies on their federal survey and in 2016 and 2017, the facility had 11 deficiencies each year. Since the change in operator, the facility has hired a new facility administrator, director of nursing and support staff. All employees were retrained and or attended the required ongoing in-service program. Lastly the operators have been seeking to recruit additional RN's and LPN's who will focus on special needs of the residents such as wound care, quality measures and provide overall nursing support.

#### 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

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

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement and Sale of Real Property Agreement

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

|                                |   |
|--------------------------------|---|
| Date:                          | October 17, 2017 (amended January 24, 2018)   |
| Sellers:                       | Stephen T. Heard, LLC   |
| Purchaser:                     | Larry Goldfarb, or an entity to which he assigns  |
| 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 2150 Saint Paul Street, Rochester, NY (Monroe 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:                | \$950,000   |
| Payment of the Purchase Price: | \$100,000 deposit at execution held in escrow;<br>\$850,000 due at closing. |

#### Assignment Agreement

The applicant submitted a draft Assignment Agreement for assignment of the RHCF operations and realty, summarized below:

|                            |  |
|----------------------------|--|
| Assignor:                  | Larry Goldfarb   |
| Assignee (Operations):     | AGA Operating LLC  |
| Assignee (Realty):         | AGAL Realty LLC  |
| Assets Transferred (Op.):  | All the acquired operating assets listed in the APA                            |
| Excluded Op. Assets:       | All the excluded operating assets listed in the APA                            |
| Realty Assets Transferred: | All rights, title and interest in and to the RHCF's real property per the SRPA |
| Assigned Purchase Price:   | \$950,000  |

The purchase price will be allocated between the operating entity (\$100,000) and realty entity (\$851,000) upon closing of this transaction. AGAL Realty LLC will finance the mortgage.

The financing plan is as follows:

|  |           |
|--|-----------|
| Equity   | \$312,500 |
| Mortgage (6% interest, 10-year term, 25-year amortization) | \$637,500 |
| Total  | \$950,000 |

Eastern Union Healthcare Group had provided a letter of interest for the mortgage at the stated terms.

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 28-bed nursing home located at 2150 Saint Paul Street, Rochester, NY (Monroe County) |
| Lessor:     | AGAL Realty LLC  |
| Lessee:     | AGA Operating LLC  |
| Term:       | 20 years with two (2) additional five (5) year extensions upon written notice          |
| Rental:     | \$150,000 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 their current year (2017) results and the first and third year operating budgets after the change in operator, in 2018 dollars, summarized below:

|                    | <u>Current Year</u> |                   | <u>Year One</u> |                  | <u>Year Three</u> |                  |
|--------------------|---------------------|-------------------|-----------------|------------------|-------------------|------------------|
|                    | <u>Per Diem</u>     | <u>Total</u>      | <u>Per Diem</u> | <u>Total</u>     | <u>Per Diem</u>   | <u>Total</u>     |
| <u>Revenues</u>    |                     |                   |                 |                  |                   |                  |
| Medicaid FFS/MC    | \$191.00            | \$1,144,258       | \$174.52        | \$1,124,800      | \$174.52          | \$1,124,800      |
| Medicare FFS/MC    | \$321.24            | \$88,021          | \$450.11        | \$401,500        | \$454.15          | \$405,100        |
| Commercial FFS     | \$0.00              | \$0.00            | \$350.19        | \$555,400        | \$353.47          | \$560,600        |
| Private Pay/Other  | \$270.49            | \$782,542         | \$350.25        | \$347,100        | \$350.25          | \$350,700        |
| Other              |                     | \$466             |                 | \$29,800         |                   | \$30,600         |
| Total Revenues     |                     | \$2,015,287       |                 | \$2,458,600      |                   | \$2,471,800      |
| <u>Expenses</u>    |                     |                   |                 |                  |                   |                  |
| Operating          | \$219.65            | \$1,986,534       | \$198.42        | \$1,967,100      | \$198.47          | \$1,967,600      |
| Capital            | \$6.89              | \$62,017          | \$24.68         | \$244,700        | \$24.37           | \$240,586        |
| Total Expenses     | \$226.54            | \$2,048,551       | \$223.10        | \$2,211,800      | \$222.83          | \$2,208,186      |
| Net Income (Loss)  |                     | <u>(\$33,264)</u> |                 | <u>\$246,800</u> |                   | <u>\$263,614</u> |
| Utilization (days) |                     | 9,158             |                 | 9,914            |                   | 9,914            |
| Max days           |                     | 10,220            |                 | 10,220           |                   | 10,220           |
| Utilization %      |                     | 89.61%            |                 | 97.00%           |                   | 97.00%           |

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

- Governmental payor rates for the Current Year reflect Fee for Service (FFS) reimbursement, whereas the Year One and Year Three rates reflect anticipated Managed Care (MC) payments. The Medicaid MC rate is projected based on the reimbursement methodology under statewide pricing with the FFS rate as benchmark. The Medicare MC rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2016 increased by 2% per annum for inflation. Private and Other rates are projected based on similar facilities in the same geographical area and increased by 2.5% per annum for inflation.
- The applicant projects no staff reductions.
- The submitted budget projects \$246,800 of net income in Year One after the change in ownership with an occupancy level at 97% (a fill level of 27 beds). Bed occupancy is currently at 25 filled beds and given that the facility is very small, filling and additional 2 beds appears attainable. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.
- Utilization by payor source during the first year after the change in operator is as follows:

| <u>Payor</u>      | <u>Current</u> | <u>Year One</u> | <u>Year Three</u> |
|-------------------|----------------|-----------------|-------------------|
| Medicaid FFS/MC   | 65.42%         | 65.00%          | 65.00%            |
| Medicare FFS/MC   | 2.99%          | 9.00%           | 9.00%             |
| Commercial FFS    | 0%             | 16.00%          | 16.00%            |
| Private Pay/Other | 31.59%         | 10.00%          | 10.00%            |

## Capability and Feasibility

The overall purchase price for the RHC operations and real estate is \$950,000 to be allocated between the operations and realty at closing. The realty entity will finance the purchase price via members' equity of \$312,500 and a \$637,500 bank loan, at the above stated terms.

Working capital requirements are estimated at \$368,633 based on two (2) months of first year expenses. The working capital requirement will be met with \$368,633 in members' equity, apportioned equivalent to their ownership percentages. BFA Attachment A is the personal net worth statements of the proposed members of AGA 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. Giorgio Mayer has provided an affidavit stating

he is willing to contribute personal resources disproportionate to his ownership interest to meet all equity requirements.

BFA Attachment C is a summary of Baird Nursing Home's 2015-2017 certified financial statements. As shown, the entity had an average negative working capital position of \$143,221; average positive net asset position of \$64,867; and average operating income of \$7,896.

BFA Attachment D is the pro forma balance sheet of AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center, which indicates a positive members' equity of \$363,250 as of the first day of operations.

BFA Attachments E and F are, respectively, the percentage ownership and financial summaries of all proposed members NYS affiliated nursing homes. The applicant indicated that the affiliated facilities that incurred net operating losses were due to the write-off of bad debt to cleanup old receivables. The affiliated facilities with negative working capital are improving and have no issues meeting their financial obligations. The most prominent negative working capital issue is Gold Crest Care Center, which stems from a balloon payment of \$10.9M on their mortgage being classified as "current" in 2016 because it came due in 2017. The mortgage was re-financed in March 2018. Affinity Skilled Living and Rehabilitation Center's negative working capital issue is due to their writing off bad debts and having more than \$2M owed from appeals not recorded on their financial statements.

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 AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center |
| BFA Attachment B | Proposed Ownership of the Operations and Real Property  |
| BFA Attachment C | Financial Summary – Baird Nursing Home for period 1/1/2015 – 12/31/2017   |
| BFA Attachment D | Pro Forma Balance Sheet of AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center                          |
| BFA Attachment E | All proposed owner's affiliated NYS RHCs and ownership percentages  |
| BFA Attachment F | Financial Summary - Affiliated nursing homes for the period 1/1/2015 – 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 11th day of October 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 AGA Operating LLC as the new operator of the 28 bed residential health care facility located at 2150 St. Paul Street, Rochester, currently operated as Baird 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:

181219 E

AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Assignment Agreement to the Asset Purchase (operations) and Sale of Real Property (realty) Agreements, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a photocopy of the applicant's executed Assignment to Asset Purchase Agreement and Agreement for Sale of Real Property, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of documentation that the current operator has completed the work necessary to resolve AER waiver 181W064.

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 # 181050-E  
 Neconset Operating LLC d/b/a The Hamlet Rehabilitation  
 and Healthcare Center at Nesconset

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

**County:** Suffolk  
**Acknowledged:** January 26, 2018

**Executive Summary**

**Description**

Nesconset Operating LLC, a New York limited liability company, requests to be established as the new operator of Nesconset Center for Nursing and Rehabilitation, a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 100 Southern Boulevard, Nesconset (Suffolk County). The RHCF operates two off-site Adult Day Health Care Programs (ADHCPs) in Suffolk County, a 90-registrant ADHCP located at 575 Clayton Street in Central Islip and a 75-registrant ADHCP located at 45 Rocky Point Road in Middle Island, which are also part of this change in ownership request. There will be no change in beds or services provided. Upon approval by the Public Health and Health Planning Council (PHHPC), the applicant will operate the facility under the name The Hamlet Rehabilitation and Healthcare Center at Nesconset.

On September 1, 2017, Nesconset Acquisition LLC, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Nesconset Operating LLC for the sale and acquisition of the operating interests of the RHCF and the two ADHCPs for a purchase price of \$1,500,000. In a separate transaction that closed on January 19, 2018, Nesconset NC Realty, LLC entered into a Real Estate Purchase Agreement (REPA) with Nesconset Property NY LLC for the sale and acquisition of the real property interests of the skilled nursing facility. The applicant will lease the premises from Nesconset Property NY LLC. There is a relationship between Nesconset Operating LLC

and Nesconset Property NY LLC in that the entities have identical membership.

Concurrent with the RHCF real property transaction, the ADHCP real property owners, Islip DC Realty, LLC (Central Islip site) and MDDC Realty, LLC (Middle Island site) entered into REPAs with 575 Clayton Street Realty LLC and 45 Rocky Point Realty LLC, respectively, for the sale and acquisition of the real property associated with the ADHCP sites. The applicant will lease the Central Islip facility from 575 Clayton Street Realty LLC and the Middle Island facility from 45 Rocky Point LLC. There is a relationship between Nesconset Operating LLC, 575 Clayton Street Realty LLC and 45 Rocky Point Realty LLC in that the entities have identical membership.

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

| Current Operator<br>Nesconset Acquisition LLC |        |
|---|--------|
| Members                                       | %      |
| Anupadevi Lamba                               | 33.33% |
| Smita Lodha                                   | 33.33% |
| Robert Heppenheimer                           | 33.34% |

| Proposed Operator<br>Nesconset Operating LLC |       |
|--|-------|
| Members                                      | %     |
| Neil Einhorn*                                | 43.5% |
| Mark Friedman*                               | 43.5% |
| Yossie Zucker                                | 5.0%  |
| Akiva Rudner                                 | 4.0%  |
| Steven Sax                                   | 4.0%  |

*\*Initial Managing Members*

BFA Attachment B is an organization chart of the operating and realty entities after the proposed change in operator. The applicant members have ownership interest in various New York State RHCFS. BFA Attachment D provides the ownership interests and financial summaries of the proposed members' affiliated RHCFS.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Waters Edge at Port Jefferson for Rehabilitation and Nursing (CON 181366) and Glengariff Health Care Center (CON 181367).

OPCHSM Recommendation  
Contingent Approval

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

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. 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 proposal. The purchase price for the operations is \$1,500,000 and will be met with equity from the proposed members of Nesconset Operating LLC. The projected Year One budget is as follows:

|             | <u>RHCF</u>         | <u>ADHCP</u>       | <u>Total</u>        |
|-------------|---------------------|--------------------|---------------------|
| Revenues    | \$26,501,200        | \$8,087,500        | \$34,588,700        |
| Expenses    | <u>\$31,075,111</u> | <u>\$1,613,189</u> | <u>\$32,688,300</u> |
| Gain/(Loss) | (\$4,573,911)       | \$6,474,311        | \$1,900,400         |

## 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 executed lease agreements for the RHCF and the two ADHCP facilities, acceptable to the Department of Health. [BFA]
2. Submission of executed Billing and Support Services Agreement, Accounts Management Agreement and Administrative Services Agreement, acceptable to the Department of Health. [BFA]
3. 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)
4. 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)
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. (RNR)
6. Submission of a photocopy of the Operating Agreement of Nesconset Operating LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Nesconset Operating LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the facility lease, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the Real Estate Purchase Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the Articles of Organization of Nesconset Property NY LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the Operating Agreement of Nesconset Property NY LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Nesconset Acquisition, 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]

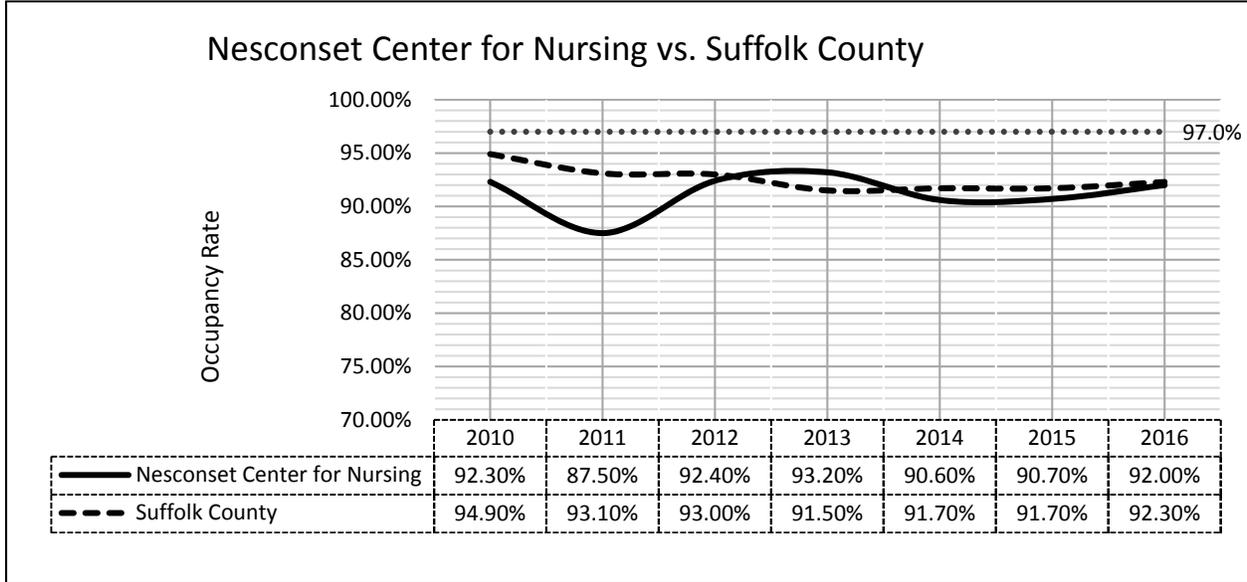
Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis

The planning optimum for occupancy is 97% in New York State. The overall occupancy was 95.9% for Suffolk County and 92% for Nesconset Center for Nursing and Rehabilitation for the latest certified year of data.



## 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.

Nesconset Center for Nursing and Rehabilitation's Medicaid admissions rate for 2015 (16.2%) was below Suffolk County's threshold of 18.4%. In 2016 Nesconset Center for Nursing and Rehabilitation Medicaid admissions rate of 15% was also below the County's threshold of 18.9%.

## Conclusion

There will be no change to beds or services in Suffolk County through completion of this project.

## Recommendation

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

## Program Analysis

### Facility Information

|                   | <b>Existing</b>                                 | <b>Proposed</b>   |
|-------------------|---|---|
| Facility Name     | Nesconset Center for Nursing and Rehabilitation | The Hamlet Rehabilitation and Nursing Center at Nesconset   |
| Address           | 100 Southern Boulevard<br>Nesconset, NY         | Same  |
| RHCF Capacity     | 240   | Same  |
| ADHCP Capacity    | 2 offsite programs<br>(90 and 75 registrants)   | Same  |
| Type of Operator  | LLC   | LLC   |
| Class of Operator | Proprietary                                     | Proprietary   |
| Operator          | Nesconset Acquisition, LLC                      | Nesconset Operating, LLC<br>Mark Friedman* 43.50 %<br>Neal Einhorn* 43.50%<br>Yossi Zucker 5%<br>Akiva Rudner 4%<br>Steven Sax 4%<br><br><i>*Managing Members</i> |

### Character and Competence - Background

#### Facility Reviewed

|  |                       |
|--|-----------------------|
| Sans Souci Rehabilitation & Nursing Center                           | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center                       | 07/2012 to present    |
| St. James Rehabilitation and Health Care Center                      | 08/2012 to present    |
| The Grand Pavilion for Rehab and Nursing at Rockville Center         | 08/2012 to present    |
| The Riverside  | 08/2013 to present    |
| Cortladt Healthcare  | 03/2014 to present    |
| The Emerald Peak Rehab and Nursing Center                            | 03/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Center        | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center            | 02/2017 to present    |
| Crown Center for Nursing and Rehabilitation                          | 01/2015 to 8/2016     |
| The Paramount at Somers Rehab and Nursing Center                     | 01/2018 to present    |
| Beeghly Oaks Center for Rehab and Healing(OH)                        | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH)                       | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care (OH)             | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation and Healing (OH)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH)                   | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL)                    | 03/2016 to present    |
| Bristol at Tampa Rehabilitation and Nursing Center (FL)              | 06/2017 to present    |
| Encore at Boca Raton Rehabilitation and Nursing Center (FL)          | 01/2018 to present    |
| Palmetto Sub- Acute Care Center (FL)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ)                              | 02/2015 to present    |
| Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN) | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN)              | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN)             | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing (TN)                   | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN)   | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA)                 | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA)             | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA)         | 01/2014 to present    |

### **Individual Background Review**

**Mark Friedman** discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

|  |                       |
|--|-----------------------|
| Sans Souci Rehab & Nursing Center (33%)                                  | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                   | 07/2012 to present    |
| Livingston Hills Nursing & Rehab   | 05/2006 to 9/2013     |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                      | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                     | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)            | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                 | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                  | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)        | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)    | 01/2018 to present    |
| Palmetto Sub-Acute Care Center(FL) (40%)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                         | 02/2015 to present    |
| Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)            | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)            | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)            | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                  | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)               | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)           | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)    | 01/2014 to present    |
| Passionate Home Care, LLC  | Pending               |

**Neal Einhorn** discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

|   |                       |
|---|-----------------------|
| Sans Souci Rehab & Nursing Center (25%)                                       | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                        | 07/2012 to present    |
| Livingston Hills Nursing & Rehab  | 05/2006 to 09/2013    |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                           | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                          | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)                 | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)                    | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                      | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                       | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)             | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)         | 12/2017 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                              | 02/2015 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)                 | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                       | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)                    | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)                | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)         | 01/2014 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (40%)              | 01/2018 to present    |
| Palmetto Sub-Acute Care Center (FL) (40%)                                     | 02/2018 to present    |
| Passionate Home Care, LLC   | Pending               |

**Yossie Zucker** is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

|  |                    |
|--|--------------------|
| The Willows at Ramapo Rehabilitation and Nursing Center (2%)     | 07/2012 to present |
| St. James Rehabilitation and Healthcare Center (3%)              | 08/2012 to present |
| The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)   | 08/2012 to present |
| The Riverside (2%)   | 08/2013 to present |
| Cortlandt Healthcare (2%)  | 03/2014 to present |
| The Emerald Peek Rehab & Nursing Center (2%)                     | 03/2016 to present |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)  | 07/2016 to present |
| The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)     | 02/2017 to present |
| The Paramount at Somers Rehab and Nursing Center (5%)            | 01/2018 to present |
| Beeghly Oaks Center for Rehabilitation and Healing (5%)          | 10/2016 to present |
| Oasis Center for Rehabilitation and Healing (5%)                 | 10/2016 to present |
| Heritage Center for Rehabilitation and Specialty Care (5%)       | 10/2016 to present |
| Jupiter Rehabilitation and Healthcare Center (5%)                | 10/2016 to present |
| Gallitan Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Quality Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| Trevecca Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Bethany Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| The Bristol at Tampa Rehabilitation and Nursing Center (5%)      | 06/2017 to present |
| Harmony Center for Rehabilitation and Healing (5%)               | 07/2017 to 04/2018 |
| Hospitality Center for Rehabilitation and Healing (5%)           | 02/2014 to 04/2018 |
| Signature Healthcare of Nashville Rehabilitation & Wellness (5%) | 12/2017 to present |
| The Encore at Boca Raton Rehabilitation and Nursing Center (5%)  | 01/2018 to present |
| Palmetto Sub-Acute Care Center (5%)                              | 02/2018 to present |

**Akiva Rudner** is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

|   |                       |
|---|-----------------------|
| St. James Rehabilitation & Healthcare Center (1%)                       | 08/2012 to present    |
| Crown Center for Nursing and Rehab (2.50%)                              | 01/2015 to 8/2016     |
| The Emerald Peek Rehabilitation & Nursing Center (2%)                   | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)         | 07/2016 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)            | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)         | 10/2016 to April 2018 |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                   | 10/2016 to present    |
| Hospitality Center for Rehab and Healing (OH) (4%)                      | 02/2014 to 4/2018     |
| Harmony Center for Rehabilitation and Healing (4.00 %)                  | 07/2017 to 4/2018     |
| Jupiter Rehabilitation and Healthcare Center (FL) (4%)                  | 10/2016 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)    | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                    | 02/2018 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)             | 06/2017 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%) | 12/2017 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)          | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                   | 01/2018 to present    |

**Steven Sax** has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

|  |                       |
|--|-----------------------|
| St. James Rehabilitation and Healthcare Center (3%)                  | 08/2012 to present    |
| Cortlandt Healthcare (1%)  | 03/2014 to present    |
| The Emerald Peek Rehab & Nursing Center (2%)                         | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)      | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)       | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                | 01/2018 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)         | 10/2016 to present    |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)      | 10/2016 to April 2018 |
| The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)          | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| Trebecca Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)          | 06/2017 to present    |
| Harmony Center for Rehabilitation and Healing (4%)                   | 07/2017 to 4/2018     |
| Hospitality Center for Rehab and Healing (OH) (4%)                   | 02/2014 to 4/2018     |
| Nashville Center for Rehabilitation and Healing (TN) (4%)            | 12/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%) | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                 | 02/2018 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (4%)      | 01/2018 to present    |

#### Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

*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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$9,500 for a Survey on February 17, 2017.

*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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$3,214 for a Survey on December 8, 2016.

*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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of \$4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of \$35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined \$5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

*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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of \$4,428 in relation to the same 7/30/16 survey.
- The facility was fined \$9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

*An assessment of the underlying causes of the above enforcements determined 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(s).*

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

- The facility incurred a civil money penalty of \$48, 655 on June 4, 2017.

*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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

#### Quality Review

| <b>Provider Name</b>                              | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Sans Souci Rehabilitation and Nursing Center      | 10/2009                | ****           | ***                      | *****                  | **              | 3                   |
| The Willows at Ramapo Rehab and Nursing Center    | 07/2012                | ***            | ***                      | *****                  | *               | 5                   |
| The Grand Pavilion for R & N at Rockville Centre  | 08/2012                | **             | **                       | *****                  | *               | 5                   |
| St James Rehab & Health Care Center               | 08/2012                | **             | ***                      | ****                   | *               | 4                   |
| The Riverside                                     | 08/2013                | **             | **                       | *****                  | *               | 4                   |
| Cortlandt Healthcare LLC                          | 03/2014                | ***            | ***                      | ****                   | ***             | 4                   |
| The Emerald Peek Rehab and Nursing Center         | 04/2016                | ****           | ***                      | *****                  | **              | 3                   |
| The Enclave at Port Chester Rehab and Nursing Ctr | 07/2016                | *****          | ****                     | *****                  | **              | 4                   |
| The Chateau at Brooklyn Rehab & Nursing Ctr       | 02/2017                | ****           | ***                      | *****                  | **              | 2                   |
| The Paramount at Somers Rehab and Nursing Center  | 1/2018                 | ****           | ****                     | ****                   | **              | 5                   |
| <b>Ohio</b>                                       |                        |                |                          |                        |                 |                     |
| Beeghly Oaks Center for Rehabilitation & Healing  | 11/2014                | *              | *                        | **                     | **              | N/A                 |

| <b>Provider Name</b>                                | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Oasis Center for Rehab and Healing                  | 11/2014                | *              | *                        | ***                    | **              | N/A                 |
| <b>Florida</b>                                      |                        |                |                          |                        |                 |                     |
| Jupiter Rehabilitation and Healthcare Center        | 03/2016                | ***            | **                       | *****                  | ***             | N/A                 |
| Bristol at Tampa Rehab and Nursing Center LLC       | 06/2017                | *****          | ***                      | *****                  | ****            | N/A                 |
| Encore at Boca Raton Rehabilitation and Nursing Ce  | 1/2018                 | **             | *                        | *****                  | *****           | N/A                 |
| Palmetto Subacute Care Center                       | 02/2018                | *****          | *****                    | *****                  | *               | N/A                 |
| <b>New Jersey</b>                                   |                        |                |                          |                        |                 |                     |
| Chatham Hills Subacute Care Center                  | 02/2015                | ***            | **                       | *****                  | ***             | N/A                 |
| <b>Tennessee</b>                                    |                        |                |                          |                        |                 |                     |
| Gallatin Health Care Center, LLC                    | 07/2016                | **             | *                        | *****                  | **              | N/A                 |
| Quality Center for Rehabilitation and Healing LLC   | 07/2016                | ***            | ****                     | ***                    | *               | N/A                 |
| Trevecca Center for Rehabilitation and Healing LLC  | 03/2017                | *****          | ****                     | *****                  | ***             | N/A                 |
| Bethany Center for Rehabilitation and Healing LLC   | 03/2017                | ****           | ***                      | *****                  | ***             | N/A                 |
| *Signature Healthcare of Nashville Rehab & Wellness | 12/2017                | **             | *                        | *****                  | ***             | N/A                 |
| <b>Pennsylvania</b>                                 |                        |                |                          |                        |                 |                     |
| Forbes Center for Rehab and Healthcare LLC          | 10/2011                | *              | *                        | ****                   | ***             | N/A                 |
| Platinum Ridge Ctr for Rehab & Healing              | 01/2014                | **             | **                       | *                      | ****            | N/A                 |
| Squirrel Hill Ctr for Rehabilitation and Healing    | 02/2014                | **             | **                       | ***                    | ***             | N/A                 |

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicates that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed APA for the operating interests of the RHCF and the two ADHCPs. The agreement will close upon PHHPC approval of this CON. The terms are as follows:

|                        |  |
|------------------------|--|
| Date:                  | September 1, 2017  |
| Seller:                | Nesconset Acquisition, LLC   |
| Purchaser:             | Nesconset Operating LLC  |
| Effective Date:        | 11/1/2017, the date of an executed employment agreement between proposed operator Neil Einhorn and Nesconset Acquisition, LLC.   |
| Purchased Assets:      | All rights, title and interest in the business assets lien free. The assets include: the business and operation of a 240-bed nursing home at 100 Southern Blvd, Nesconset ("Facility") and the ADHCPs at 575 Clayton Street, Central Islip, and 45 Rocky Point Road, Middle Island, leasehold improvements, furniture, fixtures and equipment, leases, inventory, supplies, personal property, all Assumed Contracts, resident funds held in trust, intellectual and information technology property, books and records, and all accounts receivable relating to services rendered after the Effective Date. |
| Excluded Assets:       | Retroactive rate increases for services prior to the APA Effective Date, accounts receivable prior to the Effective Date, proceeds of the Universal Settlement payable to the Facility, securities, real estate tax funds prior to closing date and the assets in the 401(k) and deferred compensation plans.  |
| Assumed Liabilities:   | Buyer will assume at Closing all ongoing liabilities and obligations of Seller relating to the period on or after the Effective Date with respect to the purchased assets.   |
| Purchase Price:        | \$1,500,000 cash paid at closing.  |
| Additional Provisions: | Monthly escrow payments if transactions covered by the APA have not been consummated within 16 months of CON application filing, up to a maximum of \$700,000, to be applied towards payment of the Purchase Price at closing.   |

The purchase price of the operations will be funded by equity from the members of Nesconset Operating LLC. BFA Attachment A is the net worth summary of the members of Nesconset Operating, LLC, which reveals sufficient resources to meet the equity requirement overall. Mark Friedman, Neil Einhorn and Yossie Zucker have also provided affidavits indicating that they are willing to contribute resources disproportionate to their membership interests in the operating entity to fund the equity requirement.

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

### Lease Agreements

Draft leases have been submitted for the RHCF and ADHCP real properties. The terms are as follows:

|             |   |
|-------------|---|
| Premises:   | 240-bed Skilled Nursing Facility located at 100 Southern Boulevard, Nesconset, NY 11767 |
| Landlord:   | Nesconset Property NY LLC   |
| Lessee:     | Nesconset Operating LLC   |
| Term:       | Five (5) years with two 5-year renewal options  |
| Rent:       | \$4,250,000/year  |
| Provisions: | Taxes, insurance, utilities, maintenance/repairs, replacement reserve                   |

|             |  |
|-------------|--|
| Premises:   | 90-registrant ADHCP located at 575 W. Lowell Ave a/k/a 575 Clayton Street, Central Islip, NY 11722 |
| Landlord:   | 575 Clayton St Realty LLC  |
| Lessee:     | Nesconset Operating LLC  |
| Term:       | Five (5) years with two 5-year renewal options   |
| Rent:       | \$473,600 for year 1 and increasing to \$775,273 per year by year 3                                |
| Provisions: | Taxes, insurance, utilities, maintenance/repairs, replacement reserve                              |

|             |   |
|-------------|---|
| Premises:   | 75-registrant ADHCP located at 45 Rocky Point Road, Middle Island, NY 11953 |
| Landlord:   | 45 Rocky Point Realty LLC   |
| Lessee:     | Nesconset Operating LLC   |
| Term:       | Five (5) years with two 5-year renewal options                              |
| Rent:       | \$445,589/ for year 1 and increasing to \$775,273 per year by year 3        |
| Provisions: | Taxes, insurance, utilities, maintenance/repairs, replacement reserve       |

The lease arrangements for the RHCf and the two ADHCPs are non-arm's length agreements in that the proposed operating entity and the real property owners have identical members. The applicant has submitted an affidavit attesting to the relationship between Nesconset Operating LLC and the three lessor entities.

#### Accounts Management Agreement

The applicant has submitted a draft Accounts Management Agreement. The terms are as follows:

|                    |   |
|--------------------|---|
| Company:           | Nesconset Operating LLC   |
| Contractor:        | CareRite Services, LLC  |
| Term:              | No specified end date   |
| Compensation:      | \$15,000/month  |
| Services Provided: | Accounts payable, payroll, and cash management; monthly general ledger, trial balance and financial statements. |

The Accounts Management Agreement is non-arm's length in that CareRite Services LLC and Nesconset Operating LLC share common ownership. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

#### Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement. The terms are as follows:

|                    |   |
|--------------------|---|
| Company:           | Nesconset Operating LLC   |
| Contractor:        | CareRite Centers LLC  |
| Term:              | Five (5) year term with subsequent two (2) year term renewal options.   |
| Compensation:      | Actual costs and expenses incurred by CareRite. Cost that cannot be directly attributed will be priced on a per bed allocation of CareRite's direct and indirect costs related to such services. Estimated annual cost = \$344,000. |
| Services Provided: | Accounts payable, payroll, and cash management; monthly general ledger, trial balance and financial statements.   |

The Administrative Services Agreement is non-arm's length in that CareRite Centers LLC and Nesconset Operating LLC share common ownership. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

## Billing and Support Services Agreement

|                    |   |
|--------------------|---|
| Company:           | Nesconset Operating LLC   |
| Contractor:        | Comprehensive Healthcare Solutions, LLC   |
| Term:              | No specified end date   |
| Compensation:      | \$15,000/month billing fee plus \$2,500/month software lease cost.                                |
| Services Provided: | Billing support, including ongoing software support, server hosting of software and data storage. |

Comprehensive Healthcare Solutions, LLC has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

## Operating Budget

The applicant provided the current year (2017) and first and third year of operations, in 2018 dollars, summarized below:

| <b>RHCF<br/>(240 beds)</b> | <u>Current Year</u> |                      | <u>Year One</u> |                      | <u>Year Three</u> |                      |
|----------------------------|---------------------|----------------------|-----------------|----------------------|-------------------|----------------------|
|                            | <u>Per Diem</u>     | <u>Total</u>         | <u>Per Diem</u> | <u>Total</u>         | <u>Per Diem</u>   | <u>Total</u>         |
| <u>Revenues</u>            |                     |                      |                 |                      |                   |                      |
| Medicaid                   | \$294.82            | \$18,804,134         | \$291.45        | \$20,803,300         | \$291.45          | \$20,803,300         |
| Medicare                   | \$687.79            | \$4,100,578          | \$680.03        | \$1,733,400          | \$680.03          | \$1,733,400          |
| Commercial                 | \$447.49            | \$2,603,000          | \$325.06        | \$2,762,000          | \$325.06          | \$2,762,000          |
| Private Pay                | \$357.93            | \$1,422,785          | \$460.06        | \$1,172,700          | \$460.06          | \$1,172,700          |
| Other*                     |                     | <u>\$380,516</u>     |                 | <u>\$29,800</u>      |                   | <u>\$30,600</u>      |
| Total Revenues             |                     | \$27,311,016         |                 | \$26,501,200         |                   | \$26,502,000         |
| <u>Expenses</u>            |                     |                      |                 |                      |                   |                      |
| Operating                  | \$440.73            | \$35,052,110         | \$314.81        | \$26,750,111         | \$307.71          | \$26,147,465         |
| Capital                    | <u>\$27.03</u>      | <u>\$2,149,699</u>   | <u>\$50.90</u>  | <u>\$4,325,000</u>   | <u>\$50.90</u>    | <u>\$4,325,000</u>   |
| Total Expenses             | \$467.76            | \$37,201,809         | \$365.71        | \$31,075,111         | \$358.61          | \$30,472,465         |
| Net Income/Loss            |                     | <u>(\$9,890,793)</u> |                 | <u>(\$4,573,911)</u> |                   | <u>(\$3,970,465)</u> |
| Patient days               |                     | 79,532               |                 | 84,973               |                   | 84,973               |
| % Occupancy                |                     | 90.8%                |                 | 97.0%                |                   | 97.0%                |

\* Other income includes cash discounts/purchases, TV income, bad debt recoveries, respite care and other miscellaneous revenue.

Reported revenues and direct expenses for the two ADHCPs are as follows:

| <b>ADHCP<br/>(165 slots)</b> | <u>Current Year</u> |                    | <u>Year One</u> |                    | <u>Year Three</u> |                    |
|------------------------------|---------------------|--------------------|-----------------|--------------------|-------------------|--------------------|
|                              | <u>Per Diem</u>     | <u>Total</u>       | <u>Per Diem</u> | <u>Total</u>       | <u>Per Diem</u>   | <u>Total</u>       |
| Total Revenues               | \$184.21            | \$8,307,802        | \$179.32        | \$8,087,500        | \$179.32          | \$8,087,500        |
| <u>Expenses</u>              |                     |                    |                 |                    |                   |                    |
| Operating                    | \$26.75             | \$1,206,365        | \$14.86         | \$694,000          | \$14.86           | \$694,000          |
| Capital                      | <u>\$22.32</u>      | <u>\$1,006,652</u> | <u>\$20.38</u>  | <u>\$919,189</u>   | <u>\$33.76</u>    | <u>\$1,522,535</u> |
| Total Expenses               | \$49.07             | \$2,213,017        | \$35.24         | \$1,613,189        | \$48.62           | \$2,216,535        |
| Net Income                   |                     | <u>\$6,094,785</u> |                 | <u>\$6,474,311</u> |                   | <u>\$5,870,965</u> |
| Utilization (Visits)         |                     | 45,100             |                 | 45,100             |                   | 45,100             |
| % of Capacity                |                     | 87%                |                 | 87%                |                   | 87%                |

Combined revenues and expenses for the RHCF and the two ADHCPs are:

|            | <u>Current Year</u> | <u>Year One</u>     | <u>Year Three</u>   |
|------------|---------------------|---------------------|---------------------|
| Revenues   | \$35,618,818        | \$34,588,700        | \$34,589,500        |
| Expenses   | <u>\$39,414,826</u> | <u>\$32,688,300</u> | <u>\$32,689,000</u> |
| Net Income | (\$3,796,008)       | \$1,900,400         | \$1,900,500         |

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

- Medicaid rates are based on the current reimbursement mechanism under statewide pricing.
- Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2017. Commercial/Private Pay rates are based on 2017 results.
- Operating expense assumptions are based upon the historical experience of the proposed operators, with the elimination of non-recurring charges and implementation of cost containment measures
- Capital expense increases reflect property leases with the new realty owners. Required lease payments cover debt service costs, property taxes, and utilities/maintenance expenses.
- RHCF utilization for 2017 was 90.8%. Self-reported census data as updated August 1, 2018, identified occupancy at 98.8% with only three beds available for admissions. The RHCF's overall utilization is projected at 97%. The applicant intends to increase and maintain occupancy by:
  - Outreach/education program with Senior Planning Services to admit Medicaid-pending patients, enabling more residents to remain in their preferred service area;
  - Implementation of INTERACT (Interventions to Reduce Acute Care Transfers) model, including a congestive heart failure program;
  - Engagement with local physicians, hospitals and community leaders to identify gaps and expand service offerings, leveraging experience of the operators in managing RHCFs; and
  - Integration of palliative care into the care model.
- RHCF utilization by payor source reflects a shift from fee for service (FFS) to managed care (MC) reimbursement and relative growth in Medicaid patient volume:

| <u>Payor</u>      | <u>Current Year</u> | <u>Year One</u> |
|-------------------|---------------------|-----------------|
| Medicare MC       | 0.0%                | 3.0%            |
| Medicare FFS      | 7.5%                | 0.0%            |
| Medicaid MC       | 0.0%                | 84.0%           |
| Medicaid FFS      | 80.2%               | 0.0%            |
| Commercial FFS    | 7.3%                | 10.0%           |
| Private Pay/Other | 5.0%                | 3.0%            |

The ADHCP revenues and expenses assume the following:

- ADHCP visits are 100% Medicaid and projections reflect both the Central Islip and Middle Island sites. Utilization is expected to remain unchanged at 45,100 visits/year. Revenue is forecast to drop by 2.7% due to an expected reduction in the Medicaid reimbursement rates for these services.
- Maximum capacity is 51,754 visits based on a seven-day week with reduced weekend capacity.
- Expense reductions reflect decreases in salaries/wages and employee benefits, offset in part by higher rent expenses.
- ADHCP expenses relating to transportation and other operating items are recorded under the RHCF totals above.

#### Capability and Feasibility

There are no project costs associated with this proposal. The purchase price for the operating interests in the RHCF and ADHCPs is \$1,500,000, which will be funded from members' equity. The working capital requirement of \$5,488,000 based on two months of first year expenses will be provided from proposed members' equity. BFA Attachment A, net worth of the proposed members of Nesconset Operating LLC, reveals sufficient resources exist for stated levels of equity. BFA Attachment E is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$7,460,534 for the operation.

Total expenses are expected to decline by 17% or \$6,726,526 in Year One based largely due to reductions in management and administrative salaries, employee benefit costs, purchased and

contracted services, and administrative costs related to the elimination of a third-party back-office services contract. Current year expenses also include a one-time employee benefit accrual adjustment and non-recurring legal and other fees related to a prior proposed sale of the entity. The projected elimination of 21.7 FTEs in Year One involves administrative staff only and will not impact resident care staffing. The new owners operate multiple facilities with centralized management, administration and purchasing and expect to deliver efficiencies that will drive cost reductions and improve performance.

The submitted budget indicates net income of approximately \$1,900,400 in the first year following the transfer of ownership. BFA Attachment F is the budget sensitivity analysis based on the RHCf utilization of 90.8% as of December 31, 2017, which shows that budgeted RHCf revenues would decrease by \$1,724,711 resulting in net operating income of \$175,689 in the first full year of operations. Current utilization at the facility (self-reported to the Department) was 98.8% as of August 1, 2018, which supports the applicant's 97% occupancy objective as projected. As previously noted, the applicant has planned initiatives to increase utilization and help maintain occupancy going forward. The budget appears reasonable.

BFA Attachment C, financial summary of Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation LLC indicates that the facility generated negative working capital and negative net assets in 2016 and 2017 and through the period ended 5/31/18. The facility also reported net operating losses of \$3,671,966 for 2016 and \$3,796,008 in 2017. The negative working capital included one-time legal expenses that have been settled and liabilities resulting from confessions of judgment in January 2015 and December 2016 with 1199 SEIU. In 2018, the facility began a construction project and recorded approximately \$4M in associated debt as a short-term liability. This liability will be reclassified and amounts recognized as long-term in accordance with the multi-year construction period for the project. Net operating losses stem from declining utilization rates and staffing costs in excess of requirements to sustain projected utilization. Additionally, 2017 operations were negatively impacted by higher rent costs and a one-time increase in employee benefit escrow accruals. The current operators have taken steps to improve case mix and bring costs in line with budgeted occupancy, and the proposed operators will work to increase utilization while continuing to streamline costs.

BFA Attachment D, financial summary of the proposed members affiliated RHCfs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018 or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of \$2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only \$1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest-bearing note payable of \$1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.
- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

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## Attachments

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|                  |   |
|------------------|---|
| BFA Attachment A | Nesconset Operating LLC Proposed Members Net Worth                  |
| BFA Attachment B | Organizational Chart  |
| BFA Attachment C | Financial Summary, Nesconset Center for Nursing and Rehabilitation. |
| BFA Attachment D | Affiliated Residential Health Care Facilities                       |
| BFA Attachment E | Pro Forma Balance Sheet   |
| BFA Attachment F | Budget Sensitivity Analysis based on 2017 Utilization               |

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 11th day of October 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 Nesconset Operating LLC as the new operator of the 240-bed residential health care facility located at 100 Southern Boulevard, Nesconset currently operated as Nesconset Center for Nursing and Rehabilitation, 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:

181050 E

Nesconset Operating LLC d/b/a The Hamlet  
Rehabilitation and Healthcare Center at  
Nesconset

APPROVAL CONTINGENT UPON:

1. Submission of executed lease agreements for the RHCF and the two ADHCP facilities, acceptable to the Department of Health. [BFA]
2. Submission of executed Billing and Support Services Agreement, Accounts Management Agreement and Administrative Services Agreement, acceptable to the Department of Health. [BFA]
3. 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)
4. 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)
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. (RNR)
6. Submission of a photocopy of the Operating Agreement of Nesconset Operating LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Nesconset Operating LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the facility lease, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the Real Estate Purchase Agreement, which is acceptable to the Department. [CSL]

10. Submission of a photocopy of the Articles of Organization of Nesconset Property NY LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the Operating Agreement of Nesconset Property NY LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Nesconset Acquisition, 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 # 181366-E**  
**Port Jefferson Operating, LLC d/b/a Waters Edge Rehab & Nursing at Port Jefferson**

**Program:** Residential Health Care Facility      **County:** Suffolk  
**Purpose:** Establishment      **Acknowledged:** May 23, 2018

**Executive Summary**

**Description**

Port Jefferson Operating, LLC, a New York limited liability company, is requesting approval to be established as the new operator of Waters Edge at Port Jefferson for Rehabilitation and Nursing (Waters Edge), a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 150 Dark Hollow Road, Port Jefferson (Suffolk County). Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the entity will do business as Waters Edge Rehab & Nursing Center at Port Jefferson. There will be no change in beds or services provided.

On March 29, 2018, Glen-Haven Residential Health Care Facilities, Inc. (Glen-Haven), the current operator of the RHCF, entered into an Operations Transfer Agreement (OTA) with Port Jefferson Operating, LLC for the acquisition of the operating interests of the RHCF for a purchase price of \$10. Concurrently, Glen-Haven entered into an Asset Purchase Agreement (APA) with Port Jefferson Property NY, LLC for the sale and acquisition of certain assets of the corporation, excluding the real property, for a purchase price of \$13,250,000. Simultaneously, Glen-Haven Holding Corp., the real property owner, entered into a Real Estate Purchase Agreement (REPA) with Port Jefferson Property NY, LLC for the sale and acquisition of the real property for a purchase price of \$7,000,000. The OTA, APA and REPA will close simultaneously upon PHHPC approval if this application. There is a relationship between Port Jefferson Operating, LLC and Port Jefferson Property NY, LLC in that the entities have identical membership. Upon approval of

the change in ownership of the operating interests, Port Jefferson Operating, LLC will lease the premises from Port Jefferson Property NY, LLC.

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

| <u>Current Operator</u>                            |     |
|--|-----|
| Glen-Haven Residential Health Care Facilities Inc. |     |
| <u>Members</u>                                     |     |
| Veena Ahuja  | 25% |
| Sanjay Ahuja                                       | 25% |
| Namita Mohan                                       | 25% |
| Vanita Mudgil                                      | 25% |

| <u>Proposed Operator</u>      |       |
|-------------------------------|-------|
| Port Jefferson Operating, LLC |       |
| <u>Members</u>                |       |
| Mark Friedman *               | 43.5% |
| Neal Einhorn *                | 43.5% |
| Yossie Zucker                 | 5.0%  |
| Akiva Rudner                  | 4.0%  |
| Steven Sax                    | 4.0%  |

*\*Managing members*

The proposed members have ownership interest in various New York State RHCFs. BFA Attachment C provides the ownership interest and financial summary of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Glengariff Health Care

Center, a 262-bed RHCf located in Nassau County (CON 181367), and Nesconset Center for Nursing and Rehabilitation, a 240-bed RHCf also located in Suffolk County (CON 181050).

OPCHSM Recommendation  
Contingent Approval

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

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. 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

Port Jefferson Operating, LLC will acquire the RHCf's operations under the terms of the OTA for \$10 to be funded via equity. Under the terms of the REPA and APA, Port Jefferson Property NY, LLC will acquire the RHCf's realty property and certain assets for \$20,250,000 to be funded via \$4,050,000 in equity with the remaining \$16,200,000 to be financed via a loan for a 10-year term, 25-year amortization, and interest at the 5 Year Treasury Rate plus 300 basis points (indicative rate of 5.78% as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest for the loan at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing not be available. There are no project costs associated with this application. The projected budget is as follows:

|            |                   |
|------------|-------------------|
|            | <u>Year One</u>   |
| Revenues   | \$14,616,500      |
| Expenses   | <u>13,681,230</u> |
| Net Income | \$935,270         |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF realty property and certain assets, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an Account Management Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
6. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
8. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

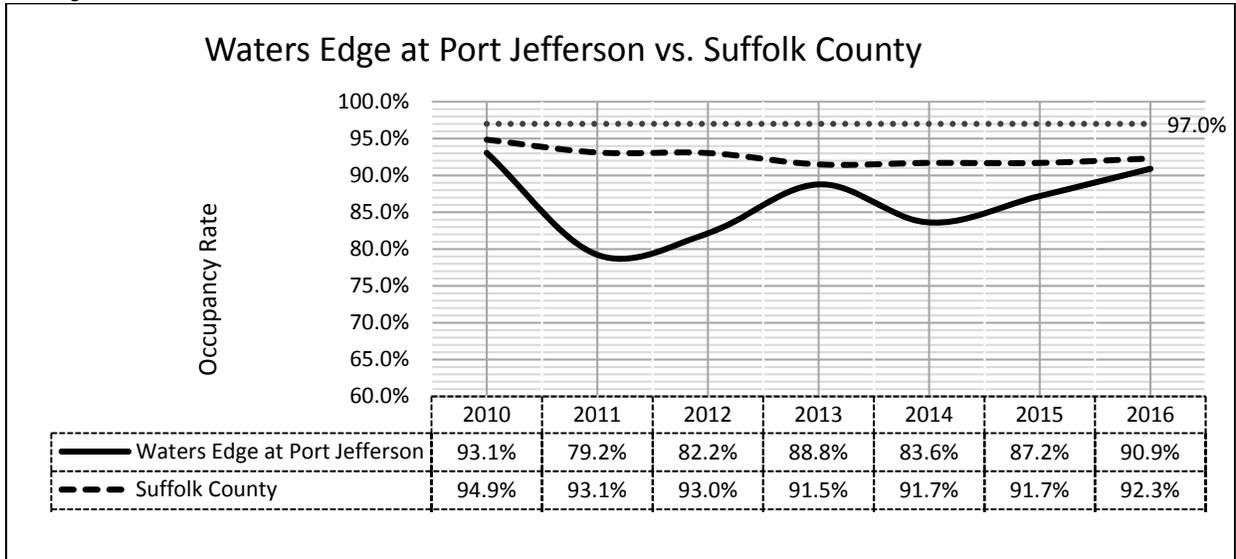
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis



## 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.

Waters Edge's Medicaid admissions rate for 2015, 18.9%, exceed Suffolk County's threshold of 18.4%. In 2016, Waters Edge's Medicaid admissions rate of 23.8% was also above the County's threshold of 18.9%.

## Conclusion

There will be no bed or service changes in Suffolk County 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     | Waters Edge at Port Jefferson for Rehabilitation and Nursing | Waters Edge Rehab & Nursing Center at Port Jefferson   |
| Address           | 150 Dark Hollow Road<br>Port Jefferson, NY 11777             | Same   |
| RHCF Capacity     | 120  | Same   |
| ADHCP Capacity    | 0  | Same   |
| Type of Operator  | Corporation  | LLC  |
| Class of Operator | Proprietary  | Proprietary  |
| Operator          | Glen-Haven Residential Health Care Facilities Inc.           | Port Jefferson Operating, LLC<br>Mark Friedman* 43.50 %<br>Neal Einhorn* 43.50%<br>Yossi Zucker 5%<br>Akiva Rudner 4%<br>Steven Sax 4%<br><br><i>*Managing Members</i> |

### Character and Competence - Background

#### **Facility Reviewed**

|  |                       |
|--|-----------------------|
| Sans Souci Rehabilitation & Nursing Center                           | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center                       | 07/2012 to present    |
| St. James Rehabilitation and Health Care Center                      | 08/2012 to present    |
| The Grand Pavilion for Rehab and Nursing at Rockville Center         | 08/2012 to present    |
| The Riverside  | 08/2013 to present    |
| Cortladt Healthcare  | 03/2014 to present    |
| The Emerald Peak Rehab and Nursing Center                            | 03/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Center        | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center            | 02/2017 to present    |
| Crown Center for Nursing and Rehabilitation                          | 01/2015 to 8/2016     |
| The Paramount at Somers Rehab and Nursing Center                     | 01/2018 to present    |
| Beeghly Oaks Center for Rehab and Healing(OH)                        | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH)                       | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care (OH)             | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation and Healing (OH)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH)                   | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL)                    | 03/2016 to present    |
| Bristol at Tampa Rehabilitation and Nursing Center (FL)              | 06/2017 to present    |
| Encore at Boca Raton Rehabilitation and Nursing Center (FL)          | 01/2018 to present    |
| Palmetto Sub- Acute Care Center (FL)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ)                              | 02/2015 to present    |
| Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN) | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN)              | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN)             | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing (TN)                   | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN)   | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA)                 | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA)             | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA)         | 01/2014 to present    |

### **Individual Background Review**

**Mark Friedman** discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

|  |                       |
|--|-----------------------|
| Sans Souci Rehab & Nursing Center (33%)                                  | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                   | 07/2012 to present    |
| Livingston Hills Nursing & Rehab   | 05/2006 to 9/2013     |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                      | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                     | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)            | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                 | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                  | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)        | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)    | 01/2018 to present    |
| Palmetto Sub-Acute Care Center(FL) (40%)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                         | 02/2015 to present    |
| Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)            | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)            | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)            | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                  | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)               | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)           | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)    | 01/2014 to present    |
| Passionate Home Care, LLC  | Pending               |

**Neal Einhorn** discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

|   |                       |
|---|-----------------------|
| Sans Souci Rehab & Nursing Center (25%)                                       | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                        | 07/2012 to present    |
| Livingston Hills Nursing & Rehab  | 05/2006 to 09/2013    |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                           | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                          | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)                 | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)                    | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                      | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                       | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)             | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)         | 12/2017 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                              | 02/2015 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)                 | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                       | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)                    | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)                | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)         | 01/2014 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (40%)              | 01/2018 to present    |
| Palmetto Sub-Acute Care Center (FL) (40%)                                     | 02/2018 to present    |
| Passionate Home Care, LLC   | Pending               |

**Yossie Zucker** is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

|  |                    |
|--|--------------------|
| The Willows at Ramapo Rehabilitation and Nursing Center (2%)     | 07/2012 to present |
| St. James Rehabilitation and Healthcare Center (3%)              | 08/2012 to present |
| The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)   | 08/2012 to present |
| The Riverside (2%)   | 08/2013 to present |
| Cortlandt Healthcare (2%)  | 03/2014 to present |
| The Emerald Peek Rehab & Nursing Center (2%)                     | 03/2016 to present |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)  | 07/2016 to present |
| The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)     | 02/2017 to present |
| The Paramount at Somers Rehab and Nursing Center (5%)            | 01/2018 to present |
| Beeghly Oaks Center for Rehabilitation and Healing (5%)          | 10/2016 to present |
| Oasis Center for Rehabilitation and Healing (5%)                 | 10/2016 to present |
| Heritage Center for Rehabilitation and Specialty Care (5%)       | 10/2016 to present |
| Jupiter Rehabilitation and Healthcare Center (5%)                | 10/2016 to present |
| Gallitan Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Quality Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| Trevecca Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Bethany Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| The Bristol at Tampa Rehabilitation and Nursing Center (5%)      | 06/2017 to present |
| Harmony Center for Rehabilitation and Healing (5%)               | 07/2017 to 04/2018 |
| Hospitality Center for Rehabilitation and Healing (5%)           | 02/2014 to 04/2018 |
| Signature Healthcare of Nashville Rehabilitation & Wellness (5%) | 12/2017 to present |
| The Encore at Boca Raton Rehabilitation and Nursing Center (5%)  | 01/2018 to present |
| Palmetto Sub-Acute Care Center (5%)                              | 02/2018 to present |

**Akiva Rudner** is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

|   |                       |
|---|-----------------------|
| St. James Rehabilitation & Healthcare Center (1%)                       | 08/2012 to present    |
| Crown Center for Nursing and Rehab (2.50%)                              | 01/2015 to 8/2016     |
| The Emerald Peek Rehabilitation & Nursing Center (2%)                   | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)         | 07/2016 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)            | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)         | 10/2016 to April 2018 |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                   | 10/2016 to present    |
| Hospitality Center for Rehab and Healing (OH) (4%)                      | 02/2014 to 4/2018     |
| Harmony Center for Rehabilitation and Healing (4.00 %)                  | 07/2017 to 4/2018     |
| Jupiter Rehabilitation and Healthcare Center (FL) (4%)                  | 10/2016 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)    | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                    | 02/2018 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)             | 06/2017 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%) | 12/2017 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)          | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                   | 01/2018 to present    |

**Steven Sax** has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

|  |                       |
|--|-----------------------|
| St. James Rehabilitation and Healthcare Center (3%)                  | 08/2012 to present    |
| Cortlandt Healthcare (1%)  | 03/2014 to present    |
| The Emerald Peek Rehab & Nursing Center (2%)                         | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)      | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)       | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                | 01/2018 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)         | 10/2016 to present    |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)      | 10/2016 to April 2018 |
| The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)          | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)          | 06/2017 to present    |
| Harmony Center for Rehabilitation and Healing (4%)                   | 07/2017 to 4/2018     |
| Hospitality Center for Rehab and Healing (OH) (4%)                   | 02/2014 to 4/2018     |
| Nashville Center for Rehabilitation and Healing (TN) (4%)            | 12/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%) | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                 | 02/2018 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (4%)      | 01/2018 to present    |

#### Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

*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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$9,500 for a Survey on February 17, 2017.

*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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$3,214 for a Survey on December 8, 2016.

*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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of \$4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of \$35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined \$5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

*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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of \$4,428 in relation to the same 7/30/16 survey.
- The facility was fined \$9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

*An assessment of the underlying causes of the above enforcements determined 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(s).*

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

- The facility incurred a civil money penalty of \$48, 655 on June 4, 2017.

*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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

#### Quality Review

| <b>Provider Name</b>                              | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Sans Souci Rehabilitation and Nursing Center      | 10/2009                | ****           | ***                      | *****                  | **              | 3                   |
| The Willows at Ramapo Rehab and Nursing Center    | 07/2012                | ***            | ***                      | *****                  | *               | 5                   |
| The Grand Pavilion for R & N at Rockville Centre  | 08/2012                | **             | **                       | *****                  | *               | 5                   |
| St James Rehab & Health Care Center               | 08/2012                | **             | ***                      | ****                   | *               | 4                   |
| The Riverside                                     | 08/2013                | **             | **                       | *****                  | *               | 4                   |
| Cortlandt Healthcare LLC                          | 03/2014                | ***            | ***                      | ****                   | ***             | 4                   |
| The Emerald Peek Rehab and Nursing Center         | 04/2016                | ****           | ***                      | *****                  | **              | 3                   |
| The Enclave at Port Chester Rehab and Nursing Ctr | 07/2016                | *****          | ****                     | *****                  | **              | 4                   |
| The Chateau at Brooklyn Rehab & Nursing Ctr       | 02/2017                | ****           | ***                      | *****                  | **              | 2                   |
| The Paramount at Somers Rehab and Nursing Center  | 1/2018                 | ****           | ****                     | ****                   | **              | 5                   |
| <b>Ohio</b>                                       |                        |                |                          |                        |                 |                     |
| Beeghly Oaks Center for Rehabilitation & Healing  | 11/2014                | *              | *                        | **                     | **              | N/A                 |

| <b>Provider Name</b>                                | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Oasis Center for Rehab and Healing                  | 11/2014                | *              | *                        | ***                    | **              | N/A                 |
| <b>Florida</b>                                      |                        |                |                          |                        |                 |                     |
| Jupiter Rehabilitation and Healthcare Center        | 03/2016                | ***            | **                       | *****                  | ***             | N/A                 |
| Bristol at Tampa Rehab and Nursing Center LLC       | 06/2017                | *****          | ***                      | *****                  | ****            | N/A                 |
| Encore at Boca Raton Rehabilitation and Nursing Ce  | 1/2018                 | **             | *                        | *****                  | *****           | N/A                 |
| Palmetto Subacute Care Center                       | 02/2018                | *****          | *****                    | *****                  | *               | N/A                 |
| <b>New Jersey</b>                                   |                        |                |                          |                        |                 |                     |
| Chatham Hills Subacute Care Center                  | 02/2015                | ***            | **                       | *****                  | ***             | N/A                 |
| <b>Tennessee</b>                                    |                        |                |                          |                        |                 |                     |
| Gallatin Health Care Center, LLC                    | 07/2016                | **             | *                        | *****                  | **              | N/A                 |
| Quality Center for Rehabilitation and Healing LLC   | 07/2016                | ***            | ****                     | ***                    | *               | N/A                 |
| Trevecca Center for Rehabilitation and Healing LLC  | 03/2017                | *****          | ****                     | *****                  | ***             | N/A                 |
| Bethany Center for Rehabilitation and Healing LLC   | 03/2017                | ****           | ***                      | *****                  | ***             | N/A                 |
| *Signature Healthcare of Nashville Rehab & Wellness | 12/2017                | **             | *                        | *****                  | ***             | N/A                 |
| <b>Pennsylvania</b>                                 |                        |                |                          |                        |                 |                     |
| Forbes Center for Rehab and Healthcare LLC          | 10/2011                | *              | *                        | ****                   | ***             | N/A                 |
| Platinum Ridge Ctr for Rehab & Healing              | 01/2014                | **             | **                       | *                      | ****            | N/A                 |
| Squirrel Hill Ctr for Rehabilitation and Healing    | 02/2014                | **             | **                       | ***                    | ***             | N/A                 |

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicate that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

### Operations Transfer Agreement (OTA)

The applicant submitted an executed OTA to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

|                      |  |
|----------------------|--|
| Date:                | March 29, 2018   |
| Transferor:          | Glen-Haven Residential Health Care Facilities, Inc.  |
| Transferee:          | Port Jefferson Operating, LLC  |
| Asset Acquired:      | Business and operations of the facility, inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, accounts receivable, all plans, Medicare/Medicaid provider IDs, licenses & permits  |
| Excluded Assets:     | Personal Property; the name "Waters Edge at Port Jefferson for Rehabilitation and Nursing" and all other trade names and trademarks; all telephone and telefax numbers, email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; all payment adjustments made to the facility, and related accounts receivable, for services rendered prior to closing; cash/cash equivalents; Universal Settlement funds paid or to be paid. |
| Assumed Liabilities: | Employee Benefits, Accounts Payable, and Medicaid/Medicare liabilities.  |
| Purchase Price:      | \$10 – Adjustments will be computed at closing upon the best available information. Buyer shall receive a credit for all liabilities assumed by applicant and Seller shall receive a credit for all accounts receivable relating to services rendered prior to the closing date.   |

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of September 12, 2018, the facility had a nominal outstanding Medicaid overpayment liability of \$49,245.

### Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire certain assets related to the RHCF. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | March 29, 2018  |
| Seller:                    | Glen-Haven Residential Health Care Facilities Inc.  |
| Buyer:                     | Port Jefferson Property NY LLC  |
| Asset Acquired:            | Personal Property, telephones, financial records, goodwill, leasehold improvements, furniture, fixtures and equipment, all other assets except excluded assets.   |
| Excluded Assets:           | Inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare/Medicaid provider IDs, Accounts receivable, cash. |
| Purchase Price:            | \$13,250,000  |
| Payment of Purchase Price: | \$285,000 Initial Deposit, held in escrow<br>\$12,965,000 remaining balance due at closing.   |

Real Estate Purchase Agreement (REPA)

The applicant has submitted an executed REPA to acquire the RHCF's realty property. The terms are summarized below:

|                            |  |
|----------------------------|--|
| Date:                      | March 29, 2018   |
| Seller:                    | Glen-Haven Holding Corp.   |
| Buyer:                     | Port Jefferson Property NY, LLC  |
| Assets Acquired:           | The RHCF Property including: all rights, title and interest in and to the parcel of Land known as 150 Dark Hollow, Port Jefferson, New York; the parking area, buildings, fixtures and other improvements situated on the Land; all equipment and other personal property used at the facility; all easements and appurtenances pertaining to the Land; all authorizations, waivers, licenses, permits and approvals from any governmental agency or quasi-governmental agency relating to the forgoing. |
| Purchase Price:            | \$7,000,000  |
| Payment of Purchase Price: | Initial deposit of \$150,000 to be held in escrow and the balance of \$6,850,000 due at closing to be funded as indicated below  |

Financing Detail

The total purchase price is apportioned as follows:

| <u>Purchase</u>               | <u>Proposed Owner</u>   | <u>Total</u>   |
|-------------------------------|---|--|
| Operating Assets Realty Total | Port Jefferson Operating, LLC<br>Port Jefferson Property NY, LLC<br>Port Jefferson Property NY, LLC | \$10<br>\$13,250,000<br><u>\$7,000,000</u><br>\$20,250,010 |

The applicant's financing plan is as follows:

|  |                     |
|--|---------------------|
| Equity *   | \$10                |
| Equity #   | \$4,050,000         |
| Loan (5.78% ^, 10-yr term w/ 25-yr amortization) # | <u>\$16,200,000</u> |
| Total  | \$20,250,010        |

\* Members of Port Jefferson Operating, LLC

# Members of Port Jefferson Property NY, LLC

^ Based on 5 Year U.S. Treasury Rate (indicative rate of 5.78 as of 8/29/18)

Metropolitan Commercial Bank has provided a letter of interest for the financing at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A provides the realty members' net worth summaries. It is noted that liquid resources may not be available in proportion to the proposed members ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

Lease Agreement

A draft lease has been submitted to lease the RHCF realty property and certain assets. The terms are summarized below:

|             |  |
|-------------|--|
| Premises:   | 120-bed skilled nursing home located at 150 Dark Hollow Road, Port Jefferson, NY |
| Landlord:   | Port Jefferson Property NY, LLC  |
| Lessee:     | Port Jefferson Operating, LLC  |
| Term:       | 10 Years (Initial term)  |
| Rental:     | 2,200,000/Year   |
| Provisions: | Triple Net   |

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

#### Account Management Agreement

A draft account management agreement has been submitted and the terms are summarized below:

|           |   |
|-----------|---|
| Client:   | Port Jefferson Operating, LLC   |
| Provider: | CareRite Services, LLC *  |
| Services: | <b>A/P</b> (receive/post vendor invoices, review/confirm accuracy, vendor correspondence), <b>Cash Management</b> (monitor bank balances, transfers & direct deposits, cash mgmt. & vendor disbursements, monthly bank reconciliations), <b>Payroll</b> (process payroll, transfer Federal & State taxes, file quarterly payroll & yearly W-2 taxes, payroll reports), and <b>Financial Statements</b> (prepare g/l, monthly trial balance & financial statements, review monthly financials to identify areas of opportunity, assist facility's CPA firm in completion of audited financials & cost report). |
| Fee:      | \$7,300/monthly   |

*\*Members of CareRite Services, LLC are Yossie Zucker (50%) and Chana D. Zucker (50%).*

#### Billing and Support Services Agreement

A draft billing and support services agreement has been submitted and the terms are summarized below:

|           |  |
|-----------|--|
| Client:   | Port Jefferson Operating, LLC  |
| Provider: | Comprehensive Healthcare Solutions, LLC *  |
| Services: | Maintain all client billing, collection and accounting data in a secure computer system and at the Client's request access to the Facility Computer Network (FCN) will be given. Access to the FCN will be "Read Only" as only Comprehensive can make changes in the system. |
| Fee:      | \$7,800/monthly (\$5,300, Services & \$2,500, lease of software/hardware)  |

*\*Sole member of Comprehensive Healthcare Solutions, LLC is Shaindl Shur (100%).*

#### Administrative Services Agreement

A draft administrative service agreement has been submitted and the terms are summarized below:

|           |   |
|-----------|---|
| Client:   | Port Jefferson Operating, LLC   |
| Provider: | CareRite Centers, LLC *   |
| Services: | Employee benefit & personnel services, oversee general maintenance & cleaning services, clerical services, public relations services, est. policies/procedures governing quality assurance, risk mgmt., etc., assistance with quality assurance activities, develop orientation & training plans to educate admin. Personnel on policies/procedures, and other services upon request.   |
| Fee:      | The admin. fee will reflect the actual costs/expenses incurred by CareRite (directly or indirectly) on behalf of or at the request of the Client (e.g., equipment costs, personnel costs, software, med/non-med supplies, maintenance, utilities, misc. expenses, etc.). Costs that cannot be directly attributed to the Client, services will be based upon a per bed allocation of CareRite's direct/indirect costs with respect to such services. The estimated annual cost will be \$344,000. |

*\*Members of CareRite Center, LLC are Mark Friedman (50%) and Neal Einhorn (50%).*

The Account Management and Administrative Service Agreements are non-arm's length in that the proposed operating entity has members in common with the service providers, CareRite Services, LLC and CareRite Centers, LLC. The applicant has submitted an executed attestation acknowledging their understanding that there are statutory and regulatory powers that cannot be delegated to a third party and the applicant will not engage in any illegal delegation of authority.

## Operating Budget

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

| <u>Revenues</u>  | <u>Current Year</u> |                    | <u>Year One</u> |                  |
|------------------|---------------------|--------------------|-----------------|------------------|
|                  | <u>Per Diem</u>     | <u>Total</u>       | <u>Per Diem</u> | <u>Total</u>     |
| Commercial - FFS | \$403.43            | \$1,008,177        | \$357.13        | \$1,062,100      |
| Medicare - FFS   | \$689.72            | 2,980,284          | N/A             | 0                |
| Medicare - MC    | N/A                 | 0                  | \$663.03        | 3,520,700        |
| Medicaid - FFS   | \$295.35            | 8,936,234          | N/A             | 0                |
| Medicaid - MC    | N/A                 | 0                  | \$286.37        | 8,941,800        |
| Private Pay      | \$375.00            | 1,031,625          | \$357.13        | 1,062,100        |
| All Other        | N/A                 | <u>99,304</u>      | N/A             | <u>29,800</u>    |
| Total Revenue    |                     | \$14,055,624       |                 | \$14,616,500     |
| <u>Expenses</u>  |                     |                    |                 |                  |
| Operating        | \$300.79            | \$11,979,708       | \$265.14        | \$11,263,800     |
| Capital          | <u>\$18.91</u>      | <u>753,193</u>     | <u>\$56.90</u>  | <u>2,417,430</u> |
| Total            | \$319.71            | \$12,732,901       | \$322.04        | \$13,681,230     |
| Net Income       |                     | <u>\$1,322,723</u> |                 | <u>\$935,270</u> |
| Patient Days     |                     | 39,827             |                 | 42,483           |
| Occupancy        |                     | 91%                |                 | 97%              |

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

- The Medicare rate is based on the facility's most current average rate of payment. The Medicaid rate is projected based on the reimbursement methodology under statewide pricing. Commercial, Private and Other rates are projected based on similar facilities in the same geographical area.
- All other revenue is based on the current operator's model and then adjusted based on the experience of the applicant.
- Expense assumptions are based on the current operator's model and then adjusted based on the applicant's experience. This includes:
  - Employee Benefits decrease by \$199,945. This is based upon the benefit packages at other facilities operated by the proposed buyer.
  - Professional Fees decrease by \$179,203 due to the current operator having incurred additional costs (legal and accounting expenses) related to the sale of the facility.
  - Non-medical, Non-surgical Supplies decrease by \$80,500 based on the proposed operator's ability to secure better vendor pricing.
  - Other Direct Expenses decrease by \$189,669 due to the current operator reducing insurance settlement costs, consultant fees and other non-recurring costs.
  - Rent/Depreciation increasing by \$1,704,805 in Year One and \$1,671,756 in Year Three, which is attributable to the new lease contract.
- The projected utilization for the facility is 97% in Year One and Year Three. Occupancy for 2016 and 2017 was at 91%. Occupancy is expected to increase due to the good relationships the operator has with upstream and downstream providers, including many of the local hospitals. They intend to leverage these relationships to the benefit of the facility. They are also seeking to introduce other programs that will be unique to the area to attract more consumers.
- Breakeven utilization is projected at 93.6% or 39,764 patient days for the Year One.
- Utilization by payor source for the first year after the change in ownership is summarized below:

| <u>Payor</u>     | <u>Current Year</u> | <u>Year One</u> |
|------------------|---------------------|-----------------|
| Commercial - FFS | 6.3%                | 7.0%            |
| Medicare - FFS   | 10.8%               | 0.0%            |
| Medicare - MC    | 0.0%                | 12.5%           |
| Medicaid - FFS   | 76.0%               | 0.0%            |
| Medicaid - MC    | 0.0%                | 73.5%           |
| Private Pay      | <u>6.9%</u>         | <u>7.0%</u>     |
| Total            | 100.0%              | 100.0%          |

## Capability and Feasibility

The RHCF's operating interest will be purchased for \$10 and will be funded via members' equity. There are no project costs associated with this application. The realty property and certain assets will be purchased for \$20,250,000 and will be funded via \$4,050,000 in members' equity with the remaining \$16,200,000 to be financed with a loan for a 10-year term, 25-year amortization at the 5-year treasury rate plus 300 basis points (indicative rate of 5.78 as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest. The proposed property owner intends to obtain HUD financing within the initial 30-60 months after change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A provides the members' net worth summaries; however, liquid resources may not be available in proportion to the members proposed ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The working capital requirement is estimated at \$2,947,048, which is determined based on two months of Year One expenses of \$2,280,205 plus \$666,843 in assumed liabilities over assumed current assets. The applicant indicated they will provide \$1,496,282 in working capital to be funded via members' equity with the remaining \$1,450,766 to be satisfied via a loan for a three-year term at approximately 4.75% interest. Metropolitan Commercial Bank has provided a letter of interest. BFA Attachment A is the members' net worth summaries, which indicates sufficient liquid resources overall. Affidavits were provided from the majority members stating they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The submitted budget projects net profit of \$935,270 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$560k primarily due to an increase in occupancy. As of August 1, 2018, occupancy was reported at 99.1% with only one bed available for admissions. Expenses are expected to increase by approximately \$900k due mostly to a \$1.7m increase in depreciation/rent from a new lease agreement offset by decreases in employee benefits, professional fees, and other direct expenses that amount to approximately 800k. BFA Attachment D is the pro-forma balance sheet for Port Jefferson Operating, LLC, which shows the operation entity will start with positive members' equity. The budget appears reasonable.

BFA Attachment B is a Financial Summary of Glen-Haven Residential Health Care Facilities Inc.'s 2015-2017 certified financial statements and their internal financial statements through April 30, 2018. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income in 2017 through April 30, 2018. The facility had negative net assets and net income in 2015-2016. In 2016, the members contributed \$4.6m additional paid-in-capital to better its net asset position. The facility also improved its operations from these years, as they have achieved net income in 2017 and the period ending April 30, 2018.

BFA Attachment C, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018 or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of \$2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only \$1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest-bearing note payable of \$1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.

- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

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

Recommendation

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

|             |
|-------------|
| Attachments |
|-------------|

|                  |  |
|------------------|--|
| BFA Attachment A | Net Worth of Proposed Members, Port Jefferson Operating, LLC and Port Jefferson Property NY, LLC |
| BFA Attachment B | Financial Summary of Glen-Haven Residential Health Care Facilities Inc.                          |
| BFA Attachment C | Proposed Members' Affiliated RHCF Ownership Interest and Financial Summary                       |
| BFA Attachment D | Pro Forma Balance Sheet, Port Jefferson Operating, 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 11th day of October 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 Port Jefferson Operating LLC as the new operator of Waters Edge at Port Jefferson for Rehabilitation and Nursing an existing 120-bed residential health care facility, located at 150 Dark Hollow Road, Port Jefferson, 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:

181366 E

Port Jefferson Operating, LLC d/b/a Water  
Edge Rehab & Nursing at Port Jefferson

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF realty property and certain assets, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an Account Management Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
6. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
8. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Lease 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 # 181367-E
Glengariff Operating, LLC d/b/a Glengariff Rehabilitation and Healthcare Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: May 23, 2018

Executive Summary

Description

Glengariff Operating, LLC, a New York limited liability company, requests approval to be established as the new operator of Glengariff Health Care Center, a 262-bed, proprietary, Article 28 residential health care facility (RHCF) located at 141 Dosoris Lane, Glen Cove (Nassau County). The Glengariff Corporation, a proprietary business entity, is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the entity will do business as Glengariff Rehabilitation and Healthcare Center. There will be no change in beds or services provided.

On March 29, 2018, Glengariff Operating, LLC entered into an Operations Transfer Agreement (OTA) with The Glengariff Corporation to acquire the operating interests of the RHCF for a purchase price of \$10. Concurrently, The Glengariff Corporation entered into an Asset Purchase Agreement (APA) with Glengariff Property NY, LLC for the sale and acquisition of certain assets of the corporation, excluding the real property, for a purchase price of \$28,750,000. Simultaneously, Glengariff Holding Corp., the real property owner, entered into a Real Estate Purchase Agreement (REPA) with Glengariff Property NY, LLC for the sale and acquisition of the RHCF's real property for a purchase price of \$21,000,000. The OTA, APA and REPA will close simultaneously upon PHHPC approval if this application. There is a relationship between Glengariff Operating, LLC and Glengariff Property NY, LLC in that the entities have identical membership. Upon

approval of the change in ownership of the operations, Glengariff Operating, LLC will lease the premises from Glengariff Property NY, LLC.

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

Table with 2 columns: Member Name and Percentage. Title: Current Operator (The Glengariff Corporation). Members: Veena Ahuja (25%), Sanjay Ahuja (25%), Namita Mohan (25%), Vanita Mudgil (25%).

Table with 2 columns: Member Name and Percentage. Title: Proposed Operator (Glengariff Operating, LLC). Members: Mark Friedman \* (43.5%), Neal Einhorn \* (43.5%), Yossie Zucker (5.0%), Akiva Rudner (4.0%), Steven Sax (4.0%).

\* Managing members

The proposed members have ownership interest in various New York State RHCFs. BFA Attachment C provides the ownership interest and financial summary of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Waters Edge at Port Jefferson for Rehabilitation and Nursing, a 120-bed RHCF located in Suffolk County (CON

181366), and Nesconset Center for Nursing and Rehabilitation, a 240-bed RHCF also located in Suffolk County (CON 181050).

OPCHSM Recommendation  
Contingent Approval

Need Summary

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

Program Summary

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

Glengariff Operating, LLC will acquire the RHCF's operations under the terms of the OTA for \$10 to be funded via members' equity. Under the terms of the REPA and APA, Glengariff Property NY, LLC will acquire the RHCF's realty and certain assets for a total of \$49,750,000 to be funded via \$4,950,000 in

equity, a \$5,000,000 Promissory Note with the current property owner for a 60-month term at 6% interest, with the remaining \$39,800,000 to be financed via a loan for a 10-year term, 25-year amortization, and interest at the 5 Year U.S. Treasury Rate plus 300 basis points (indicative rate of 5.78% as of 8/29/18), with one reset after the fifth year. Metropolitan Commercial Bank has provided a letter of interest for the loan at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing not be available. There are no project costs associated with this application. The proposed budget is as follows:

|            | <u>Year One</u>     |
|------------|---------------------|
| Revenues   | <u>\$37,207,200</u> |
| Expenses   | <u>35,663,607</u>   |
| Net Income | <u>\$1,543,593</u>  |

## 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;
  - 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF realty and certain assets, acceptable to the Department of Health. [BFA]
6. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of an Account Management Agreement, acceptable to the Department of Health. [BFA]
9. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
10. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
11. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Glengariff Operating LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a facility lease, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the Glengariff Operating LLC Operating Agreement, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

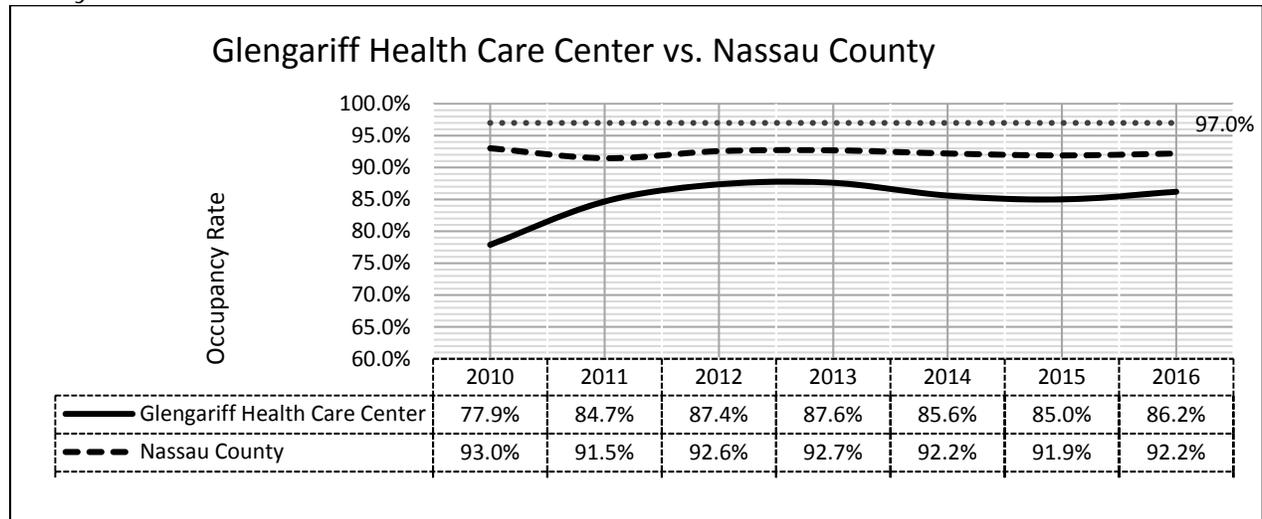
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**October 11, 2018**

# Need Analysis

## Analysis



## 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.

Glengariff Health Care Center's Medicaid admissions rate for 2015, 8.8%, was below Nassau County's threshold of 11.1%. In 2016, Glengariff Health Care Center's Medicaid admissions rate was 8.5%, which was also below the County's 2016 threshold of 9.2%.

## Conclusion

There will be no change to beds or services in Nassau County 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     | Glengariff Health Care Center     | Glengariff Rehabilitation and Healthcare Center   |
| Address           | 141 Dosoris Lane<br>Glen Cove, NY | Same  |
| RHCF Capacity     | 262                               | Same  |
| ADHCP Capacity    | 0                                 | Same  |
| Type of Operator  | Corporation                       | LLC   |
| Class of Operator | Proprietary                       | Proprietary   |
| Operator          | The Glengariff Corporation        | Glengariiff Operating, LLC<br>Mark Friedman* 43.50 %<br>Neal Einhorn* 43.50%<br>Yossi Zucker 5%<br>Akiva Rudner 4%<br>Steven Sax 4%<br><i>*Managing Members</i> |

### Character and Competence - Background

#### **Facility Reviewed**

|  |                       |
|--|-----------------------|
| Sans Souci Rehabilitation & Nursing Center                           | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center                       | 07/2012 to present    |
| St. James Rehabilitation and Health Care Center                      | 08/2012 to present    |
| The Grand Pavilion for Rehab and Nursing at Rockville Center         | 08/2012 to present    |
| The Riverside  | 08/2013 to present    |
| Cortladt Healthcare  | 03/2014 to present    |
| The Emerald Peak Rehab and Nursing Center                            | 03/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Center        | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center            | 02/2017 to present    |
| Crown Center for Nursing and Rehabilitation                          | 01/2015 to 8/2016     |
| The Paramount at Somers Rehab and Nursing Center                     | 01/2018 to present    |
| Beeghly Oaks Center for Rehab and Healing(OH)                        | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH)                       | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care (OH)             | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation and Healing (OH)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH)                   | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL)                    | 03/2016 to present    |
| Bristol at Tampa Rehabilitation and Nursing Center (FL)              | 06/2017 to present    |
| Encore at Boca Raton Rehabilitation and Nursing Center (FL)          | 01/2018 to present    |
| Palmetto Sub- Acute Care Center (FL)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ)                              | 02/2015 to present    |
| Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN) | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN)              | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN)             | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing (TN)                   | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN)   | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA)                 | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA)             | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA)         | 01/2014 to present    |

### **Individual Background Review**

**Mark Friedman** discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

|  |                       |
|--|-----------------------|
| Sans Souci Rehab & Nursing Center (33%)                                  | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                   | 07/2012 to present    |
| Livingston Hills Nursing & Rehab   | 05/2006 to 9/2013     |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                      | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                     | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)            | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)               | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                 | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                  | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)        | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)    | 01/2018 to present    |
| Palmetto Sub-Acute Care Center(FL) (40%)                                 | 02/2018 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                         | 02/2015 to present    |
| Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)            | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)            | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)            | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                  | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)               | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)           | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)    | 01/2014 to present    |
| Passionate Home Care, LLC  | Pending               |

**Neal Einhorn** discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

|   |                       |
|---|-----------------------|
| Sans Souci Rehab & Nursing Center (25%)                                       | 10/2009 to present    |
| The Willows at Ramapo Rehab and Nursing Center (8.50%)                        | 07/2012 to present    |
| Livingston Hills Nursing & Rehab  | 05/2006 to 09/2013    |
| Beeghly Oaks Center for Rehab and Healing(OH) (37%)                           | 11/2014 to present    |
| Oasis Center for Rehabilitation & Healing (OH) (37%)                          | 11/2014 to present    |
| Heritage Center for Rehabilitation & Specialty Care(OH) (37%)                 | 11/2014 to April 2018 |
| Hospitality Center for Rehabilitation & Healing (OH) (28%)                    | 02/2014 to April 2018 |
| Harmony Center for Rehabilitation and Healing (OH) (41%)                      | 07/2017 to April 2018 |
| Jupiter Rehabilitation and Healthcare Center (FL) (40%)                       | 03/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)             | 06/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)         | 12/2017 to present    |
| Chatham Hills Subacute Care Center (NJ) (47.50%)                              | 02/2015 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 07/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (40%)                 | 07/2016 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)                 | 03/2017 to present    |
| Bethany Center for Rehabilitation and Healing(TN) (40%)                       | 03/2017 to present    |
| Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%) | 12/2017 to present    |
| Forbes Center for Rehabilitation and Healthcare (PA) (19%)                    | 10/2011 to Present    |
| Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)                | 02/2014 to present    |
| Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)         | 01/2014 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (40%)              | 01/2018 to present    |
| Palmetto Sub-Acute Care Center (FL) (40%)                                     | 02/2018 to present    |
| Passionate Home Care, LLC   | Pending               |

**Yossie Zucker** is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

|  |                    |
|--|--------------------|
| The Willows at Ramapo Rehabilitation and Nursing Center (2%)     | 07/2012 to present |
| St. James Rehabilitation and Healthcare Center (3%)              | 08/2012 to present |
| The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)   | 08/2012 to present |
| The Riverside (2%)   | 08/2013 to present |
| Cortlandt Healthcare (2%)  | 03/2014 to present |
| The Emerald Peek Rehab & Nursing Center (2%)                     | 03/2016 to present |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)  | 07/2016 to present |
| The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)     | 02/2017 to present |
| The Paramount at Somers Rehab and Nursing Center (5%)            | 01/2018 to present |
| Beeghly Oaks Center for Rehabilitation and Healing (5%)          | 10/2016 to present |
| Oasis Center for Rehabilitation and Healing (5%)                 | 10/2016 to present |
| Heritage Center for Rehabilitation and Specialty Care (5%)       | 10/2016 to present |
| Jupiter Rehabilitation and Healthcare Center (5%)                | 10/2016 to present |
| Gallitan Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Quality Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| Trevecca Center for Rehabilitation and Healing (5%)              | 10/2016 to present |
| Bethany Center for Rehabilitation and Healing (5%)               | 10/2016 to present |
| The Bristol at Tampa Rehabilitation and Nursing Center (5%)      | 06/2017 to present |
| Harmony Center for Rehabilitation and Healing (5%)               | 07/2017 to 04/2018 |
| Hospitality Center for Rehabilitation and Healing (5%)           | 02/2014 to 04/2018 |
| Signature Healthcare of Nashville Rehabilitation & Wellness (5%) | 12/2017 to present |
| The Encore at Boca Raton Rehabilitation and Nursing Center (5%)  | 01/2018 to present |
| Palmetto Sub-Acute Care Center (5%)                              | 02/2018 to present |

**Akiva Rudner** is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

|   |                       |
|---|-----------------------|
| St. James Rehabilitation & Healthcare Center (1%)                       | 08/2012 to present    |
| Crown Center for Nursing and Rehab (2.50%)                              | 01/2015 to 8/2016     |
| The Emerald Peek Rehabilitation & Nursing Center (2%)                   | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)         | 07/2016 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)            | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)         | 10/2016 to April 2018 |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                   | 10/2016 to present    |
| Hospitality Center for Rehab and Healing (OH) (4%)                      | 02/2014 to 4/2018     |
| Harmony Center for Rehabilitation and Healing (4.00 %)                  | 07/2017 to 4/2018     |
| Jupiter Rehabilitation and Healthcare Center (FL) (4%)                  | 10/2016 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)    | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                    | 02/2018 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)             | 06/2017 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)            | 10/2016 to present    |
| Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%) | 12/2017 to present    |
| Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)           | 10/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)          | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                   | 01/2018 to present    |

**Steven Sax** has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

|  |                       |
|--|-----------------------|
| St. James Rehabilitation and Healthcare Center (3%)                  | 08/2012 to present    |
| Cortlandt Healthcare (1%)  | 03/2014 to present    |
| The Emerald Peek Rehab & Nursing Center (2%)                         | 04/2016 to present    |
| The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)      | 07/2016 to present    |
| The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)       | 02/2017 to present    |
| The Paramount at Somers Rehab and Nursing Center (4%)                | 01/2018 to present    |
| Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)         | 10/2016 to present    |
| Oasis Center for Rehabilitation and Healing (OH) (2%)                | 10/2016 to present    |
| Heritage Center for Rehabilitation and Specialty Care (OH) (2%)      | 10/2016 to April 2018 |
| The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)          | 10/2016 to present    |
| Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Quality Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| Trebecca Center for Rehabilitation and Healing, LLC (TN) (4%)        | 10/2016 to present    |
| Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)         | 10/2016 to present    |
| The Bristol at Tampa Rehabilitation and Nursing Center (4%)          | 06/2017 to present    |
| Harmony Center for Rehabilitation and Healing (4%)                   | 07/2017 to 4/2018     |
| Hospitality Center for Rehab and Healing (OH) (4%)                   | 02/2014 to 4/2018     |
| Nashville Center for Rehabilitation and Healing (TN) (4%)            | 12/2017 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%) | 01/2018 to present    |
| Palmetto Sub- Acute Center (FL) (4%)                                 | 02/2018 to present    |
| The Encore at Boca Raton Rehabilitation and Nursing Center (4%)      | 01/2018 to present    |

#### Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

*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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$9,500 for a Survey on February 17, 2017.

*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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$3,214 for a Survey on December 8, 2016.

*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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of \$4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of \$35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined \$5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

*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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of \$4,428 in relation to the same 7/30/16 survey.
- The facility was fined \$9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

*An assessment of the underlying causes of the above enforcements determined 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(s).*

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

- The facility incurred a civil money penalty of \$48, 655 on June 4, 2017.

*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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

#### Quality Review

| <b>Provider Name</b>                              | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Sans Souci Rehabilitation and Nursing Center      | 10/2009                | ****           | ***                      | *****                  | **              | 3                   |
| The Willows at Ramapo Rehab and Nursing Center    | 07/2012                | ***            | ***                      | *****                  | *               | 5                   |
| The Grand Pavilion for R & N at Rockville Centre  | 08/2012                | **             | **                       | *****                  | *               | 5                   |
| St James Rehab & Health Care Center               | 08/2012                | **             | ***                      | ****                   | *               | 4                   |
| The Riverside                                     | 08/2013                | **             | **                       | *****                  | *               | 4                   |
| Cortlandt Healthcare LLC                          | 03/2014                | ***            | ***                      | ****                   | ***             | 4                   |
| The Emerald Peek Rehab and Nursing Center         | 04/2016                | ****           | ***                      | *****                  | **              | 3                   |
| The Enclave at Port Chester Rehab and Nursing Ctr | 07/2016                | *****          | ****                     | *****                  | **              | 4                   |
| The Chateau at Brooklyn Rehab & Nursing Ctr       | 02/2017                | ****           | ***                      | *****                  | **              | 2                   |
| The Paramount at Somers Rehab and Nursing Center  | 1/2018                 | ****           | ****                     | ****                   | **              | 5                   |
| <b>Ohio</b>                                       |                        |                |                          |                        |                 |                     |
| Beeghly Oaks Center for Rehabilitation & Healing  | 11/2014                | *              | *                        | **                     | **              | N/A                 |

| <b>Provider Name</b>                                | <b>Ownership since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|---|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Oasis Center for Rehab and Healing                  | 11/2014                | *              | *                        | ***                    | **              | N/A                 |
| <b>Florida</b>                                      |                        |                |                          |                        |                 |                     |
| Jupiter Rehabilitation and Healthcare Center        | 03/2016                | ***            | **                       | *****                  | ***             | N/A                 |
| Bristol at Tampa Rehab and Nursing Center LLC       | 06/2017                | *****          | ***                      | *****                  | ****            | N/A                 |
| Encore at Boca Raton Rehabilitation and Nursing Ce  | 1/2018                 | **             | *                        | *****                  | *****           | N/A                 |
| Palmetto Subacute Care Center                       | 02/2018                | *****          | *****                    | *****                  | *               | N/A                 |
| <b>New Jersey</b>                                   |                        |                |                          |                        |                 |                     |
| Chatham Hills Subacute Care Center                  | 02/2015                | ***            | **                       | *****                  | ***             | N/A                 |
| <b>Tennessee</b>                                    |                        |                |                          |                        |                 |                     |
| Gallatin Health Care Center, LLC                    | 07/2016                | **             | *                        | *****                  | **              | N/A                 |
| Quality Center for Rehabilitation and Healing LLC   | 07/2016                | ***            | ****                     | ***                    | *               | N/A                 |
| Trevecca Center for Rehabilitation and Healing LLC  | 03/2017                | *****          | ****                     | *****                  | ***             | N/A                 |
| Bethany Center for Rehabilitation and Healing LLC   | 03/2017                | ****           | ***                      | *****                  | ***             | N/A                 |
| *Signature Healthcare of Nashville Rehab & Wellness | 12/2017                | **             | *                        | *****                  | ***             | N/A                 |
| <b>Pennsylvania</b>                                 |                        |                |                          |                        |                 |                     |
| Forbes Center for Rehab and Healthcare LLC          | 10/2011                | *              | *                        | ****                   | ***             | N/A                 |
| Platinum Ridge Ctr for Rehab & Healing              | 01/2014                | **             | **                       | *                      | ****            | N/A                 |
| Squirrel Hill Ctr for Rehabilitation and Healing    | 02/2014                | **             | **                       | ***                    | ***             | N/A                 |

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicate that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

#### 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

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

Recommendation

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

**Financial Analysis**

Operations Transfer Agreement (OTA)

The applicant submitted an executed OTA to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

|                      |   |
|----------------------|---|
| Date:                | March 29, 2018  |
| Transferor:          | The Glengariff Corporation  |
| Transferee:          | Glengariff Operating, LLC   |
| Asset Acquired:      | Business and operations of the facility, inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare/Medicaid provider IDs, licenses and permits.   |
| Excluded Assets:     | Personal Property; the name "Glengariff Health Care Center" and all other trade names and trademarks; all telephone and telefax numbers, email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; accounts receivable; cash/cash equivalents; Universal Settlement funds paid or to be paid. |
| Assumed Liabilities: | Employee Benefits, Accounts Payable, and Medicaid/Medicare liabilities.   |
| Purchase Price:      | \$10 – Adjustments will be computed at closing upon the best available information. Buyer shall receive a credit for all liabilities assumed by applicant and Seller shall receive a credit for all accounts receivable relating to services rendered prior to the closing date.  |

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of September 1, 2018, the facility had no outstanding Medicaid overpayment liabilities.

### Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire certain assets related to the RHCF. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | March 29, 2018  |
| Seller:                    | The Glengariff Corporation  |
| Buyer:                     | Glengariff Property NY LLC  |
| Asset Acquired:            | Personal Property, all telephone and telefax numbers and email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; accounts receivable, accounts receivable and proceeds of collections; all other assets except excluded assets. |
| Excluded Assets:           | Inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare and Medicaid provider IDs, accounts receivable, cash.   |
| Purchase Price:            | \$28,750,000  |
| Payment of Purchase Price: | \$615,000 Initial Deposit;<br>\$5,000,000 Promissory Note (60 months, 6% interest):<br>\$23,135,000 remaining balance due at closing.   |

### Real Estate Purchase Agreement (REPA)

The applicant has submitted an executed REPA to acquire the RHCF's realty property. The terms are summarized below:

|                            |  |
|----------------------------|--|
| Date:                      | March 29, 2018   |
| Seller:                    | Glengariff Holding Corp.   |
| Buyer:                     | Glengariff Property NY, LLC  |
| Assets Acquired:           | The RHCF Property including: all rights, title and interest in and to the parcel of Land known as 141 Dosoris Lane, Glen Cove, New York; the parking area, buildings, fixtures and other improvements situated on the Land; all equipment and other personal property used at the facility; all easements and appurtenances pertaining to the Land; all authorizations, waivers, licenses, permits and approvals from any governmental agency or quasi-governmental agency relating to the forgoing. |
| Purchase Price:            | \$21,000,000   |
| Payment of Purchase Price: | \$450,000 Initial Deposit (held in escrow):<br>\$20,550,000 remaining balance due at closing.  |

### Financing Details

The total purchase price is apportioned as follows:

| <u>Purchase</u> | <u>Proposed Owner</u>       | <u>Total</u>        |
|-----------------|-----------------------------|---------------------|
| Operations      | Glengariff Operating, LLC   | \$10                |
| Assets          | Glengariff Property NY, LLC | \$28,750,000        |
| Realty          | Glengariff Property NY, LLC | <u>\$21,000,000</u> |
| Total           |                             | \$49,750,010        |

The applicant's financing plan is as follows:

|  |                     |
|--|---------------------|
| Members' Equity *  | \$10                |
| Members' Equity #  | \$4,950,000         |
| Promissory Note with Glengariff Corp. (6% interest, 5-year term) # | \$5,000,000         |
| Loan (5.78% interest ^, 10-year term, 25-year amortization) #      | <u>\$39,800,000</u> |
| Total  | \$49,750,010        |

\* Members of Glengariff Operating, LLC

# Members of Glengariff Property NY, LLC

^ Based on 5 Year U.S. Treasury Rate (indicative rate of 5.78 as of 8/29/18)

Metropolitan Commercial Bank has provided a letter of interest for the financing at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA attachment A is the proposed members' net worth summaries. It is noted that liquid resources may not be available in proportion to the proposed members ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

#### Lease Agreement

A draft lease has been submitted to lease the RHCF realty property. The terms are summarized below:

|             |   |
|-------------|---|
| Premises:   | 262-bed skilled nursing home located at 141 Dosoris Lane, Glen Cove, New York |
| Landlord:   | Glengariff Property NY, LLC   |
| Lessee:     | Glengariff Operating, LLC   |
| Term:       | 10 Years (Initial term)   |
| Rental:     | \$4,900,000/Year  |
| Provisions: | Triple Net  |

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

#### Account Management Agreement

A draft account management agreement has been submitted and the terms are summarized below:

|           |   |
|-----------|---|
| Client:   | Glengariff Operating, LLC   |
| Provider: | CareRite Services, LLC *  |
| Services: | <b>A/P</b> (receive/post vendor invoices, review/confirm accuracy, vendor correspondence), <b>Cash Management</b> (monitor bank balances, transfers & direct deposits, cash mgmt. & vendor disbursements, monthly bank reconciliations), <b>Payroll</b> (process payroll, transfer Federal & State taxes, file quarterly payroll & yearly W-2 taxes, payroll reports), and <b>Financial Statements</b> (prepare g/l, monthly trial balance & financial statements, review monthly financials to identify areas of opportunity, assist facility's CPA firm in completion of audited financials & cost report). |
| Fee:      | \$16,000/monthly  |

*\*Members of CareRite Services, LLC are Yossie Zucker (50%) and Chana D. Zucker (50%).*

#### Billing and Support Services Agreement

A draft billing and support services agreement has been submitted and the terms are summarized below:

|           |  |
|-----------|--|
| Client:   | Glengariff Operating, LLC  |
| Provider: | Comprehensive Healthcare Solutions, LLC *  |
| Services: | Maintain all client billing, collection and accounting data in a secure computer system and at Client's request access to the Facility Computer Network (FCN) will be given. Access to the FCN will be "Read Only" as only Comprehensive can make changes in the system. |
| Fee:      | \$16,000/monthly (\$13,500, Services & \$2,500, lease of software/hardware)  |

*\*Sole member of Comprehensive Healthcare Solutions, LLC is Shaindl Shur (100%).*

## Administrative Services Agreement

A draft administrative service agreement has been submitted and the terms are summarized below:

|           |   |
|-----------|---|
| Client:   | Glengariff Operating, LLC   |
| Provider: | CareRite Centers, LLC *   |
| Services: | Employee benefit & personnel services, oversee general maintenance & cleaning services, clerical services, public relations services, est. policies/procedures governing quality assurance, risk mgmt., etc., assistance with quality assurance activities, develop orientation & training plans to educate admin. Personnel on policies/procedures, and other services upon request.   |
| Fee:      | The admin. fee will reflect the actual costs/expenses incurred by CareRite (directly or indirectly) on behalf of or at the request of the Client (e.g., equipment costs, personnel costs, software, med/non-med supplies, maintenance, utilities, misc. expenses, etc.). Costs that cannot be directly attributed to the Client, services will be based upon a per bed allocation of CareRite's direct/indirect costs with respect to such services. The estimated annual cost will be \$344,000. |

\*Members of CareRite Centers, LLC are Mark Friedman (50%) and Neal Einhorn (50%).

The Account Management and Administrative Service Agreements are non-arm's length in that the proposed operating entity has members in common with the service providers, CareRite Services, LLC and CareRite Centers, LLC. The applicant has submitted an executed attestation acknowledging their understanding that there are statutory and regulatory powers that cannot be delegated to a third party and the applicant will not engage in any illegal delegation of authority.

### Operating Budget

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

| Revenues           | Current Year   |                    | Year One       |                    |
|--------------------|----------------|--------------------|----------------|--------------------|
|                    | Per Diem       | Total              | Per Diem       | Total              |
| Commercial - FFS   | \$397.65       | \$3,929,221        | \$331.58       | \$2,768,000        |
| Medicare - FFS     | \$703.21       | 13,312,442         | N/A            | 0                  |
| Medicare - MC      | N/A            | 0                  | \$698.77       | 14,907,600         |
| Medicaid - FFS     | \$301.30       | 14,529,477         | N/A            | 0                  |
| Medicaid - MC      | N/A            | 0                  | \$288.65       | 15,797,400         |
| Private Pay        | \$494.50       | 2,498,709          | \$443.75       | 3,704,401          |
| All Other          | N/A            | <u>112,982</u>     | N/A            | <u>29,800</u>      |
| Total Revenue      |                | \$34,382,831       |                | \$37,207,201       |
| <u>Expenses</u>    |                |                    |                |                    |
| Operating          | \$371.82       | \$30,521,494       | \$323.63       | \$30,018,900       |
| Capital            | <u>\$28.52</u> | <u>2,340,969</u>   | <u>\$60.85</u> | <u>5,644,707</u>   |
| Total              | \$400.34       | \$32,862,463       | \$384.48       | \$35,663,607       |
| Net Income (Loss)  |                | <u>\$1,520,368</u> |                | <u>\$1,543,594</u> |
| Total Patient Days |                | 82,087             |                | 92,758             |
| Occupancy %        |                | 85.84%             |                | 97.00%             |

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

- The Medicare rate is based on the facility's most current average rate of payment. The Medicaid rate is projected based on the reimbursement methodology under statewide pricing. Commercial, Private Pay and Other rates are projected based on similar facilities in the same geographical area.
- Expense assumptions are based on the current operator's model and then adjusted based on the applicant's experience. The following is noted:
  - Salaries and Wages decrease by \$774,719 due to removal of the current operator salaries.
  - Employee Benefits decrease by \$1,645,123. This is based upon the benefit packages at other facilities operated by the proposed buyer. Per the applicant, no benefits are decreasing but they can get better pricing on health insurance, workers' compensation and the 401(k)-plan due to the number of related facilities.

- Professional Fees decrease by \$408,783 due to the current operator having incurred additional costs (legal and accounting expenses) related to the sale of the facility.
- Non-medical, Non-surgical Supplies increase by \$238,701 due to budgeted investments in supplies to better support the residents.
- Other Direct Expenses increase by \$2,066,298 due to the proposed operator utilizing certain support functions from related parties such as: Fiscal, Billing/Collections, IT, and Certain Nursing Administration functions.
- Rent/Deprecation increasing by \$3,370,972 which is attributable to the new lease contract. The lease payment includes debt service coverage on the proposed realty loan, escrow contributions for taxes and insurance, reserve for replacement (estimated at \$500 per bed per year) and overhead expenses (\$964 K per year)
- The projected utilization is 97% in Year One and Year Three. Occupancy for 2016 and 2017 was 86.2% and 85.8%, respectively. Occupancy is expected to increase due to the applicant's good relationships with upstream and downstream providers, including many local hospitals. They intend to leverage these relationships to benefit the facility. End-stage renal disease services have recently been added to increase occupancy and they are also seeking to introduce other programs unique to the area such as: Art Therapy, Cardiovascular Care, Orthopedic Rehabilitation, Pulmonary Care, Urban Zen, Wound Care, and Amputee Care.
- Breakeven utilization is projected at 95.85% or 88,910 patient days for Year One.
- Utilization by payor source for the first year after the change in ownership is summarized below:

| <u>Payor</u>     | <u>Current Year</u> | <u>Year One</u> |
|------------------|---------------------|-----------------|
| Commercial - FFS | 12.0%               | 9.0%            |
| Medicare - FFS   | 23.1%               | 0.0%            |
| Medicare - MC    | 0.0%                | 23.0%           |
| Medicaid - FFS   | 58.7%               | 0.0%            |
| Medicaid - MC    | 0.0%                | 59.0%           |
| Private Pay      | <u>6.2%</u>         | <u>9.0%</u>     |
| Total            | 100.0%              | 100.0%          |

### Capability and Feasibility

The RHC's operating interest will be purchased for \$10 and will be funded via members' equity. There are no project costs associated with this application. The realty property and certain assets will be purchased for \$49,750,000 and will be funded via \$4,950,000 in members' equity, a \$5,000,000 Promissory Note with the current property owner for a 60-month term at 6% interest, and the remaining \$39,800,000 to be financed with a loan for a 10-year term, 25-year amortization, at the 5-year treasury rate plus 300 basis points (indicative rate of 5.78 as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest. The proposed property owner intends to obtain HUD financing within the initial 30-60 months after change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A is the members' net worth summaries; however, liquid resources may not be available in proportion to the members' proposed ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The working capital requirement is estimated at \$5,943,935 based on two months of Year One expenses. The applicant indicated they will provide \$2,050,112 in working capital to be funded via members' equity, \$1,843,823 in assumed current assets over assumed liabilities as noted in the APA, and the remaining \$2,050,000 to be satisfied via a three-year loan at approximately 5% interest. Metropolitan Commercial Bank has provided a letter of interest. BFA Attachment A is the members' net worth summaries, which indicates sufficient liquid resources overall. Affidavits were provided from the majority members stating they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The submitted budget projects a net profit of \$1,543,593 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$2.8 million primarily due to an anticipated increase in occupancy and expenses are expected to increase by approximately \$2.8 million due predominantly to an increase in capital costs related to the new lease. As of August 1, 2018, occupancy was reported at 88.2%. BFA Attachment E is a budget sensitivity analysis based on the facility's latest utilization, which indicates that revenues would decrease by \$3,575,895. Occupancy is expected to increase due to the applicant's relationships with upstream and downstream providers, and the addition of services such as end-stage renal disease services (recently added) and unique programs (Art Therapy, Cardiovascular Care, Orthopedic Rehabilitation, Pulmonary Care, Urban Zen, Wound Care, and Amputee Care). BFA Attachment D is the pro forma balance sheet for Glengariff Operating, LLC, which shows the operation entity will start with positive members' equity. The budget appears reasonable.

BFA Attachment B is a Financial Summary of The Glengariff Corporation's 2016-2017 certified financial statements and internal financial statements through May 31, 2018. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income for the periods shown.

BFA Attachment C, financial summary of the proposed members affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018, or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of \$2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only \$1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest bearing note payable of \$1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.
- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

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

Recommendation

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

## Attachments

- BFA Attachment A Net Worth of Proposed Members, Glengariff Operating, LLC and Glengariff Property NY, LLC
- BFA Attachment B Financial Summary of The Glengariff Corporation
- BFA Attachment C Proposed Members' Affiliated RHCF Ownership Interest and Financial Summary
- BFA Attachment D Pro Forma Balance Sheet, Glengariff 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 11th day of October 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 Glengariff Operating, LLC as the new operator of Glengariff Health Care Center, an existing 262-bed residential health care facility located at 141 Dosoris Lane, Glen Cove, 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:

181367 E

FACILITY/APPLICANT:

Glengariff Operating, LLC d/b/a Glengariff  
Rehabilitation and Healthcare 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;
  - 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF realty and certain assets, acceptable to the Department of Health. [BFA]
6. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of an Account Management Agreement, acceptable to the Department of Health. [BFA]
9. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
10. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]

11. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Glengariff Operating LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a facility lease, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the Glengariff Operating LLC Operating 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]

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 # 181387-E  
Verrazano Nursing Home**

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

**County:** Richmond  
**Acknowledged:** June 8, 2018

**Executive Summary**

**Description**

Verrazano Nursing Home, Inc., a New York Proprietary Business Corporation that operates a 120-bed, Article 28 residential health care facility (RHCF) located at 100 Castleton Avenue, Staten Island (Richmond County), requests approval to transfer 30.5% stock ownership (30.5 shares) from one withdrawing member to one current member, and transfer 7% stock ownership from one current member to another current member. Henry Schon, a current 30.5% shareholder, will withdraw his interest in the facility via a transfer of his ownership interest (30.5 shares) to his daughter, Heidi Gelley. Heidi Gelley will transfer her existing 7% ownership interest (seven shares) to her husband, David Gelley. After the transfers, Heidi Gelley will own 30.5% and David Gelley will own 14.625% of the outstanding shares. There will be no change in beds or services provided as a result of the change in ownership.

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

|              | <u>Current</u> | <u>Proposed</u> |
|--------------|----------------|-----------------|
| Simon Kraus  | 54.875%        | 54.875%         |
| David Gelley | 7.625%         | 14.625%         |
| Heidi Gelley | 7.000%         | 30.500%         |
| Henry Schon  | 30.500%        | 0.000%          |

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 members requiring Public Health and Health Planning Council (PHHPC) approval. 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 the 30.5 shares in Verrazano Nursing Home, Inc. is \$100,000 and will be funded via cash. The seven shares will be gifted between two current members.

No budget analysis was necessary as this is an assignment of 30.5% and 7.0% ownership interest in the RHCF via Assignment and Assumption Agreements between the withdrawing member and two current members. Simon Kraus, the current shareholder with majority ownership interest in the facility, remains 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

**October 11, 2018**

## Program Analysis

### Facility Information

|                       | <b>Existing</b>  | <b>Proposed</b> |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
|-----------------------|--|-----------------|---------|--|-------------|---------|--|--------------|--------|--|--------------|--------|--|---|--------------|---------|--|---------------|---------|--|----------------|---------|--|
| Facility Name         | Verrazano Nursing Home   | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Address               | 100 Castleton Avenue<br>Staten Island, NY 10301  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| RHCF Capacity         | 120  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| ADHC Program Capacity | N/A  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Type of Operator      | Corporation  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Class of Operator     | Proprietary  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Operator              | Verrazano Nursing Home Inc.  | Same            |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
|                       | <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Simone Kraus</td> <td style="width: 33%;">54.875%</td> <td style="width: 33%;"></td> </tr> <tr> <td>Henry Schon</td> <td>30.500%</td> <td></td> </tr> <tr> <td>Heidi Gelley</td> <td>7.000%</td> <td></td> </tr> <tr> <td>David Gelley</td> <td>7.625%</td> <td></td> </tr> </table> | Simone Kraus    | 54.875% |  | Henry Schon | 30.500% |  | Heidi Gelley | 7.000% |  | David Gelley | 7.625% |  | <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Simone Kraus</td> <td style="width: 33%;">54.875%</td> <td style="width: 33%;"></td> </tr> <tr> <td>Heidi Gelley*</td> <td>30.500%</td> <td></td> </tr> <tr> <td>David Gelley**</td> <td>14.625%</td> <td></td> </tr> </table> <p>*Vice President and Secretary<br/>**President and Treasurer</p> | Simone Kraus | 54.875% |  | Heidi Gelley* | 30.500% |  | David Gelley** | 14.625% |  |
| Simone Kraus          | 54.875%  |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Henry Schon           | 30.500%  |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Heidi Gelley          | 7.000%   |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| David Gelley          | 7.625%   |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Simone Kraus          | 54.875%  |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| Heidi Gelley*         | 30.500%  |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |
| David Gelley**        | 14.625%  |                 |         |  |             |         |  |              |        |  |              |        |  |   |              |         |  |               |         |  |                |         |  |

### Character and Competence-Background

#### **Facilities Reviewed**

|                              |                 |
|------------------------------|-----------------|
| Lawrence Nursing Care Center | 08/08 – current |
| Verrazano Nursing Home       | 08/08 – current |

#### **Individual Background Review**

**Heidi Gelley** discloses employment in the Marketing and Billing Departments at Verrazano Nursing Home. She has held this position since March of 2007. Ms. Gelley discloses the following nursing home ownership interests:

|                                    |                 |
|------------------------------------|-----------------|
| Lawrence Nursing Care Center [25%] | 1993 – current  |
| Verrazano Nursing Home [7%]        | 04/07 – current |

**David Gelley** discloses employment as the Chief Executive Office at Verrazano Nursing Home. He has held this position since 1996. Mr. Gelley discloses the following nursing home ownership interest:

|                                 |                 |
|---------------------------------|-----------------|
| Verrazano Nursing Home [7.625%] | 01/07 – current |
|---------------------------------|-----------------|

### Character and Competence - Analysis

No negative information has been received concerning the character and competence for those stockholders whose shares are increasing in Verrazano Nursing Home Inc.

A review of the operations of Lawrence Nursing Care Center for the period identified above reveals the following:

- The facility was fined \$16,000 pursuant to Stipulation and Order NH-11-42 for surveillance findings on 3/10/10 and 6/15/10. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care Free of Accidents Hazards/Supervision/Devices 415.26 Effective Administration/ Resident Well Being, 415.15(a) Responsibilities of Medical Director, 415.12(i)(l) Maintain Nutritional Status Unless Unavoidable
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-198 for surveillance findings on 9/20/2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Free of Accident Hazards/Supervision/Devices
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-16-199 for surveillance findings on 2/20/13. Deficiencies were found under NYCRR 415.12 Quality of Care – Highest Practicable Potential – Provide Care Service for Highest Well Being.

The review of operations of Verrazano Nursing Home for the period identified above reveals there were no enforcements.

Quality Review

| <b>Provider Name</b>         | <b>Ownership Since</b> | <b>Overall</b> | <b>Health Inspection</b> | <b>Quality Measure</b> | <b>Staffing</b> | <b>NYS Quintile</b> |
|------------------------------|------------------------|----------------|--------------------------|------------------------|-----------------|---------------------|
| Lawrence Nursing Care Center | 1993                   | ***            | ***                      | *****                  | *               | 3                   |
| Verrazano Nursing Home       | 01/07                  | ****           | ****                     | *****                  | *               | 1                   |

*NOTE: The subject facility is included, because the applicant already has ownership interest.*

Project Review

Ms. Heidi Gelley, and Mr. David Gelley both have current ownership interest in this facility. These interests were acquired through separate 90-day notices and did not require presentation to PHHPC. The acquisition of the additional shares necessitates PHHPC approval because the Operator type is a Corporation.

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. 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.**

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

Assignment and Assumption Agreement

The applicant has submitted two executed Assignment and Assumption Agreements for the transfer of shares in the RHCF, to be effectuated simultaneously upon PHHPC approval. The terms are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | March 5, 2018                               |
| Assignor:                  | Henry Schon                                 |
| Assignee:                  | Heidi Gelley                                |
| Shares Acquired            | 30.5 shares of stock                        |
| Purchase Price:            | \$100,000                                   |
| Payment of Purchase Price: | \$10,000 deposit<br>\$90,000 due at closing |

The balance due on the 30.5% stock transfer will be funded via equity.

|                            |               |
|----------------------------|---------------|
| Date:                      | March 5, 2018 |
| Assignor:                  | Heidi Gelley  |
| Assignee:                  | David Gelley  |
| Purchase Price:            | Gift          |
| Payment of Purchase Price: | N/A           |

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the 30.5 shares in Verrazano Nursing Home, Inc. is \$100,000 and will be funded via cash. The seven shares will be gifted between two current members. BFA Attachment A is the personal net worth statement of the current members, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is an assignment of 30.5% and 7.0% ownership interest in the RHCFC via Assignment and Assumption Agreements between one withdrawing member and two current members. The other current shareholder remains in the ownership structure with majority interest, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the financial summary of Verrazano Nursing Home, Inc. As shown, the facility has positive working capital in the amount of \$623,978, a positive net asset position of \$1,277,048, and a net income of \$233,368 for the period January 1, 2018 through April 30, 2018.

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.**

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

|                  |   |
|------------------|---|
| BFA Attachment A | Verrazano Nursing Home, Inc – Current Members Net Worth   |
| BFA Attachment B | Verrazano Nursing Home, Inc – Financial Summary 2015-2018 |

## 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 11th day of October 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 30.5 percent stock from one withdrawing member to one existing member and transfer seven (7) percent interest from one existing member to another, 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:

181387 E

Verrazano Nursing Home

APPROVAL CONTINGENT UPON:

N/A

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 # 181348-E  
North Shore Home Care**

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

**County:** Westchester  
**Acknowledged:** May 16, 2018

**Executive Summary**

**Description**

North Shore University Hospital, Inc. d/b/a North Shore Home Care (NSHC), a voluntary not-for-profit, Article 36 Certified Home Health Agency (CHHA) located at 972 Brush Hollow Road, Westbury (Nassau County), requests approval to acquire and merge the license and assets of Visiting Nurse Association of Hudson Valley (VNAHV), a voluntary not-for-profit, Article 36 CHHA located at 540 White Plains Road, Tarrytown (Westchester County), into its operations. NSHC will be the surviving entity and will add VNAHV's office locations in Westchester and Putnam Counties to its operating certificate. Northwell Healthcare Inc. is the sole member and co-operator of North Shore University Hospital, Inc. Under CON 162447, Northwell Healthcare, Inc. became the sole corporate member of Visiting Nurse Association of Hudson Valley. There will be no interruption to services.

VNAHV will remain in business as a separate corporate body, remaining as the member and operator of Hospice Care in Westchester and Putnam, Inc. and VNA Home Health Services, Inc., a Licensed Home Care Services Agency (LHCSA) in Tarrytown that serves Bronx, Putnam and Westchester counties. Northwell Healthcare, Inc. became the grandparent of VNAHV's Hospice and LHCSA operations under CONs 162451 and 162459, respectively.

Currently, NSHC is authorized to provide CHHA services in Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties. Upon approval of the merger, NSHC will add Putnam County to its authorized geographic service area. NSHC is certified to

provide Home Health Aide, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech-Language Pathology, Respiratory Therapy and Personal Care. As VNAHV does not currently offer Nutritional, Personal Care and Respiratory Therapy services, the merger will expand the CHHA services available to VNAHV's current patients to include these services.

Northwell Health, Inc., is a comprehensive, integrated health care delivery system that is comprised of numerous hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care, including home care, long-term care, and hospice services. The purpose of this transaction is to increase operational efficiencies, improve regional delivery of care, improve the wellness of the communities served, and deliver value to patients and payors.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This proposal is seeking approval for a merger and acquisition whereby North Shore Home Care will acquire and merge the license and assets of the Visiting Nurse Association of Hudson Valley CHHA. North Shore Home Care is certified to operate in Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties. Upon approval of the merger, NSHC will add Putnam County to its authorized service area.

Program Summary

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

Financial Summary

There are no project costs or acquisition price associated with this application. The projected budget is as follows:

|             | <u>Year One</u>   | <u>Year Three</u> |
|-------------|-------------------|-------------------|
| Revenues    | \$77,620,000      | \$82,708,000      |
| Expenses    | <u>76,334,461</u> | <u>80,987,155</u> |
| Gain/(Loss) | \$1,285,539       | \$1,720,845       |

## 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 from the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the asset purchase agreement from the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2018**

## Need and Program Analysis

### Program Description

North Shore University Hospital, Inc. d/b/a North Shore Home Care, a not for profit business corporation, seeks approval to acquire and merge the assets of the Visiting Nurse Association of Hudson Valley Certified Home Health Agency (CHHA).

Currently, the operator of the Visiting Nurse Association of Hudson Valley CHHA is Visiting Nurse Association of Hudson Valley, which also operates a Licensed Home Care Services Agency (LHCSA) and a Hospice. Post-transaction, Visiting Nurse Association of Hudson Valley will remain the operator of the LHCSA and Hospice and the CHHA license will be surrendered.

Visiting Nurse Association of Hudson Valley and North Shore University Hospital, Inc. d/b/a North Shore Home Care are both parented by Northwell Healthcare, Inc., which is parented by Northwell Health, Inc. This parent structure will remain the same following the completion of this merger and acquisition. Please see Programmatic Attachment A: Northwell Health, Inc. Organizational Chart for further detail regarding this structure.

### Character and Competence

The Board of Trustees of North Shore Home Care is comprised of the following individuals:

|  |   |
|--|---|
| <p><b>Frank J. Besignano</b> – Trustee<br/>           Manager Business Development, Signature Bank<br/> <u>Affiliation</u><br/>           Visiting Nurse Associates of Staten Island (CHHA)</p>  | <p><b>Roger A. Blumencranz</b> – Trustee<br/>           President, BWD Group, LLC, an NFP Co.<br/> <u>Affiliation</u><br/>           John T. Mather Memorial Hospital</p>                               |
| <p><b>Robert W. Chasanoff</b> – Trustee<br/>           Retired</p>   | <p><b>Mark L. Claster</b> – Chairman of the Board of Trustees, Trustee<br/>           President, Carl Marks &amp; Co, Inc.<br/> <u>Affiliation</u><br/>           Staten Island University Hospital</p> |
| <p><b>Michael J. Dowling</b> – President, Chief Executive Officer, Trustee<br/>           President, CEO – Northwell Health, Inc.</p>  | <p><b>Michael A. Epstein, Esq.</b> – Trustee<br/>           Partner, Weil Gotshal &amp; Manges, LLP<br/> <u>Affiliation</u><br/>           Jewish Board of Family &amp; Children Services</p>           |
| <p><b>Michael E. Feldman, Esq.</b> – Trustee<br/>           Retired</p>  | <p><b>Catherine C. Foster</b> – Trustee<br/>           Faculty, Columbia University</p>   |
| <p><b>Lloyd Keith Friedlander, Esq.</b> – Trustee<br/>           Managing Director, Acisure, LLC</p>   | <p><b>Lloyd M. Goldman</b> – Trustee<br/>           President, BLDG Management Co.</p>  |
| <p><b>Richard D. Goldstein, Esq.</b> – Immediate Past Chairman, Trustee<br/>           Chairman, CEO, AEP Capital LLC<br/> <u>Affiliations</u><br/>           Staten Island University Hospital<br/>           Northern Westchester Hospital<br/>           Phelps Memorial Hospital<br/>           Peconic Bay Medical Center</p> | <p><b>Alan I. Greene</b> – Treasurer, Trustee<br/>           Managing Director, Neuberger Berman, LLC<br/> <u>Affiliation</u><br/>           Eisenhower Medical Center (CA)</p>                         |
| <p><b>Paul B. Guenther</b> – Trustee<br/>           Retired</p>  | <p><b>William O. Hiltz</b> – Trustee<br/>           Senior Managing Director, Evercore Partners</p>   |

|  |  |
|--|--|
| <p><b>Kenneth A. Jacoppi, Esq.</b> – Trustee<br/>Attorney, Kenneth Jacoppi &amp; Associates<br/><u>Affiliation</u><br/>John T. Mather Memorial Hospital/Memorial Health System</p>   | <p><b>Saul B. Katz, CPA</b> – Trustee<br/>President, Chief Operating Officer, Sterling Equities, Inc.</p>  |
| <p><b>Cary A. Kravet</b> – Trustee<br/>President, Kravet, Inc.</p>   | <p><b>Jeffrey B. Lane</b> – Trustee<br/>Partner, York Bridge Wealth Partners<br/>Chairman, Casa Columbia</p>   |
| <p><b>Seth B. Lipsay</b> – Trustee<br/>Executive Managing Director, New World Realty Management, LLC</p>   | <p><b>William L. Mack</b> – Vice Chairman, Trustee<br/>Chairman, Founder, Mack Real Estate Group<br/>President, Senior Managing Partner, The Mack Company</p>                                    |
| <p><b>F.J. McCarthy</b> – Trustee<br/>President, Site Selection Advisory Group, Inc.</p>   | <p><b>Patrick F. McDermott</b>, Financial Planner – Trustee<br/>Senior Vice President, Cook Maran Associates d/b/a McDermott &amp; Thomas</p>  |
| <p><b>Ralph A. Nappi</b> – Executive Vice Chairman, Trustee<br/>Executive Vice Chairman, Northwell Health, Inc.<br/><u>Affiliations</u><br/>Staten Island University Hospital<br/>Northern Westchester Hospital<br/>Phelps Memorial Hospital<br/>Peconic Bay Medical Center<br/>John T. Mather Memorial Hospital</p> | <p><b>Richard B. Nye</b> – Trustee<br/>President, Baker Nye Advisors</p>   |
| <p><b>Sharon Patterson</b> – Trustee<br/>Real Estate Broker, Edwin Fishel Tuccio RE<br/><u>Affiliations</u><br/>Peconic Bay Medical Center</p>   | <p><b>Lewis S. Ranieri</b> – Trustee<br/>Chairman, Senior Managing Partner, Ranieri Partners Management LLC<br/>Chairman, Chief Executive Officer, Managing Director, Ranieri &amp; Co, Inc.</p> |
| <p><b>Robert D. Rosenthal, Esq.</b> – Trustee<br/>Chairman, Chief Executive Officer, First Long Island Investors, LLC</p>  | <p><b>Barry Rubenstein</b> – Vice Chairman, Trustee<br/>Managing Partner, Wheatley Partners</p>  |
| <p><b>Michael I. Schwartz, Esq.</b> – Trustee<br/>Co-Founder, Co-Managing Partner, TrilynX Partners LLC</p>  | <p><b>Kenneth W. Taber, Esq.</b> – Trustee<br/>Partner, Pillsbury Winthrop Shaw Pittman, LLP<br/><u>Affiliation</u><br/>Phelps Hospital</p>  |
| <p><b>Donald Zucker</b> – Secretary, Trustee<br/>Chairman of the Board, Donald Zucker Company</p>  | <p><b>Roy J. Zuckerberg</b> – Trustee<br/>Senior Director, Goldman Sachs Group, Inc.</p>   |

Each member of the Board of Trustees submitted identical information regarding legal actions in which North Shore University Hospital, Inc. has been involved. Please see Programmatic Attachment B: North Shore University Hospital Record of Legal Action.

Lloyd M. Goldman disclosed that as the owner and operator of several hundred properties throughout the United States, including hotels, apartment houses, office buildings, and industrial and retail properties, he has been named as a defendant in many civil actions. All of the cases in which he has been named have been resolved and he has never been found to be personally liable in any of these cases. Additionally, Mr. Goldman stated that these cases have never involved a claim of fraud, malpractice, misrepresentation and/or breach of a fiduciary duty.

Richard D. Goldstein also disclosed that he was a director and shareholder of American Community Newspapers, Inc., a corporation in Delaware, which filed for bankruptcy in May 2009.

Kenneth W. Taber disclosed that he was named as a defendant in a civil action in which a former law firm Partner sued him and all other former partners.

Barry Rubenstein disclosed that, due to his position as General Partner in an investment partnership and member of a corporate board, he is sometimes named in security action suits. He stated that none of these have ever settled or been lost.

Roger A. Blumencranz disclosed action taken against him by the New York State Insurance Department. It was stipulated and agreed that Sections 2103, 2104, 2105, and 2110 of the Insurance Law were violated when Mr. Blumencranz and other respondents failed to renew their corporate and individual licenses while continuing to do business as agents, brokers and excess lines brokers. As a result of the Stipulation, a \$1,600 penalty was imposed and paid in lieu of any other disciplinary action.

Michael A. Epstein sits on the Board of Trustees of the Jewish Board of Family and Children's Services. He disclosed that this agency recently entered into a settlement with the NYS Office of the Medicaid Inspector General.

Michael E. Feldman disclosed that during his time as an Attorney/Partner at Proskauer Rose, LLP, from June 1985 to June 2010, he was involved in various business claims.

William O. Hiltz also disclosed that his employer, Evercore Partners, an investment banking firm, is frequently a defendant in various civil proceedings due to their active engagement in the merger and acquisition business. Mr. Hiltz stated that the firm has never been found liable in any civil action. He also stated that, on two occasions, the firm has agreed to the imposition of regulatory fines rather than pursuing a dispute resolution process.

Kenneth A. Jacoppi disclosed that John T. Mather Memorial Hospital, Inc. has been involved in malpractice actions and employee issues during the course of ordinary business.

Saul B. Katz disclosed that he was named as a defendant in an action related to the liquidation of Bernard L. Madoff Investment Securities, LLC. Also, Mr. Katz once held stock and was director of a company which was placed into receivership.

Lewis S. Ranieri disclosed a record of legal actions in which he has been involved. Nothing disclosed caused concern from a character and competence perspective.

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

Northern Westchester Hospital was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated October 17, 2016 for inspection findings on April 25, 2016 for violations of 10 NYCRR Part 405. Specifically, 405.21(c)(1)(iv) – Perinatal Services; General Requirements.

The state of California reports that Eisenhower Medical Center was fined \$4,312.00 for an adverse event. The penalty was paid on March 16, 2018. The provider was also fined \$1,800.00 for late self-reporting, these fines were settled between 2013 and 2015. Additionally, Eisenhower Medical Center has pending administrative fines totaling \$15,100.00 for late self-reporting of the adverse event and breaches of protected health information.

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 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.

**Programmatic Description**

North Shore Home Care, currently serves the following counties from an office located at located at 972 Brush Hollow Road, Westbury, New York 11590:

|          |             |          |
|----------|-------------|----------|
| Bronx    | Kings       | Nassau   |
| New York | Queens      | Richmond |
| Suffolk  | Westchester |          |

As a result of this merger, North Shore Home Care will add Putnam county to their service area.

North Shore Home Care provides the following services.

|                              |                      |                           |
|------------------------------|----------------------|---------------------------|
| Home Health Aide             | Occupational Therapy | Respiratory Therapy       |
| Personal Care                | Nursing              | Nutrition                 |
| Medical Social Services      | Physical Therapy     | Speech Language Pathology |
| Medical Supplies & Equipment |                      |                           |

This project will have no impact on the services being offered by North Shore Home Care.

| <b>CHHA Quality of Patient Care Star Ratings</b> as of September 7, 2018              |                               |
|---|-------------------------------|
| <b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars |                               |
| <b>CHHA Name</b>  | <b>Quality of Care Rating</b> |
| Visiting Nurse Associates of Staten Island  | 4 out of 5 stars              |
| Visiting Nurse Association of Hudson Valley   | 2.5 out of 5 stars            |
| North Shore University Hospital, Inc. d/b/a North Shore Home Care                     | 3.5 out of 5 stars            |

**Recommendation**

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

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

**Bill of Sale**

The applicant has submitted a signed Bill of Sale between VNAHV and NSHC to be effectuated upon Public Health and Health Planning Council approval. The terms are summarized below:

|                         |  |
|-------------------------|--|
| <b>Date:</b>            | May 1, 2018  |
| <b>Seller:</b>          | Visiting Nurse Association of Hudson Valley  |
| <b>Buyer:</b>           | North Shore University Hospital, Inc., d/b/a North Shore Home Care   |
| <b>Assets Acquired:</b> | All rights, title and interest in the CHHA's business assets including copies of records relating to and used in the CHHA operations, leases and goodwill. |
| <b>Purchase Price:</b>  | \$ -0-   |

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. The facility has a no outstanding Medicaid Assessment liability as of July 9, 2018.

### Operating Budget

The applicant has submitted their current year (2017) and projected operating budgets for the first and third years, in 2018 dollars, summarized below:

|                 | <u>Current Year</u> | <u>First Year</u>  | <u>Three Year</u>  |
|-----------------|---------------------|--------------------|--------------------|
| <u>Revenues</u> |                     |                    |                    |
| Medicaid        | \$438,093           | \$377,000          | \$389,000          |
| Medicare        | 54,554,463          | 60,770,000         | \$64,605,000       |
| Commercial      | 18,712,444          | 19,158,000         | 20,561,000         |
| Other Income *  | 396,000             | 0                  | 0                  |
| Bad Debt        | <u>-2,532,000</u>   | <u>-2,685,000</u>  | <u>-2,847,000</u>  |
| Total Revenue   | \$71,569,000        | \$77,620,000       | \$82,708,000       |
| <u>Expenses</u> |                     |                    |                    |
| Operating       | \$69,641,150        | \$75,054,153       | \$79,628,402       |
| Capital         | <u>1,074,850</u>    | <u>\$1,280,308</u> | <u>\$1,358,753</u> |
| Total Expenses  | \$70,716,000        | \$76,334,461       | \$80,987,155       |
| Net Income      | \$853,000           | \$1,285,539        | \$1,720,845        |
| Patient Visits  | 396,962             | 429,819            | 455,644            |

\* Includes DSRIP funding of \$200,000 plus Intercompany transfers & payments for providing medical records.

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2017 revenue and expenses.
- Reimbursement rates for Medicare was based on episodic payment rate of \$2,684.17 with a case mix index (CMI) of 0.9. The Medicaid episodic payment rate is \$2,357.72 with a CMI of 0.75. Commercial and manage care rates were based on existing NSHC rates.
- Expenses are based on historical experience adjusted for projected volume.
- Breakeven is projected at 98.3% and 97.9% of estimated 1<sup>st</sup> and 3<sup>rd</sup> year visits.
- Utilization by payor for the current, first and third years is summarized below:

| <u>Payor</u> | <u>Current Year</u> |          | <u>First Year</u> |          | <u>Third Year</u> |          |
|--------------|---------------------|----------|-------------------|----------|-------------------|----------|
|              | <u>Visits</u>       | <u>%</u> | <u>Visits</u>     | <u>%</u> | <u>Visits</u>     | <u>%</u> |
| Medicaid     | 2,063               | .52%     | 2,258             | .53%     | 2,394             | .53%     |
| Medicare     | 260,169             | 65.54%   | 282,226           | 65.66%   | 299,182           | 65.66%   |
| Commercial   | 131,905             | 33.23%   | 142,354           | 33.12%   | 150,907           | 33.12%   |
| Charity      | 2,825               | .71%     | 2,981             | .69%     | 3,161             | .69%     |
| Total        | 396,962             | 100%     | 429,819           | 100%     | 455,644           | 100%     |

- The applicant states they accept all Charity referrals and plans to capture these referrals by working with the hospitals in Westchester, Putnam and Brooklyn. NSHC has established a standard financial assistance fee schedules using the federal poverty thresholds (household income is less than 200%).

### Capability and Feasibility

They are no projects costs or issues with capability and feasibility. The working capital requirement is estimated at \$936,410 based on two months of first year incremental expenses (change between current year and first year). Funds will be provided from ongoing operations of NSHC or cash on hand. BFA Attachment B is a summary of North Shore University Hospital, Inc.'s 2017 certified financial statements, which shows sufficient liquid resources to meet this requirement.

The applicant's budget projects a first and third year surplus of \$1,285,539 and \$1,720,845, respectively. The budget appears to be reasonable.

Review of BFA Attachment B, North Shore University Hospital's 2017 audited financial statements shows positive working capital, positive net assets and operating surplus of \$81,863,000. BFA Attachment C is Visiting Nurse Association of Hudson Valley's 2016 certified financial statements and December 31, 2017 internal financial statements, both of which show positive working capital and positive net assets. There was a loss of \$680,579 in 2016 and for 2017 internals show a surplus of \$122,774.

BFA Attachment D is a summary of Northwell Health, Inc.'s 2017 certified financial statements which shows positive working capital, positive assets, and positive excess of revenue and gains and losses over expenses.

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      | Organizational Chart for Northwell Healthcare, Inc.   |
| BFA Attachment B      | Financial Summary for North Shore University Hospital, Inc. 2017 (Audited)                            |
| BFA Attachment C      | Financial Summary for Visiting Nurse Association of Hudson Valley 2016 (Audited) and 2017 (Unaudited) |
| BFA Attachment D      | Financial Summary for Northwell Health, Inc. 2017 (Audited)   |
| Program Attachment A: | Northwell Health, Inc. Organizational Chart   |
| Program Attachment B: | North Shore University Hospital Record of Legal Action  |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of October 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 acquire and merge the Visiting Nurse Association of Hudson Valley's Certified Home Health Care Agency and assets, 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

181348 E

North Shore Home Care

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the by-laws from the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the asset purchase agreement from the applicant, 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 # 172420-B**  
**Doral Medical and Multispecialty Facility, LLC d/b/a Doral  
Medical and Multispecialty Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** January 26, 2018

**Executive Summary**

**Description**

Doral Medical and Multispecialty Facility, LLC (Doral Medical), a New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 1797 Pitkin Avenue, Brooklyn (Kings County). The facility will be housed in 6,650 sq. ft. of leased space on the second floor of a three-story building that is being renovated to house other Article 28 and non-Article 28 programs. The D&TC will include 12 exam rooms, two treatment rooms, three blood work areas, a laboratory, radiology, ultrasound, mammogram and bone density rooms, as well as a pharmacy and the requisite support space. Upon approval, the Center will be known as Doral Medical and Multispecialty Center.

The members of Doral Medical are David Lipschitz (89%), Daniel Gurgov (10%), and Kaveh Askari (1%). Mr. Lipschitz has 85% ownership interest in Doral Dialysis Center, an Article 28 dialysis clinic approved under CON 151338 and currently under construction in the cellar floor of the same building as the proposed D&TC. Mr. Gurgov has health care management experience and Mr. Askari is a licensed pharmacist specializing in oncology.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Doral Medical and Multi-Specialty Facility, LLC proposes to establish and construct an Article 28 diagnostic and treatment center in Kings County. Proposed services to be provided are: Medical Services-Primary Care and Medical Services – Other Medical Specialties. The number of projected visits is 13,466 for Year One.

**Program Summary**

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

**Financial Summary**

Project costs of \$2,407,786 will be met via members' equity of \$240,779 and a \$2,167,008 bank loan at 6% interest for a ten-year term. JPMorgan Chase Bank has provided a letter of interest for the bank loan. Additionally, an executed Promissory Note has been provided for a personal loan of up to \$2,500,000 at 2.72% interest for a five-year term from Doral Insurance Company, Inc., a company solely owned by proposed member David Lipschitz, to cover any equity shortfall or first year operating cost needs. The proposed budget is as follows:

|            |                    |
|------------|--------------------|
| Revenues   | \$3,258,210        |
| Expenses   | <u>\$2,525,024</u> |
| Net Income | \$733,186          |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming that the Promissory Note advances have been made to cover any equity shortfall and first year operating losses, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's executed and completed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the applicant's Amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within 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. Construction must start on or before January 1, 2019 and construction must be completed by April 30, 2019, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**October 11, 2018**

# Need Analysis

## Background and Analysis

The primary service area consists of the neighborhoods of Bedford-Stuyvesant, Crown Heights, Prospect Heights, and Brownsville which encompass the following zip codes: 11207, 1121, and 11233. The secondary service area is Kings County. The population of Kings County was 2,504,700 in 2010. Per the PAD projection data from the Cornell Program on Applied Demographics, the population of Kings County is estimated to grow to 2,583,413 by 2025, an increase of 3.1%.

The proposed center will provide the following services: Medical Services - Primary Care and Medical Services - Other Medical Specialties. East Flatbush and Brownsville are HRSA designated Health Professional Shortage Areas. Kings County is a HRSA designated Medically Underserved Area.

## Prevention Quality Indicators-PQIs

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the service area is significantly higher than the rate for the New York State rate.

### Hospital Admissions per 100,000 Adults for Overall PQIs

| <b>PQI Rates:<br/>2015</b> | <b>Zip Codes:11207,<br/>11212 and 11233</b> | <b>New York State</b> |
|----------------------------|---|-----------------------|
| All PQI's                  | 2,182                                       | 1,380                 |

Source – DOH data, 2018

The number of projected visits is 13,466 for Year One and 29,178 for Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## Conclusion

Approval of this project will provide for improved access to a variety of medical services for the residents of Kings County.

## Recommendation

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

## Program Analysis

### Program Description

|   |   |
|---|---|
| <b>Proposed Operator</b>  | Doral Medical and Multispecialty Facility, LLC  |
| <b>To Be Known As</b>   | Doral Medical and Multispecialty Center   |
| <b>Site Address</b>   | 1797 Pitkin Avenue<br>Brooklyn, NY 11212 (Kings County).                                      |
| <b>Specialties</b>  | Medical Services – Primary Care<br>Medical Services – Other Medical Specialties               |
| <b>Hours of Operation</b>   | Monday through Friday, 8 am to 6 pm<br>If needs indicate, hours may expand.                   |
| <b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>                     | 13.23 FTEs / 22.29 FTEs   |
| <b>Medical Director(s)</b>  | Leon Shein, M.D.  |
| <b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b> | Expected to be provided by<br>Brookdale Hospital Medical Center<br>1.6 miles / 7 minutes away |

### Character and Competence

The members of Doral Medical and Multispecialty Facility, LLC are:

| <b>Name</b>                 | <b>Interest</b> |
|-----------------------------|-----------------|
| David Lipschitz             | 89%             |
| Daniel Gurgov               | 10%             |
| Kaveh (“Kevin”) Askari, RPh | 1%              |
| <b>Total</b>                | 100%            |

**Mr. Lipschitz** has over 20 years of experience in the healthcare sector. He is the President of House Calls Home Care, a home care agency he founded in 2012. Prior to that, he had 19 years of experience in long-term care, including 16 years as Associate Administrator and then Administrator of Record for a 380-bed nursing home in Brooklyn. He is also a majority member of Doral Dialysis, LLC, a corporation currently constructing a dialysis center at the same address (approved in Project #151338).

**Mr. Gurgov** has operated E&J Management Group, Inc., specializing in healthcare management and consulting and business development. Prior to that, he was employed for 13 years by a private physician practice culminating in the position of Director of Operations where he was responsible for the overall day-to-day operations of the office.

**Mr. Askari** is a pharmacist who holds licenses in over a dozen states. Since 1998, he has been the owner of and staff pharmacist at Manhasset Park Drug Corp., a community retail pharmacy on the North Shore of Long Island. He was previously a member of Onco360/Sina Drug LLC, an oncology pharmacy that provided medications for the treatment of cancer.

Disclosure information was similarly submitted and reviewed for the Medical Director, **Leon Shein, M.D.** Dr. Shein earned his medical degree from the University of the East in the Philippines and completed a nephrology fellowship at Brookdale Hospital. He has over 30 years of experience with renal patients and is board-certified in internal medicine with sub-certification in nephrology. Dr. Shein currently serves as the Chief of Nephrology at Prospect Medical Group in Brooklyn where his responsibilities include running the dialysis unit and evaluating both acute and chronic renal failure patients and their associated problems.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database. Mr. Askari disclosed that he is a defendant in a civil suit which stemmed from the sale of his pharmacy business (Sina Drug Corp. d/b/a OncoMed Specialty, LLC). As a selling shareholder, Mr. Askari agreed to a restrictive covenant which specifically provided that he could engage in the practice of pharmacy as long as he did not engage in a competitive business and his ownership of a retail pharmacy was not deemed to be a violation. In December 2016, Pharmacy Corporation of America (PCA) alleged that two of Mr. Askari's companies improperly competed with OncoMed Specialty in violation of the non-competition provision. In June 2017, Mr. Askari filed a complaint against PCA. In August 2017, the court consolidated the two cases which, according to the Applicant, remain essentially dormant with only very basic documentary discovery.

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.

**Conclusion**

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

**Recommendation**

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

**Financial Analysis**

**Lease Rental Agreement**

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

|             |   |
|-------------|---|
| Premises:   | 6,650 sq. ft. on the 2 <sup>nd</sup> floor of a building located at 1797 Pitkin Avenue, Brooklyn, NY          |
| Lessor:     | Doral Realty Holdings LLC   |
| Lessee:     | Doral Medical and Multispecialty Facility LLC   |
| Term:       | 10 Years with (1) 5-year renewal term   |
| Rental:     | Years One – Three \$304,000 per year (\$46 per sq. ft.).<br>Rental will increase by 2.5% per year thereafter. |
| Provisions: | The lessee shall be responsible for maintenance, utilities and real estate taxes.                             |

The lease arrangement is a non-arm's length agreement. The applicant submitted an affidavit attesting to the relationship between the landlord and tenant in that there is common ownership between the entities. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost is estimated at \$2,407,786, further broken down as follows:

|                            |                 |
|----------------------------|-----------------|
| Renovation and Demolition  | \$1,712,375     |
| Design Contingency         | \$85,619        |
| Construction Contingency   | \$85,619        |
| Architect/Engineering Fees | \$133,000       |
| Other Fees (Consultant)    | \$125,000       |
| Moveable Equipment         | \$170,105       |
| Financing Costs            | \$34,675        |
| Interim Interest Expense   | \$46,234        |
| CON Fee                    | \$2,000         |
| Additional Processing Fee  | <u>\$13,159</u> |
| Total Project Cost         | \$2,407,786     |

Project costs are based on a construction start date of January 1, 2019 and a four-month construction period.

The applicant's financing plan appears as follows:

|   |                    |
|---|--------------------|
| Equity                                  | \$240,778          |
| Bank Loan (5.5% interest, 10-year term) | <u>\$2,167,008</u> |
| Total                                   | \$2,407,786        |

JPMorgan Chase Bank provided a letter of interest for the mortgage loan. David Lipschitz has provided an executed Promissory Note for a personal loan of up to \$2,500,000 from Doral Insurance Company, Inc., which he solely owns, to cover any shortfall in liquid resources and year one loss. The Promissory Note provides for a five-year term at 2.72% interest. Repayment of the total principal amount is due at term with no penalty for early prepayment. BFA Attachment A is the 2017 Certified Financial Statements of Doral Insurance Company, Inc., which show significant liquid resources to cover this loan.

Operating Budget

The applicant's operating budget, in 2018 dollars, during the first and third years, is summarized below:

|                   | Year One       |                    | Year Three     |                  |
|-------------------|----------------|--------------------|----------------|------------------|
|                   | Per Visit      | Total              | Per Visit      | Total            |
| <u>Revenues</u>   |                |                    |                |                  |
| Medicaid FFS      | \$114.00       | \$76,724           | \$113.86       | \$66,494         |
| Medicaid MC       | \$113.96       | \$444,999          | \$113.95       | \$1,130,400      |
| Medicare FFS      | \$113.92       | \$153,448          | \$113.94       | \$166,235        |
| Medicare MC       | \$113.94       | \$383,620          | \$113.95       | \$997,411        |
| Commercial FFS    | \$113.95       | \$322,241          | \$113.94       | \$631,694        |
| Private Pay/Other | \$113.98       | <u>\$122,758</u>   | \$113.96       | <u>\$265,976</u> |
| Total Revenues    |                | \$1,503,790        |                | \$3,258,210      |
| <u>Expenses</u>   |                |                    |                |                  |
| Operating         | \$81.63        | \$1,099,261        | \$65.82        | \$1,920,357      |
| Capital           | <u>\$46.44</u> | <u>\$625,408</u>   | <u>\$20.72</u> | <u>\$604,667</u> |
| Total Expenses    | \$128.08       | \$1,724,669        | \$86.54        | \$2,525,024      |
| Net Income/(Loss) |                | <u>(\$220,879)</u> |                | <u>\$733,186</u> |
| Visits            |                | 13,466             |                | 29,178           |

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

| <u>Payor</u>               | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service   | 5.0%            | 2.0%              |
| Medicaid Managed Care      | 29.0%           | 34.0%             |
| Medicare Fee-For-Service   | 10.0%           | 5.0%              |
| Medicare Managed Care      | 25.0%           | 30.0%             |
| Commercial Fee-For-Service | 21.0%           | 19.0%             |
| Private Pay                | 8.0%            | 8.0%              |
| Charity Care               | 2.0%            | 2.0%              |

Revenue assumptions are based on current average per visit payment rates by payors for D&TC services. Expense assumptions are based on the experience of other similar facilities in the geographical area. Additionally, information was obtained from Medicaid AHCF cost reports for similar type Article 28 D&TCs to confirm assumptions. The applicant anticipates an increase in utilization by Year Three based on the population density of the area and need for primary care and specialty services, referrals from other health care occupants of the building, and the marketing efforts of the applicant. Based on the applicant's assumptions, the budget appears reasonable.

#### Capability and Feasibility

Total project cost of \$2,407,786 will be met via members' equity of \$240,778 and a bank loan of \$2,167,008 at the above stated terms. JPMorgan Chase Bank has provided a letter of interest.

Working capital requirements are estimated at \$420,837 based on two months of third year expenses. The applicant will finance \$210,419 at 5.25% interest for a three-year term. JPMorgan Chase Bank has provided a letter of interest for the working capital loan. The remaining \$210,418 will be provided as equity from the proposed members of Doral Medical. David Lipschitz has provided a disproportionate share affidavit to cover any equity shortfall for the D&TC. BFA Attachment A is the proposed members' personal net worth statements and 2017 certified financial statements for Doral Insurance Company, Inc., which indicate the availability of sufficient funds to meet the equity requirements for the project. David Lipschitz has provided an executed Promissory Note for a personal loan of up to \$2,500,000 from his solely owned company, Doral Insurance Company, Inc., to cover any shortfall in liquid resources. The Promissory Note is for a five-year term at 2.72% interest with no penalty for early prepayment. BFA Attachment B is the pro forma balance sheet of Doral Medical and Multispecialty Facility, LLC as of the first day of operation, which indicates a net asset position of \$451,197.

The submitted budget indicates a net loss of \$220,879 and a net gain of \$733,186 during the first and third years, respectively. Revenues are reflective of current reimbursement rates for D&TCs. Mr. Lipschitz will cover the Year One loss via his personal assets and the personal loan from his insurance company. As shown on BFA Attachment A, Mr. Lipschitz has sufficient resources to cover the Year One losses as well as his portion of the equity and working capital requirement and any other members' equity shortfall.

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 | Personal Net Worth Statement-Proposed Members and 2017 Certified Financial Statements of Doral Insurance Company, Inc. |
| BFA Attachment B | Pro Forma Balance Sheet of Doral Medical and Multispecialty Facility, LLC  |
| BHFP Attachment  | Map  |

## 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 11th day of October 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 and construct a new diagnostic and treatment center to be located at Pitkin Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

172420 B

FACILITY/APPLICANT:

Doral Medical and Multispecialty Facility, LLC  
d/b/a Doral Medical and Multispecialty Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming that the Promissory Note advances have been made to cover any equity shortfall and first year operating losses, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's executed and completed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the applicant's Amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within 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. Construction must start on or before January 1, 2019 and construction must be completed by April 30, 2019, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.  
[AER]

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 # 181177-B**  
**Adira Dialysis, LLC d/b/a Adira Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Westchester  
**Purpose:** Establishment and Construction    **Acknowledged:** March 15, 2018

**Executive Summary**

**Description**

Adira Dialysis, LLC, a to-be-formed New York limited liability company, requests approval to establish and construct a 20-station, Article 28 chronic renal dialysis center (the Center) to be located at 120 Odell Avenue, Yonkers (Westchester County). The Center will be housed in a new 9,618-square foot addition to be constructed adjacent to the main lobby of Adira at Riverside Rehabilitation and Nursing, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) operated by L&A Operations, LLC. The Center will serve the residents of the RHCF who require dialysis, as well as members of the community. The Center will provide for two entrances, one from the main lobby on the entrance floor for nursing home residents, and the other from a new lobby to be constructed adjacent to the main entrance of the RHCF. The applicant will lease the space from L&A Operations, LLC. Upon Public Health and Health Planning Council (PHHPC) approval, the facility will be known as Adira Dialysis Center.

The proposed members of Adira Dialysis, LLC are Allen Stein (43%), Lazer Strulivitch (43%), and Leopold Schwimmer (14%). Mr. Stein will be the managing member. There is a relationship between Adira Dialysis, LLC and L&A Operations, LLC in that the entities have identical membership and ownership interest.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The Center will be located adjacent to Adira at Riverside Rehabilitation and Nursing. The close vicinity to the nursing facility will allow for easy transport of the frail elderly nursing home residents needing ESRD treatment.

**Program Summary**

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

**Financial Summary**

Total project costs of \$3,674,886 will be met with \$2,978,328 equity from the proposed members and equipment lease financing of \$696,558. Signature Financial has provided a letter of interest for the equipment financing. The proposed budget is as follows:

|            |                  |
|------------|------------------|
| Revenues   | \$5,782,315      |
| Expenses   | <u>5,165,511</u> |
| Net Income | \$616,804        |

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2019 and construction must be completed by September 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]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**October 11, 2018**

## Need Analysis

### Analysis

The primary service area for the new facility will be Westchester County, which had a population estimate of 974,542 for 2016. The percentage of the population aged 65 and over was 16.2%. The nonwhite population percentage was 26.2%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Westchester County and New York State are shown below.

|                  | Westchester County | New York State |
|------------------|--------------------|----------------|
| Ages 65 and Over | 16.2%              | 15.4%          |
| Nonwhite         | 26.2%              | 30.1%          |

Source: U.S. Census 2017

### Capacity

Below are the Department's guidelines to estimate capacity for chronic dialysis stations:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free-standing station per year is 156.
- One hospital based station represents 499 treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.

### Need Projections

| <b>Westchester County Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021</b>   |                    |                   |                         |                 |                 |                                   |                           |
|--|--------------------|-------------------|-------------------------|-----------------|-----------------|-----------------------------------|---------------------------|
| County   | Existing Resources | Pending Resources | Total Current Resources | Total Need 2021 | Unmet Need 2021 | County-wide Stations Under Review | Unmet Need After Approval |
|  | a                  | b                 | c                       | d               | e               | f                                 | g                         |
|  |                    |                   | ( a + b )               |                 | ( d - c )       |                                   | ( e - f )                 |
| Westchester  | 285                | 0                 | 285                     | 311             | 26              | 20                                | 6                         |
| Column (a): Existing Resources: Stations in Operation  |                    |                   |                         |                 |                 |                                   |                           |
| Column (b): Pending Resources: Includes Stations with Contingent Approval per the Bureau of Project Management and Stations with Recommendations of Approval by the Bureau of Public Need Review, but not yet Contingently Approved in the Bureau of Project Management. |                    |                   |                         |                 |                 |                                   |                           |
| Column (f): Submitted Projects / Stations Under Review   |                    |                   |                         |                 |                 |                                   |                           |

### Conclusion

Additional dialysis resources will benefit county residents, and the location of this center adjacent to the nursing home will specifically benefit nursing home residents requiring dialysis.

### Recommendation

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

## Program Analysis

### Program Description

|   |   |
|---|---|
| <b>Proposed Operator</b>  | Adira Dialysis, LLC   |
| <b>Doing Business As</b>  | Adira Dialysis Center   |
| <b>Site Address</b>   | 120 Odell Avenue<br>Yonkers, NY 10701 (Westchester County)                        |
| <b>Approved Services</b>  | Chronic Renal Dialysis (20 Stations)  |
| <b>Shifts/Hours/Schedule</b>  | Will operate six days a week from 8 am to 10 pm and modified as needed.           |
| <b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>                     | 10.0 FTEs / 25.32 FTEs  |
| <b>Medical Director(s)</b>  | Jackson Shaji, D.O.   |
| <b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b> | Expected to be provided by St. John's Riverside Hospital<br>0.3 miles / 2 minutes |

### Character and Competence

The members and managers of Adira Dialysis, LLC are:

| <b>Name</b>       | <b>Title</b>   | <b>Percentage</b> |
|-------------------|----------------|-------------------|
| Allen Stein       | Manager/Member | 43.00%            |
| Lazer Strulovitch | Member         | 43.00%            |
| Leopold Schwimmer | Member         | 14.00%            |
|                   |                | <b>100.00%</b>    |

**Mr. Stein** reported that he has been employed as a facility operator for L&A Operations, LLC since September 2015. L&A Operations is the Operator of Record for Adira at Riverside Rehabilitation and Nursing, a 120-bed residential health care facility located in Yonkers.

**Mr. Strulovitch** is the president/owner of Park Avenue Door and Hardware, a company that specializes in metal doors and frames, prefinished and architectural wooden doors and hardware. In addition, since 2010, he has been the owner of Park Avenue Management of Berry, LLC managing and developing real estate.

**Mr. Schwimmer** is President and owner of united Commercial Group, a real estate financing company located in Brooklyn.

All three of the proposed members are the owners/operators of Adira at Riverside Rehabilitation Center. In addition, they have ownership interest in Sprain Brook Nursing Home and other health-related entities, including adult homes.

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Jackson Shaji, D.O. Dr. Shaji graduated from the NY College of Osteopathic Medicine and completed a nephrology fellowship at Westchester Medical Center. He is board-certified in Internal Medicine and Nephrology and, for the past four years, has been an attending nephrologist at the Nephrology and Hypertension Specialists of Westchester office in Yonkers.

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

the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

**Conclusion**

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

**Recommendation**

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

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

**Lease Agreement**

The applicant has submitted a draft lease agreement for the site to be occupied, summarized below:

|             |  |
|-------------|--|
| Premises:   | New Addition, approximately 9,618 sq. ft. adjacent to the Adira RHC located at 120 Odell Avenue, Yonkers                   |
| Landlord:   | L&A Operations, LLC  |
| Tenant:     | Adira Dialysis, LLC  |
| Term:       | Five years, with three five-year option to extend.   |
| Base Rent:  | Years 1 and 2: \$384,720 annually; Year 3: \$392,414 annually; Year 4: \$400,263 annually; and Year 5: \$408,268 annually. |
| Provisions: | Triple-net: Maintenance, real estate taxes/assessments, insurance premiums, utilities.                                     |

The lease arrangement is a non- arm's length agreement in that the members of L&A Operations, LLC are the same proposed members of Adira Dialysis, LLC. The applicant has submitted an affidavit attesting to this relationship. The applicant has submitted letters from two real estate brokers attesting to the reasonableness of the per square foot rental.

**Total Project Cost and Financing**

Total project cost, which is for new construction and the acquisition of fixed and moveable equipment, is estimated at \$3,674,886 broken down as follows:

|                            |                    |
|----------------------------|--------------------|
| Renovation and Demolition  | \$2,207,331        |
| Design Contingency         | 110,367            |
| Construction Contingency   | 110,367            |
| Fixed Equipment            | 229,500            |
| Architect/Engineering Fees | 353,173            |
| Other Fees (Consultant)    | 175,000            |
| Moveable Equipment         | 467,058            |
| CON Fee                    | 2,000              |
| Additional Processing Fee  | 20,090             |
| <b>Total Project Cost</b>  | <b>\$3,674,886</b> |

Project costs are based on a construction start date of March 1, 2019, and a six-month construction period. Funding for the project will be met with \$2,978,328 equity from the proposed members, and equipment lease financing of \$696,558 over a five-year term at 7% interest. Signature Financial has provided a letter of interest at the stated terms.

## Operating Budget

The applicant has submitted an operating budget for the first and third years, in 2018 dollars, which is summarized below:

|                          | Year One      |                    | Year Three   |                  |
|--------------------------|---------------|--------------------|--------------|------------------|
|                          | Per Diem      | Total              | Per Diem     | Total            |
| <u>Revenues</u>          |               |                    |              |                  |
| Medicare MC              | \$308.73      | \$1,463,979        | \$308.70     | \$4,391,937      |
| Medicaid MC              | \$269.04      | 206,621            | \$269.35     | 620,309          |
| Commercial MC            | \$342.91      | <u>256,838</u>     | \$342.86     | <u>770,069</u>   |
| Total Revenues           |               | \$1,927,438        |              | \$5,782,315      |
| <u>Expenses</u>          |               |                    |              |                  |
| Operating                | \$287.72      | \$1,800,837        | \$222.26     | \$4,173,208      |
| Depreciation & Rent      | <u>128.55</u> | <u>804,610</u>     | <u>52.85</u> | <u>992,303</u>   |
| Total Expenses           | \$416.27      | \$2,605,447        | \$275.11     | \$5,165,511      |
| Net Income (Loss)        |               | <u>(\$678,009)</u> |              | <u>\$616,804</u> |
| Utilization (treatments) |               | 6,259              |              | 18,776           |
| Cost Per Treatment       |               | \$416.27           |              | \$275.11         |

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

|               | Year One | Year Three |
|---------------|----------|------------|
| Medicare MC   | 76.0%    | 76.0%      |
| Medicaid MC   | 10.7%    | 10.7%      |
| Commercial MC | 13.3%    | 13.3%      |

Revenue, expense and utilization assumptions are based upon review of cost reports from other dialysis facilities located in Westchester County, as well as financial statements for dialysis providers in Westchester and Rockland counties.

## Capability and Feasibility

The project costs of \$3,674,886 will be financed by the proposed members' equity of \$2,978,328, with the remaining \$696,558 financed through an equipment lease. Equipment includes but is not limited to dialysis machines, chairs and the reverse osmosis water treatment system. BFA Attachment A shows sufficient equity.

Working capital requirements have been estimated at \$860,919 based on two months of third year expenses and will be provided by the proposed members' equity. BFA Attachment A is the net worth statement of the proposed members, which indicates sufficient resources to meet the equity requirements of this application. BFA Attachment B is the pro forma balance sheet of Adira Dialysis Center as of the first day of operation, which indicates positive members' equity of \$3,839,246.

The submitted budget projects a net loss of \$678,009 in Year One and net income of \$616,804 in Year Three. The applicant has submitted an affidavit from proposed member, Allen Stein, stating that he will personally fund the first-year operating loss of the dialysis center. BFA Attachment A shows sufficient funds from proposed member, Allen Stein. Revenues are based on the current reimbursement methodologies for dialysis services. The budget appears reasonable.

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

## Recommendation

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

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## Attachments

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BFA Attachment A Net Worth Statement of proposed members  
BFA Attachment B Pro Forma Balance Sheet of Adira Dialysis 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 11th day of October 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 and construct a new 20-station dialysis center to be located at 120 Odell Avenue, Yonkers, the Center will be housed in an addition to be constructed adjacent to the main lobby of Adira at Riverside Rehabilitation and Nursing, 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:

181177 B

Adira Dialysis LLC d/b/a Adira Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2019 and construction must be completed by September 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]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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 # 172379-E  
St. Peter's Health Partners**

**Program: Hospital  
Purpose: Establishment**

**County: Albany  
Acknowledged: December 20, 2017**

**Executive Summary**

**Description**

St. Peter's Health Partners (SPHP) is seeking approval for Trinity Health Corporation (Trinity), an Indiana not-for-profit organization, to be co-established over all the Article 28 licensed SPHP facilities as a limited-purpose co-operator. Trinity is the parent of a national health care system with operations across 21 states including New York and is currently the passive parent and sole member of SPHP. SPHP is the co-operator and active parent of many Article 28 facilities in the Capital Region (collectively, the Licensed Entities).

The limited-establishment approval sought will grant Trinity a subset of operator powers for the SPHP Licensed Entities under 10 NYCRR §405.1(c) and §600.9(c), specifically:

- Approval of hospital operating and capital budgets;
- Adoption or approval of hospital operating policies and procedures;
- Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.
- Approval to participate in the total gross income or net revenue of a medical facility.

Trinity will not be established or approved to exercise any of the following operator powers over the SPHP Licensed Entities:

- Appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- Approval of certificate of need applications filed by or on behalf of the hospital;
- Approval of hospital contracts for management or for clinical services.

SPHP will continue to be the full active parent/co-operator of the Licensed Entities with authority to exercise all operator powers under 10 NYCRR §405.1(c) and §600.9(c).

SPHP was formed in 2011 when SPHP became the sole member and passive parent of St. Peter's Health Care Services, Northeast Health, Inc., and Seton Health System, Inc. Prior to this affiliation, Catholic Health East (CHE) was the sole member and passive parent of St. Peter's Health Care Services, and due to the 2011 St. Peter's-Northeast Health-Seton affiliation became the sole member and passive parent of SPHP. In 2013, CHE affiliated with Trinity Health, Inc. forming a new corporation, CHE Trinity, Inc. (sole member of the two entities). In 2014, CHE, Trinity Health, Inc., and CHE Trinity, Inc., merged and the surviving entity's name became Trinity Health Corporation. Because of these transactions, Trinity became the sole member and passive parent of SPHP.

Upon Public Health and Health Planning Council (PHHPC) approval, Trinity will be approved for specific operator authorities over SPHP and the Licensed Entities. SPHP will continue to exercise operator authority over the day-to-day operations of the Licensed Entities and will participate in the Trinity Health Obligated Group by becoming a Designated Affiliate in the Credit Group, in accordance with the Trinity Master Trust Indenture, giving SPHP and the Licensed Entities access to additional capital resources at more favorable rates and terms.

Currently, SPHP believes Trinity's limited authority as passive parent prevents SPHP from realizing the full economic and operational benefits of being part of a national health system. Additionally, SPHP cannot participate in the Trinity's Health Obligated Group or System Development Fund. SPHP requests PHHPC to approve a limited co-establishment of Trinity with SPHP and the SPHP Licensed Entities. Trinity and SPHP believe that the benefits of being part of a national health care system can only be achieved if the national parent has authority to act decisively on behalf of all members of the system in matters that affect the entire system.

OPCHSM Recommendation  
Contingent Approval for the establishment of Trinity Health Corporation as a limited co-operator of St. Peter's Health Partners and its Article 28 Licensed Entities for the operator powers 10 NYCRR §405.1(c)(2), §405.1(c)(3), §405.1(c)(5), §405.1(c)(7), and §600.9(c).

Need Summary  
There will be no change in beds or services in the community as a direct result of this application.

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. There are no expected changes in the daily operations of any of the Licensed Entities' utilization, services or beds, or to the revenues or expenses of SPHP or the Licensed Entities as a direct and immediate result of this project.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval for the establishment of Trinity Health Corporation as a limited co-operator of St. Peter's Health Partners and its Article 28 Licensed Entities for the operator powers 10 NYCRR §405.1(c)(2), §405.1(c)(3), §405.1(c)(5), §405.1(c)(7), and §600.9(c), contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
3. Submission of a photocopy of an amended Restated Certificate of Incorporations of St. Peter's Health Partners, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Peter's Health Partners, acceptable to the Department. [CSL]
6. Submission of a photocopy of Trinity Health System's System Authority Matrix, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2018**

# Need Analysis

## Background

SPHP is the co-operator of the following Article 28 facilities:

| Name   | Facility ID |
|--|-------------|
| Albany Memorial Hospital                                     | 4           |
| St. Peter's Hospital   | 5           |
| St. Mary's Hospital  | 755         |
| Samaritan Hospital of Troy                                   | 756         |
| Sunnyview Hospital and Rehabilitation Center                 | 831         |
| St. Peter's Nursing and Rehabilitation Center (RHCF)         | 17          |
| Eddy Memorial Geriatric Center (RHCF)                        | 3293        |
| Eddy Village Green (RHCF)                                    | 4000        |
| Eddy Heritage House Nursing and Rehabilitation Center (RHCF) | 4549        |
| Our Lady of Mercy Life Center (RHCF)                         | 4755        |
| Seton Health at Schuyler Ridge Residential Healthcare (RHCF) | 4826        |
| Eddy Village Green at Beverwyck (RHCF)                       | 9198        |

This application defines specific co-operator powers over SPHP and the associated Article 28 Licensed Entities. There will be no change in beds or services as a result of this application.

## Prevention Agenda

The applicant noted that the CON project does not impact the activities related to St. Peter's Health Partners (SPHP) Prevention Agenda activities or Community Service Plan. The applicant identified the priorities selected for action in the joint Albany County and SPHP most recent community service plan. These priorities include:

- Preventing chronic disease, focusing on reducing obesity and diabetes in children and adults; and
- Promoting mental health and preventing substance abuse, focusing on preventing substance abuse and other mental, emotional and behavioral diseases.

The applicant described the evidence-recommended interventions currently implemented by SPHP to prevent chronic diseases: promoting pre-diabetes screenings and education by using evidence-based tools and adult self-management programs; implementing nutrition and beverage standards in public institutions, worksites, school districts, and childcare centers; and promoting physical activity in childcare centers, school districts, community venues, and worksites.

Interventions to prevent substance abuse and other mental, emotional, and behavioral diseases are: provider education about addiction and pain management, including educating patients about risk of harm and misuse; promoting safe storage and proper disposal of unused prescriptions; offering New York State Opioid Overdose Prevention Training; and establishing ambulatory detox service locations.

SPHP reports that is a founding member and supporter of the regional PHIP and works collaboratively with local health departments, other health care systems and community-based organizations on community health improvement planning.

SPHP shared BRFS data as evidence for evidence that they are tracking progress. In CSP report, they report activities conducted, participant numbers, and school policies instituted. Their efforts could be strengthened by assessing how the workshop or the policies affected the participants or stakeholders. For example, what were some effects on participants from participating in the workshops.

The applicant did file a Schedule H form with the IRS and the level of Community Benefits spending in the Community Health Improvement Services Category is to be commended. SPHP should continue their level of Community Benefits spending

Conclusion

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

Recommendation

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

|                           |
|---------------------------|
| <h2>Program Analysis</h2> |
|---------------------------|

Program Description

St. Peter's Health Partners (SPHP) seeks approval for Trinity Health Corporation (Trinity), an Indiana nonprofit organization, to be co-established as a limited-purpose active parent over the SPHP Article 28 licensed facilities. St. Peter's Health Partners is the active parent/co-operator/ of a number of Article 28 facilities in the Capital Region. Trinity is the parent of a national health care system with operations in 21 states and is also the passive parent and sole member of SPHP. Other than this refinement in the passive/active parent relationship, there are no programmatic changes proposed affecting beds or services offered by SPHP entities.

Character and Competence

Trinity Health Corporation's Board of Directors of is comprised of the following individuals:

| <u>Name</u>               | <u>Title/Position</u>      |
|---------------------------|----------------------------|
| Richard J. Gilfillan, MD, | <i>President &amp; CEO</i> |
| James Bentley, PhD,       | <i>Chair</i>               |
| Mary Catherine Karl,      | <i>Vice-Chair</i>          |
| Paul Neumann, Esq.,       | <i>Secretary</i>           |
| Cynthia Clemence,         | <i>Treasurer</i>           |
| Kevin Barnett             |                            |
| Joseph Betancourt, MD     |                            |
| Melanie Dreher, PhD, RN   |                            |
| Sr. Mary Fanning          |                            |
| George M. Philip          |                            |
| Sr. Kathleen Popko        |                            |
| David Southwell           |                            |
| Sr. Joan Steadman         |                            |
| Roberta Waite, EdD        |                            |
| Larry Warren              |                            |
| Sr. Linda Werthman        |                            |

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 Health Insurance Programs, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all Trinity Health-affiliated facilities. Sources of information included the files, records, and reports found in the New York State Department of Health or reported by out-of-state Departments of Health. Included in the review were the results of 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.

Regarding Trinity-affiliated **hospitals in New York State:**

- On September 13, 2012, the New York State Department of Health (NYSDOH) issued a Stipulation and Order (S&O) and \$22,000 fine against St. Joseph's Hospital Health Center based on the findings of two complaint investigations. One involved a patient with a known risk for falls who was left unattended in the bathroom and fell. The second involved inadequate neurological assessment of a drug overdose patient.
- In August 2016, the NYSDOH issued a S&O and imposed a \$2,000 fine against St. Peter's Hospital based on a survey completed in January 2016 involving an Immediate Jeopardy situation in Food and Dietetic Services.

Regarding Trinity-affiliated **nursing homes in New York State:**

- In March 2017, the NYSDOH issued a S&O and \$2,000 fine against Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green based on a survey completed on August 17, 2016. Issues cited related to Quality of Care: Highest Practicable Potential. In addition to the state's penalty, a federal Civil Monetary Penalty (CMP) of \$3,963 was imposed.
- In January 2017, the NYSDOH issued a S&O and \$16,000 fine against Iroquois Nursing Home, Inc. based on a survey completed on April 13, 2016. Immediate Jeopardy was cited and deficient practice noted in the following areas: Staff Treatment of Residents; Policy and Procedure Manual Development (regarding staff treatment); Abuse; and Administration.

Regarding Trinity-affiliated **certified home health agencies in New York State:**

- In June 2013, an enforcement action and civil penalty of \$5,500 was issued against McAuley–Seton Home Care Corporation based on a survey completed on September 15, 2011. Deficient practice was cited in the following areas: Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; and Clinical Records.

Regarding Trinity-affiliated **adult care facilities in New York State:**

- In March 2012, an enforcement action and \$1,000 penalty was imposed against Hawthorne Ridge, Inc. based on an inspection completed on September 14, 2010 where violations of Systemic Endangerment were identified and cited.

In addition to the above, Catholic Health System, Inc. (**Western New York**), a subsidiary of Trinity Health Corporation, disclosed the following:

- Trinity is one of three members of Catholic Health System, Inc. On October 19, 2017, Catholic Health System, Inc., Home & Community Based Care (Catholic Health) and the Office of Inspector General of the Department of Health and Human Services (OIG) entered into a five-year Corporate Integrity Agreement (CIA) which applies specifically to two sub-acute rehabilitation facilities – Father Baker Manor and McAuley Residence. Over the term of the CIA, an Independent Review Organization will audit billing claims for medical necessity. Additionally, Catholic Health's Compliance Officer, Compliance Committee and key managers will annually certify that departments are annually that departments are in compliance with federal health care program requirements and the CIA.

Regarding affiliated Trinity Health entities **outside** of New York State:

- The State of California reported three separate enforcement actions (January 2012, November 2015 and January 2017) and civil penalties assessed (\$50,000, \$4,750, and \$11,250, respectively) against Saint Agnes Medical Center, a hospital located in Fresno, for (non-repetitive) survey violations.

- The State of Florida reported the following enforcement actions:
  - Winter Haven Hospital was assessed a \$1,000 fine on five (5) occasions (January 2011 (twice), March 2011, August 2012 and October 2013) for violations related to Nursing Assessment, Emergency Department Services and Inappropriate Restraints.
  - Mease Dunedin Hospital was assessed a penalty of \$6000 in June 2012 for violations related to Patient Assessment and Emergency Department Services. In August 2013, the hospital was assessed a penalty of \$320 for nonpayment of Life Safety Code survey fee.
  - Morton Plant Hospital was assessed a penalty of \$800 in March 2011 and \$1000 on each of four subsequent occasions (March and December 2011, July 2012 and April 2013) for violations related to Nursing Assessment, Goals, Evaluation, Intervention, and Documentation and Nursing Department Policies and Procedures.
  - Morton Plant North Bay Hospital was assessed a penalty of \$2000 in October 2011 for violations related to Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.
  - St. Anthony's Hospital was assessed a \$5,000 penalty in July 2011 for violations in the areas of MRI Alterations, Renovations, and Installation. In January 2014, the hospital was fined \$600 for nonpayment of Life Safety Code survey fee. In March 2015, a fine of \$1,000 was assessed for violations related to Nursing Management Functions. In April 2016, a \$5,500 penalty was assessed for Failure to Notify Florida State Agency for Health Care Administration of Ownership Change. Finally, in September 2017, the hospital paid the State of Florida \$6,024.67 for administrative fees and reimbursement of Medicaid overpayments.
  - St. Joseph's Hospital was assessed a penalty of \$1000 in October 2012 for violations related to Discharge Planning. In April 2016, the hospital paid a penalty of \$21,500 for Failure to Notify Florida State Agency for Health Care Administration of Ownership Changes.
  - Bartow Regional Medical Center was assessed a penalty of \$480 in May 2014 for nonpayment of a Life Safety Code survey fee.
  - Holy Cross Hospital was assessed an administrative fee and required to reimburse the State of Florida for Medicaid overpayments in April 2013, October 2015 and September 2017 in the amounts of \$11,937, \$87,056.49 and \$97,620.48, respectively.
  
- The State of Indiana reported that, in January 2017, an enforcement action was taken based on a standard recertification survey conducted in September 2016 at the Sanctuary at Holy Cross, a nursing home located in South Bend. Deficient practices were identified relating to Quality of Care: Necessary Care and Services/Highest Practicable Well-Being. A state civil penalty of \$3000 was imposed.
  
- The State of Iowa reported no enforcements, but identified three incidents:
  - In June 2016, Condition level non-compliance was identified at Mercy Home Care, a deemed Home Health Agency surveyed by an accreditation organization. Per federal requirements, the agency has been prohibited from providing home health aide training and testing for a two-year period (6/29/16-6/29/18).
  - In September 2016, Ellen Kennedy Assisted Living Center was cited for violations related to Sufficient Staffing and Nursing Reviews. The matter was resolved with no enforcement or civil penalty.
  - In January 2017, Immediate Jeopardy was identified at Mercy Medical Center. Violations of federal Conditions of Participation included: Governing Body; Quality Assessment and Performance Improvement Program (QAPI); Nursing Services; and Laboratory Services.
  
- The State of Maryland reported that, in September 2016, an enforcement action was taken against Holy Cross Rehabilitation and Nursing (Sanctuary at Holy Cross). A survey conducted in February 2016 revealed deficient practice relating to Quality of Care: Accidents / Hazards / Environment / Supervision. A federal Civil Monetary Penalty of \$74,700 was imposed.

## Conclusion

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

## Recommendation

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

# Financial Analysis

## Overview of Master Indenture

SPHP seeks to participate in the Trinity Health Obligated Group to obtain access to capital at reduced rates. Trinity uses the Trinity Health Obligated Group to obtain capital by borrowing in a cost-effective manner in the form of tax-exempt bond financing, which can be used to repay funds that are loaned by Trinity to affiliates through Trinity's intercompany loan program. Trinity enjoys access to low cost debt financing due to their size and financial strength.

Trinity is the sole Obligated Group Member of the Trinity Health Obligated Group, which was formed and implemented through a Master Trust Indenture, now amended to be called the Master Indenture, dated October 3, 2013. The Bank of New York Mellon Trust Company, N.A. serves as master trustee. The Master Indenture establishes a combined financing group, the Credit Group, comprised of the Obligated Group Members and certain tax-exempt Affiliates designated from time to time by the Obligated Group Members as Designated Affiliates. Designated Affiliates are intended to be Regional Health Ministries (RHM) within the Trinity health system that maintain a governing body that has ownership or control of a designated portion of the Trinity health system, subject to any authorities reserved to Trinity.

Under the Master Indenture, Designated Affiliates become Material Designated Affiliates if their individual total revenues exceed 5% of the combined total revenues of the Trinity health system in any fiscal year. As of September 30, 2017, there were three Material Designated Affiliates. Trinity is required under the Master Indenture to cause Material Designated Affiliates to comply with certain covenants created under the Master Indenture. These include not permitting a Material Designated Affiliate to create, incur or permit to be created or incurred any lien on the Material Designated Affiliate's property, except for permitted encumbrances, if such lien incurs indebtedness of the Material Designated Affiliate. Each Obligated Group Member is jointly and severally liable for payment of any Obligations issued under the Master Indenture. Trinity is currently the sole Obligated Group Member and will continue to be such once SPHP becomes a Designated Affiliate. As a Designated Affiliate, SPHP will participate in a combined financing group comprised of Trinity and other Designated Affiliates.

Affiliates, including Designated Affiliates and Material Designated Affiliates, are not jointly and severally liable under the Master Indenture. However, Trinity has covenanted to cause its Designated Affiliates and Material Designated Affiliates, and through reasonable efforts to cause their respective Affiliates that are not Designated Affiliates, to pay, loan or otherwise transfer to the Trinity Health Obligated Group such amounts as are necessary, in the aggregate, to enable the Obligated Group Members to pay debt service with respect to any obligation issued pursuant to the Master Indenture. Importantly, such upstreaming provision is subject in each case to any contractual, legal and organizational limitations or obligations. Upon PHHPC approval of this application, SPHP will join the Credit Group as a Designated Affiliate like Trinity's other RHMs. Given its current revenues, SPHP will most likely become a Material Designated Affiliate.

SPHP's participation in the Trinity Health Obligated Group is a natural extension of the operation and alignment of health care financing in Trinity's multi-state health system. In 2014, the Department, in part, recognized Trinity's multi-state financing through its approval of certain SPHP health care entities using Trinity's intercompany loan program. The Trinity intercompany loan program was and is a complement to the ability of organizations within the SPHP health system to obtain debt financing on a stand-alone basis. Trinity serves as a financing source for such organizations through an intercompany loan structure

like bank financing, where loans can be made directly to organizations within the SPHP health system. Although the Department's review centered on related party interests and loans as well as reimbursement issues, the Department reviewed and recognized the benefits that lower interest rates and a centralized borrowing source can provide to a New York based health care entity within a multi-state system.

#### System Development Fund

The co-establishment of Trinity with the SPHP Licensed Entities will also allow SPHP to fully participate in Trinity's System Development Fund, which is a pool of funds principally used to finance capital expenditures of the RHMs. The System Development Fund participation fee is 1% of an RHM's total expenses less depreciation and interest, based on 12 months of participation, which would be approximately \$12.5 million as of June 30, 2018. As of June 30, 2017, the System Development Fund had an account balance of approximately \$1 billion.

#### Benefits to Co-establishment

According to the applicant, co-establishment of Trinity as the limited-purpose active parent/co-operator of SPHP and the SPHP Licensed Entities and the participation of them in the Trinity Health Obligated Group will result in the following benefits to SPHP and the Licensed Entities:

- SPHP and the Licensed Entities will have access to additional capital resources at reduced rates through a unity of system resources.
- Debt management will be centralized and standardized, and SPHP will have the benefit of Trinity's experience and expertise in managing debt.
- SPHP can participate in the System Development Fund, which provides an alternative to going to the debt market for needed capital.
- Trinity, SPHP and the Licensed Entities may upstream revenues and reallocate financial resources to achieve system and operational stability.
- Operational efficiencies and integration and enhanced system performance will be advanced because Trinity will hold final and dispositive authority over system decision-making.
- SPHP will maintain dispositive management authority over day-to-day operations and other functions best performed at the local level.
- SPHP will fully realize the benefits of being part of a national system, where operations can be streamlined, administrative efficiencies created, and system-wide financial management, operations and quality initiatives across RHMs can be standardized.

#### Capability and Feasibility

The applicant stated that upon approval of this application by PHHPC, SPHP will obtain consent for the proposed changes from necessary lenders, insurers and trustees. There are no project costs related to this application. In addition, there are no expected changes in the daily operations of any of the Licensed Entities' utilization, services or beds, or to the revenues or expenses of SPHP or the Licensed Entities as a direct and immediate result of this project, although each entity is expected to experience cost benefits from the limited-purpose active parent and obligated group designations.

As of November 29, 2017, Moody's Investors Service, Inc., Standard & Poor's Ratings Services, and Fitch Ratings have assigned high investment grade municipal bond ratings of Aa3, AA-, and AA-, respectively, to the Trinity Health Credit Group.

BFA Attachments B is the consolidated certified financial summaries of SPHP, which has maintained positive working capital, net assets and a net profit of \$2,061,000 from operations as of June 30, 2017.

BFA Attachments C is the consolidated certified financial summaries of Trinity, which has maintained positive working capital, net assets and a net loss of \$18,115,000 from operations as of June 30, 2017. The net operating loss was due to Trinity repositioning themselves within some markets and right-sizing inpatient physical plant utilization. The offset of non-operating items such as investment earnings, change due to rate swaps and retiring early debt allowed Trinity \$1,354,938,000 in excess over revenues.

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

Recommendation

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

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## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Organizational Chart for St. Peter's Health Partners & Trinity |
| BFA Attachment B | Financial Summary, SPHP Consolidated, as of June 30, 2017      |
| BFA Attachment C | Financial Summary, Trinity Consolidated as of June 30, 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 11th day of October 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 co-establish Trinity Health Corporation over all the St. Peter's Health Partners facilities, as a limited-purpose active parent/co-operator, 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:

172379 E

St. Peter's Health Partners

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
3. Submission of a photocopy of an amended Restated Certificate of Incorporations of St. Peter's Health Partners, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Peter's Health Partners, acceptable to the Department. [CSL]
6. Submission of a photocopy of Trinity Health System's System Authority Matrix, 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 # 181279-E  
Cortland Regional Medical Center Inc.**

**Program: Hospital  
Purpose: Establishment**

**County: Cortland  
Acknowledged: April 20, 2018**

**Executive Summary**

**Description**

Cortland Regional Medical Center, Inc. (Cortland), a New York (NYS) not-for-profit corporation that operates a 162-bed Article 28 acute care hospital, an 80-bed Article 28 Residential Health Care Facility with a 33-slot Adult Day Health Care Program, and an Article 36 Long Term Home Health Care Program, all located at 134 Homer Avenue, Cortland (Cortland County), requests approval to establish The Guthrie Clinic (Guthrie) as its active parent/co-operator.

Cortland selected Guthrie through a Request for Proposal (RFP) process that was led by a Collaboration Task Force consisting of nine individuals, including current and past members of Cortland’s Board who are representative of its community, as well as members of its medical staff. The Task Force work was facilitated by assistance from an independent consulting firm. Through the Task Force, Cortland identified four main objectives for the affiliation in the RFP: Program and Physician Network Growth, Financial Sustainability including infusion of/access to capital for reinvestment in facilities and programs, Preparedness for Health Care Reform, and Governance. Cortland sent the RFP to twenty health systems and eleven expressed initial interest. Four systems submitted a full response: Guthrie, Cayuga Health System, Crouse Memorial Hospital, and SUNY Upstate Medical University.

The Guthrie Clinic is a not-for-profit Pennsylvania (PA) corporation that functions as the parent of The Guthrie Clinic System, an integrated healthcare delivery system that provides an array of services in North Central

Pennsylvania and the Southern Tier of New York. The System includes four acute care hospitals—Robert Packer Hospital (PA), Corning Hospital (NY), Guthrie Towanda Memorial Hospital (PA) and Troy Community Hospital (PA)—as well as other related healthcare facilities and a multi-specialty 501(c)(3) group medical practice.

Guthrie was founded in 1910 as an offspring of the Mayo Clinic. Today, Guthrie is a member of the Mayo Clinic Care Network and serves as the lead organization in the DSRP PPS Care Compass Western Region with a total of 16,488 New York State Medicaid patients attributed to its NYS primary care sites. Guthrie has been an established provider in New York State for over twenty years, and approximately half of its 5,700 employees reside and work at its inpatient and outpatient facilities in NYS. In 1999, PHHPC and NYS DOH licensed Guthrie to co-operate Corning Hospital (a 65-bed community hospital about 43 miles from Sayre) and have subsequently licensed Guthrie to operate several Article 28 outpatient clinics in the Southern Tier. In December 2011, Corning Hospital was approved to build a replacement hospital, which became operational in 2014.

Upon Public Health and Health Planning Council approval, Cortland will be renamed Guthrie Cortland Medical Center. The current sole member and passive parent of Cortland is The C.M.H. Group, Inc. (CMHG), which was formed in 1988 to serve as the parent corporation for Cortland and its sister organizations. In conjunction with this application, CMHG will cease to exist through a corporate dissolution.

As active parent/co-operator, Guthrie will have the operator rights, powers and authorities over Cortland under 10 NYCRR 405.1(c), which include:

- Appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- Approval of hospital operating and capital budgets;
- Adoption or approval of hospital operating policies and procedures;
- Approval of certificate of need applications by or on behalf of the hospital;
- Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of hospital contracts for management or for clinical services; and
- Approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Cortland Regional Medical Center is an independent, full-service safety net community health care provider in Cortland, which is located 34 miles south of Syracuse, 44 miles north of Binghamton, 24 miles northeast of Ithaca, and 75 miles from Sayre, PA. Significant financial sustainability challenges for Cortland include: losses associated with its employed physician group, lack of access to investment capital, and decreasing volume and case mix index substantially due to outmigration of higher acuity patients to hospitals in Syracuse and the Cayuga Health System in Ithaca. In addition, Cortland does not have the organizational scale or a sufficient primary and specialty care ambulatory network to effectively participate in value-based purchasing arrangements.

In 2017, Cortland was awarded a Statewide Health Care Facility Transformation Program (Phase I) grant of \$19,798,092 to retire long-term debt. The objective of the award was to enable financial stabilization of the hospital and promote opportunity for affiliation, merger or consolidation with a with a larger health care system. The proposed affiliation with Guthrie is a continuation of Cortland's transformation and

sustainability plan as a safety net provider, and its stated purpose is to develop a coordinated, highly integrated system with the objectives of improving quality, increasing access to primary and specialty services, and lowering the costs of healthcare in the communities served by Guthrie and Cortland. Through this affiliation, Guthrie has committed to provide Cortland with approximately \$100 million of direct financial assistance over the first five years for clinical investments such as in its employed physician group, and capital investment including funding 100% of its annual depreciation, information technology costs related to an Electronic Medical Record (EMR) and imaging, and human capital and supply chain management and other efficiencies to ensure mission sustainability and continued health care service delivery.

There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. Cortland will remain a separate not-for-profit corporation licensed under Article 28 and Article 36 of the Public Health Law, maintaining separate operating certificates following the completion of the project. The Guthrie Clinic will replace CMHG as the sole member of Cortland.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

There will be no reduction in either authorized services or the number or type of beds as a result of this application.

#### 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 capital costs or projected incremental changes in staffing, utilization, operating expense or operating revenue associated with this application. The affiliation is expected to lead to financial and operational efficiencies, greater participation in regional healthcare reform and population health initiatives, expanded clinical services and overall growth in revenue helping Cortland to achieve financial sustainability.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the executed Amended and Restated Certificate of Incorporation of Cortland Regional Medical Center, Inc., acceptable to the Department. [CSL]
3. Submission of a resolution by the Board of Trustees of Cortland Regional Medical Center, Inc. approving its amended Bylaws, acceptable to the Department. [CSL]
4. Submission of a resolution by the Board of Trustees of Guthrie Cortland Medical Center approving its Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Amended and Restated Certificate of Incorporation of the C.M.H. Group, acceptable to the Department. [CSL]
6. Submission of a resolution by the Board of Trustees of The C.M.H. Group, Inc., approving its Restated Bylaws, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2018**

# Need Analysis

## Background

Cortland Regional Medical Center, Inc, (Cortland) a New York not-for-profit corporation, operates a 162-bed acute care hospital, an 80-bed Residential Health Care Facility (RHCF) with a 33-slot Adult Day Health Care Program, and a Long-Term Home Health Care Program (LTHHCP), all located at 134 Homer Avenue, in Cortland County.

As shown in BPNR Attachment A (map), Cortland is located 34 miles south of Syracuse, 44 miles north of Binghamton, 24 miles northeast of Ithaca and 75 miles from Sayre, Pennsylvania.

There will be no changes to the services provided or the number of beds as a result of this project. The following beds and services are provided by Cortland (Source: HFIS, 2018):

**Table 1: Hospital Services**

|  |                                 |
|--|---------------------------------|
| Ambulatory Surgery - Multi Specialty         | Medical Services – Primary Care |
| Clinical Laboratory Service                  | Medical Social Services         |
| Coronary Care                                | Medical/Surgical                |
| Emergency Department                         | Nuclear Medicine – Diagnostic   |
| Intensive Care                               | Pediatric                       |
| Level I Perinatal Care                       | Psychiatric                     |
| Lithotripsy O/P                              | Radiology – Diagnostic          |
| Maternity                                    | Swing Bed Program               |
| Medical Services - Other Medical Specialties | Therapy – Physical O/P          |

**Table 2: Hospital Beds**

|                    |            |
|--------------------|------------|
| Intensive Care     | 12         |
| Maternity          | 15         |
| Medical / Surgical | 116        |
| Pediatric          | 8          |
| Psychiatric        | 11         |
| <b>Total</b>       | <b>162</b> |

**Table 3: Nursing Home Services**

|                            |                                    |
|----------------------------|------------------------------------|
| Baseline Services          | Pharmaceutical Service             |
| Adult Day Health Care (33) | Physician Services                 |
| Audiology                  | Psychology                         |
| Dental                     | Respite (2)                        |
| Medical Social Services    | Therapy, Occupational              |
| Nursing                    | Therapy, Physical                  |
| Nutritional                | Therapy, Speech Language Pathology |
| Optometry                  |                                    |

**Table 4: Nursing Home Beds**

|              |            |
|--------------|------------|
| RHCF         | 80         |
| <b>Total</b> | <b>162</b> |

**Table 5: LTHHCP Counties Served/Capacity**

|              |            |
|--------------|------------|
| Cortland     | 100        |
| <b>Total</b> | <b>100</b> |

**Table 6: Inpatient Discharges**

| Major Service Category | 2010         | 2011         | 2012         | 2013         | 2014         | 2015         | 2016         | %<br>Change<br>2010<br>vs. 2016 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------------------------|
| Medical/Surgical       | 3,431        | 3,766        | 3,511        | 2,635        | 2,588        | 2,614        | 2,299        | -33.0                           |
| Pediatric              | 98           | 109          | 89           | 52           | 13           | 3            | 8            | -91.8                           |
| Obstetric              | 506          | 530          | 500          | 456          | 434          | 436          | 469          | -7.3                            |
| Psychiatric            | 305          | 304          | 269          | 233          | 266          | 380          | 311          | 2.0                             |
| Chemical Dependency    | 23           | 29           | 47           | 26           | 44           | 75           | 41           | 78.3                            |
| High Risk Neonates     | 16           | 24           | 15           | 17           | 16           | 22           | 17           | 6.3                             |
| Subtotal               | 4,379        | 4,762        | 4,431        | 3,419        | 3,361        | 3,530        | 3,145        | -28.2                           |
| Healthy Newborns       | 450          | 473          | 468          | 418          | 385          | 401          | 402          | -10.7                           |
| <b>Grand Total</b>     | <b>4,829</b> | <b>5,235</b> | <b>4,899</b> | <b>3,837</b> | <b>3,746</b> | <b>3,931</b> | <b>3,547</b> | <b>-26.5</b>                    |

Data source: SPARCS

The downward trend of inpatient discharges is generally observed in community hospitals due to the continued shift of procedures and services to the ambulatory care setting. Cortland's total discharges have decreased 26 percent over the last six years from 2010 to 2016, particularly medical/surgical and pediatric discharges.

**Table 7: Market Share Analysis for Cortland Regional Medical Center Service Area**

| Patients zip code | Post office name | Annual average discharges | Percent of Cortland's total discharges | Cumulative percent | Cortland's share of zip code | Facility with largest share of zip code (%) |
|-------------------|------------------|---------------------------|--|--------------------|------------------------------|---|
| 13045             | Cortland         | 1,953                     | 51.9                                   | 51.9               | 59.6                         | Cortland (60%)                              |
| 13077             | Homer            | 382                       | 10.1                                   | 62.0               | 53.1                         | Cortland (53%)                              |
| 13803             | Marathon         | 166                       | 4.4                                    | 66.4               | 42.8                         | Cortland (43%)                              |
| 13073             | Groton           | 153                       | 4.1                                    | 70.5               | 25.0                         | Cayuga Med Ctr (47%)                        |
| 13101             | Mc Graw          | 145                       | 3.9                                    | 74.3               | 56.2                         | Cortland (56%)                              |
| 13118             | Moravia          | 125                       | 3.3                                    | 77.6               | 23.2                         | Auburn Comm Hosp (25%)                      |
| 13040             | Cincinnatus      | 123                       | 3.3                                    | 80.9               | 49.8                         | Cortland (50%)                              |
| 13158             | Truxton          | 88                        | 2.3                                    | 83.2               | 45.6                         | Cortland (46%)                              |

Data source: SPARCS inpatient data (Oct 1, 2016-Sept 30, 2017)

Cortland's market is largely centered around the zip code the hospital is located in, and the Hospital is the largest provider of inpatient services in its service area. The Service Area, for analysis purposes, is defined as the zip codes from which 85% of their hospital discharges originate. There are only two zip codes where other hospitals draw a bigger share of the population for inpatient services.

#### Prevention Agenda

Per the applicant, the priorities reported in the CON application are consistent with those reported in the Community Service Plan (CSP). The applicant reports three Prevention agenda priorities chosen: Chronic Disease, Healthy Babies, Mothers and Children and Mental Health and Substance Abuse. Cortland Regional Medical Center (Cortland) reports that they are implementing the following evidence-based interventions to support Cortland County Prevention Agenda goals:

- Adapting tobacco-free outdoor policies,
- Other preventing chronic disease intervention diabetes prevention efforts including increasing availability accessibility and use of evidence-based interventions in self-care management in clinical and community settings.
- Promoting the NYS Smokers Quit line
- Promoting smoking cessation benefits among MA beneficiaries
- Implementing Complete Streets policies, plans and practices
- focusing on increasing the number of babies exclusively breastfed while in the hospital and decreasing smoking among pregnant women

Cortland reports that it collaborates with the Cortland County Health Department and the Seven Valleys Health Coalition along with numerous community partners. Cortland provided some of the measures they are using to track MA members who are smokers and pursuing tobacco cessation. For other interventions they did not provide measures. A review of their most recent CSP update suggests they could use intermediate measures to assess progress in their efforts.

The Cortland says that in their most recent Schedule H form submitted to IRS, they did not report community health improvement services spending that supports local Prevention Agenda goals. The hospital did not report any spending in Community Health Improvement Services in the 2016 Schedule H filing.

The applicant should develop intermediate impact measures to track progress on advancing Prevention Agenda goals. The hospital is encouraged to increase investments in the Prevention Agenda and reflect it in the Community Health Improvement Services category.

#### Conclusion

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

#### Recommendation

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

## Program Analysis

#### Program Description

CMRC will remain a separate Article 28, not-for-profit corporation and will maintain its separate operating certificate. The change in governance structure will not result in any immediate changes in existing services or staffing.

#### Character and Competence

The members of The Guthrie Clinic board are:

| <u>Name</u>                  | <u>Title/Position</u> |
|------------------------------|-----------------------|
| Joseph A. Scopelliti, M.D.   | President/CEO         |
| Michael W. Donnelly          | Chair                 |
| Terence M. Devine, M.D.      | Vice-Chair            |
| Kenneth R. Levitzky, Esq.    | Secretary             |
| Ethan Arnold                 | Director              |
| Frederick J. Bloom, Jr. M.D. | Director              |
| Daniel J. Brown, M.D.        | Director              |
| Katherine P. Douglas, Ed.D.  | Director              |
| Donald W. Hartman            | Director              |
| Karen C. Kim, M.D.           | Director              |
| H. Eugene Lindsey, M.D.      | Director              |
| Joan M. Marren, R.N.         | Director              |
| Nader Mehravari              | Director              |
| David A. Pfisterer, M.D.     | Director              |
| Douglas R. Trostle, M.D.     | Director              |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office

of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

**Dr. Douglas** disclosed that she serves as President of Corning Community College. An employee filed a retaliation complaint with Equal Employment Opportunity Commission naming the college. The outcome is pending.

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.

**Ms. Marren** disclosed an affiliation with Ozanam Hall of Queens Nursing Home. On March 26, 2018, the Department issued a Stipulation and Order and \$2,000 fine against Ozanam Hall for an inspection completed on January 23, 2018. Deficient practice was identified in the areas of accidents and supervision. Specifically, a certified nursing assistant (CNA) did not follow a resident care plan during a transfer from bed to wheelchair. The resident fell and sustained a laceration to the face.

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

#### Background

In 2016, Cortland had a loss from operations of \$10.4 million on total revenues of \$86.6 million (-12.0% operating margin). In 2017, operating losses were reduced to \$3.58 million on \$96.9 million total revenue (-3.7% operating margin). Significant financial sustainability challenges for Cortland include: losses associated with its employed physician group (\$7.3 million in 2017), lack of access to investment capital, declining inpatient volume and low case mix index substantially due to outmigration of higher acuity patients to hospitals in Syracuse and Cayuga Medical Center in Ithaca. In addition, Cortland does not have the organizational scale or a sufficient primary and specialty care ambulatory network to effectively participate in value-based purchasing arrangements.

In July 2017, NYS DOH awarded Cortland a \$19.8 million debt retirement capital grant to facilitate an active parent/co-operator affiliation as part of a long-term sustainability plan. This grant was awarded prior to Cortland selecting an affiliate but was conditioned on the Hospital doing so. In September 2017, following an RFP process, Cortland announced its intent to explore an affiliation with Guthrie. The RFP process was led by a Collaboration Task Force consisting of nine individuals, including current and past members of Cortland's Board that are representative of its community, as well as members of its medical staff community. The Task Force was facilitated through assistance from an independent consulting firm. Through the Task Force, Cortland identified four main objectives for the affiliation in the RFP: Program and Physician Network Growth, Financial Sustainability including infusion of/access to capital for reinvestment in facilities and programs, Preparedness for Health Care Reform, and Governance. Cortland sent the RFP to 20 health systems and eleven expressed initial interest, but only four systems submitted a full response: Guthrie, Cayuga Health System, Crouse Memorial Hospital, and SUNY Upstate Medical University. Guthrie was the only respondent that provided a direct financial commitment as part of its proposal, and committed approximately \$100 million to Cortland over the first five-years of the affiliation for clinical investments such as in its employed physician group, and capital investment including funding 100% of its annual depreciation, information technology costs related to an EMR and

imaging, human capital and supply chain management and other efficiencies to ensure mission sustainability and continued health care service delivery.

Guthrie is a rural health care system that currently operates four hospitals (three in PA and one in NYS) and more than 32 outpatient clinical practice sites in an eleven-county, two-state, rural region (six NYS counties and five PA counties). Guthrie's main hospital, Robert Packer Hospital, is in Sayre, PA (about 1.5 miles from the NYS border). Guthrie was founded in 1910 as an offspring of the Mayo Clinic. Today, Guthrie is a member of the Mayo Clinic Care Network; Guthrie serves as the lead organization in the DSRP PPS Care Compass Western Region and has a total of 16,488 New York State Medicaid patients attributed to its NYS primary care sites who are enrolled in the Fidelis Managed Care Program; and, in 2009, the Institute for Healthcare Improvement (the originator of the Triple Aim concept) identified Guthrie as one of ten organizations nationally best meeting the Triple Aim.

In 1999, PHHPC and NYS DOH licensed Guthrie to co-operate Corning Hospital (a 65-bed community hospital about 43 miles from Sayre) and have subsequently licensed Guthrie to operate a number of Article 28 outpatient clinics in the Southern Tier. In December 2011, Corning Hospital was approved to build an efficient, right-sized replacement hospital, which became operational in 2014. In 2016, the Guthrie system had approximately 21,000 inpatient discharges and 1.2 million outpatient visits. Guthrie's total operating revenues were about \$700 million, and the system has a AA- bond rating from Standard & Poor's. Guthrie has been an established provider in New York State for over twenty years, with a growing presence in Steuben, Chemung, Tioga and Tompkins counties, and approximately half of its 5,700 employees reside and work at its inpatient and outpatient facilities in New York State.

Based on DOH data, Corning Hospital's inpatient discharges in 2017 (4,683) were about the same as they were in 2013 (4,617), and outpatient visits have increased from 158,906 in 2013 to 488,869 in 2017. Guthrie's experience with Corning would seem to support its expressed intent to grow services in Cortland and improve access to primary and specialty services. Corning Hospital is about 30 miles closer to Sayre (43 miles) than is Cortland (75 miles), so proposed patient referrals from Cortland to Sayre for tertiary services would be a significant distance and counter to existing referral patterns north to Syracuse.

There has been opposition from several health care providers in New York State, including from what the Department is referring to as the CHS Coalition (Cayuga Medical Center, Schuyler Hospital, The Family Health Network (an FQHC in Cortland), Arnot Health (a hospital system in Chemung County), and the University of Rochester Medical Center), as well as from Crouse Hospital in Syracuse. Cayuga Health System, which responded to the Cortland RFP for an affiliate partner, proposed a partnership strategy that would help Cortland increase its revenues and leverage the value of its system assets, but did not offer a direct financial commitment in its proposal; and neither did Crouse Hospital or Upstate Medical University, who were the only other health care systems that responded to the RFP. Arnot Health received the RFP but did not respond. University of Rochester (URMC) did not respond on its own but consulted with Cayuga Health System.

#### Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs, budgets or working capital requirements associated with this application.

BFA Attachment C is the June 30, 2017 (FY2017) audited consolidated financial statements of The Guthrie Clinic and their internal financial statements as of April 30, 2018. As shown, the entity had a positive working capital position and a positive net asset position for the period. In addition, The Guthrie Clinic had an operating loss of \$19,408,000 on total operating revenues of \$682,347,000 (operating margin -2.8%) for the year ending June 30, 2017, and excess income of \$44,103,000, on total revenues of \$745,858,000 with non-operating revenues included (excess margin 5.9%). As of April 30, 2018, the entity achieved positive operating income of \$140,000 (0.02% operating margin) and excess income of \$39,420,000 on total revenues of \$655,041,000 (excess margin 6.0%).

Guthrie's FY2017 net operating loss was due, in part, to lower volumes from severe weather that closed all ambulatory sites for a day and a fire and flood at Robert Packard Hospital that closed a floor and the

medical group for two months. The operations were impacted by the implementation of a new Epic revenue cycle system that temporarily decreased productivity and increased expenses. The organization also experienced elevated medical staff turnover and retirements, which negatively impacted volumes and operating income.

BFA Attachment D is the 2016-2017 consolidated financial statements of Cortland Regional Medical Center, Inc. and their internal financial statements as of March 31, 2018. As shown, for 2017 Cortland had positive working capital and net asset positions and incurred a \$3,580,348 operating loss (-3.7% operating margin), an improvement over the 2016 reported operating loss of \$10,422,322 (-12.0% operating margin). The facility reported a net operating loss of \$40,411 (-0.44% operating margin) and including non-operating revenues, an excess income of \$720,193 (+7.8% excess margin) as of March 31, 2018.

#### Conclusion

In the Department's opinion Cortland underwent a transparent and well-designed RFP process to select an affiliate based on a specific set of objectives. The fact that the health systems who are opposed to this affiliation either did not respond to the RFP or did not comply with all the requirements of the RFP (i.e., financial investment) was considered while reviewing the application. The affiliation will enhance the availability and delivery of healthcare services to patients in the communities Cortland and Guthrie serve, and advance their respective 501(c)(3) charitable purposes. The affiliation is expected to lead to financial and operational efficiencies, greater participation in regional healthcare reform and population health initiatives, expanded clinical services, and overall growth in revenue helping Cortland achieve financial sustainability. Due to financial challenges faced by Cortland as a stand-alone organization, the parties believe affiliation can provide the financial resources, capital investments and clinical efficiencies to ensure service delivery going forward. The Department concludes that an affiliation with Guthrie will have a beneficial impact on the availability of health care services in the Cortland community and the long-term sustainability of Cortland Regional Medical Center. The applicant has demonstrated the capability to proceed in a financially feasible manner.

#### Recommendation

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

## Attachments

|                   |  |
|-------------------|--|
| BPNR Attachment A | Map  |
| BFA Attachment A  | Current Organizational Chart of The Guthrie Clinic.  |
| BFA Attachment B  | Proposed Organizational Chart of the Guthrie Clinic  |
| BFA Attachment C  | June 30, 2017 Consolidated Financial Statements and April 30, 2018 Internal Financial Statements of The Guthrie Clinic.                              |
| BFA Attachment D  | 2016- 2017 Consolidated Certified Financial Statement and the March 31, 2018 Internal Financial Statements of Cortland Regional Medical 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 11th day of October 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 The Guthrie Clinic as the active parent of Cortland Regional Medical Center, Inc., to be renamed Guthrie Cortland Medical Center, and its residential health care facility and long term home health care 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:

181279 E

Cortland Regional Medical Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the executed Amended and Restated Certificate of Incorporation of Cortland Regional Medical Center, Inc., acceptable to the Department. [CSL]
3. Submission of a resolution by the Board of Trustees of Cortland Regional Medical Center, Inc. approving its amended Bylaws, acceptable to the Department. [CSL]
4. Submission of a resolution by the Board of Trustees of Guthrie Cortland Medical Center approving its Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Amended and Restated Certificate of Incorporation of the C.M.H. Group, acceptable to the Department. [CSL]
6. Submission of a resolution by the Board of Trustees of The C.M.H. Group, Inc., approving its Restated Bylaws, 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 # 172364-E  
True North IV DC, LLC

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment    **Acknowledged:** December 7, 2017

**Executive Summary**

**Description**

True North IV DC, LLC, an existing New York limited liability company, requests approval to acquire the following two proprietary Article 28 chronic renal dialysis centers currently operated by Knickerbocker Dialysis, Inc., which operates Bronx Dialysis Center: Atlas Park Dialysis (Atlas Park), a 25-station dialysis clinic located at 80-00 Cooper Avenue, Glendale (Queens County), and Jamaica Hillside Dialysis (Jamaica Hillside), a 25-station dialysis clinic located at 171-19 Hillside Avenue, Jamaica (Queens). The facilities were initially approved as extension clinics of Bronx Dialysis Center under CON 141139 (Atlas Park) and 142199 (Jamaica Hillside) and became operational effective July 31, 2017. Atlas Park is licensed to provide chronic renal dialysis services, while Jamaica Hillside is licensed to provide chronic renal dialysis, home peritoneal dialysis training and support, and home hemodialysis training and support services. Knickerbocker Dialysis, Inc. is a wholly-owned subsidiary of DaVita of New York, Inc., which operates a significant number of chronic renal dialysis extension clinics in New York State.

After the proposed change of ownership, Atlas Park will become the main site and principal place of business of True North IV DC, LLC, and the Jamaica Hillside site will become an extension clinic of Atlas Park Dialysis. True North IV DC, LLC will continue to operate both facilities under their current names after the changes of ownership.

Attachment E shows the organizational chart of True North IV DC, LLC.

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

| <b>True North IV DC, LLC</b>  |  | <b>%</b>    |
|---|--|-------------|
| <b>Members</b>  |  |             |
| <b>True North DC Holding, LLC</b>   |  | <b>88%</b>  |
| <i><b>Knickerbocker Dialysis, Inc. (51%)</b></i><br>DaVita of New York, Inc. (100%)<br>DaVita Inc. (100%)   |  |             |
| <i><b>North Shore LIJ Renal Ventures, LLC (49%)</b></i><br>North Shore University Hosp (100%)<br>Northwell Healthcare, Inc. (100%)<br>Northwell Health, Inc. (100%) |  |             |
| <b>Quinum One, LLC</b>  |  | <b>12%</b>  |
| <i><b>Quinum LLC (75%)</b></i><br>Alexander Bangiev, MD (38.88%)<br>Dayanand Huded, MD (22.24%)<br>Ljubisa Micic, MD (38.88%)                                       |  |             |
| <i><b>Narayan Holding Company, LLC (25%)</b></i><br>Narayan Das Agrawal, MD (100%)  |  |             |
| <b>TOTAL</b>  |  | <b>100%</b> |

True North IV DC, LLC will enter into a Consulting and Administrative Services Agreement with DaVita Inc. to provide accounting, billing, funds management and other consulting and administrative services.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
The locations and primary service area in Queens County for both facilities will be unchanged and there will be no change in the operation of the facilities or expansion of services after the proposed changes of ownership.

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. True North IV DC, LLC will assume the leases for the sites where Atlas Park Dialysis and Jamaica Hillside Dialysis are located.

The proposed budgets are as follows:

| <u>Atlas Park Dialysis</u> |                   |
|----------------------------|-------------------|
|                            | <u>Third Year</u> |
| Revenues                   | \$4,544,393       |
| Expenses                   | <u>3,885,796</u>  |
| Net Income                 | \$658,597         |

| <u>Jamaica Hillside Dialysis</u> |                   |
|----------------------------------|-------------------|
|                                  | <u>Third Year</u> |
| Revenues                         | \$5,396,716       |
| Expenses                         | <u>4,739,221</u>  |
| Net Income                       | \$657,495         |

## 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 Operating Agreement of True North IV DC, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Quinum One, LLC acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended Operating Agreement of Quinum One, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization for Narayan Holding Company, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended Facility Medical Director Agreement by Knickerbocker Dialysis, Inc., Nephrology Medical Care, PLLC and Ljudisa Micic, M.D. that complies with the Department of Health guidelines for service contracts, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action

March 22, 2018 Establishment and Project Review Committee – **Deferred**

April 12, 2018 Establishment and Project Review Committee – **No Recommendation**

April 12, 2018 Public Health and Health Planning Council – **No motions passed**

May 17, 2018 Establishment and Project Review Committee – **No Recommendation**

June 7, 2018 Public Health and Health Planning Council – **Deferred**

**September 27, 2018** Establishment and Project Review

**October 11, 2018** Public Health and Health Planning Council

## Need and Program Analysis

### Background

After the change of ownership proposed in this present CON, Atlas Park Dialysis will become the main site and principal place of business of True North IV DC, LLC. Jamaica Hillside Dialysis will become an extension clinic of Atlas Park Dialysis. True North IV DC, LLC will continue to operate both facilities under their current names after the changes of ownership.

### Program Description

|   |   |   |
|---|---|---|
| Proposed Operator   | True North IV DC, LLC   | True North IV DC, LLC   |
| Doing Business As   | Atlas Park Dialysis   | Jamaica Hillside Dialysis   |
| Site Designation  | Main Site   | D&TC Extension Site   |
| Site Address  | 80-00 Cooper Avenue Glendale (Queens)   | 171-19 Hillside Avenue Jamaica (Queens)   |
| Approved Services   | Chronic Renal Dialysis – (25 stations)  | Chronic Renal Dialysis – (25 stations)<br>Home Hemodialysis Training & Support<br>Home Peritoneal Dialysis Training & Support |
| Shifts/Hours/<br>Schedule   | 6 days per week<br>Available hours will increase, as required, based on demand        | 6 days per week<br>Available hours will increase, as required, based on demand  |
| Staffing<br>(1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)                         | 6.25 FTEs / 14.83 FTEs  | 7.05 FTEs / 17.79 FTEs  |
| Medical Director(s)   | Ljubisa Micic, M.D.   | Stafford D. John, M.D.  |
| Emergency, In-Patient<br>and Backup Support<br>Services Agreement and<br>Distance | Will be provided by:<br><br>Long Island Jewish Forest Hills<br>2.7 miles / 16 minutes | Will be provided by:<br><br>Long Island Jewish Forest Hills<br>5.0 miles / 16 minutes   |

### Character and Competence

The proposed membership interest of True North IV DC, LLC is as follows:

| Members   | Interest    |
|---|-------------|
| <b>True North DC Holding, LLC</b><br><i>Knickerbocker Dialysis, Inc.</i> (51%)<br>DaVita of New York, Inc. (100%)<br>DaVita Inc. (100%)<br><b>North Shore LIJ Renal Ventures, LLC</b> (49%)<br>North Shore University Hospital (100%)<br>Northwell Healthcare, Inc. (100%)<br>Northwell Health, Inc. (100%) | <b>88%</b>  |
| <b>Quinum One, LLC</b><br><b>Quinum LLC</b> (75%)<br>Alexander Bangiev, MD (38.88%)<br>Dayanand Huded, MD (22.24%)<br>Ljubisa Micic, MD (38.88%)<br><b>Narayan Holding Company, LLC</b> (25%)<br>Narayan Das Agrawal, MD (100%)   | <b>12%</b>  |
| <b>TOTAL</b>  | <b>100%</b> |

One of the members of True North DC Holding, LLC is Knickerbocker Dialysis, Inc. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. The sole member of Knickerbocker is DaVita of New York, Inc., which is owned by DaVita Inc. DaVita operates more than 2,300 dialysis facilities across the United States. The second member of True North DC Holding, LLC is North Shore LIJ Renal Ventures, LLC, whose sole member is North Shore University Hospital (NSUH). Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc., is the parent of NSUH.

The Officers of True North IV DC, LLC are:

| <b>Name</b>            | <b>Position</b>       |
|------------------------|-----------------------|
| Luann D. Regensburg    | President             |
| Matt H. Henn           | Vice President        |
| Steven N. Fishbane, MD | Chief Medical Officer |
| Gregory Stewart        | Treasurer             |
| Laurence A. Kraemer    | Secretary             |
| Stefanie Telvi         | Assistant Secretary   |

The True North IV DC, LLC managers and their affiliations are as follows:

| <b>Manager</b>      | <b>Representing/Affiliation</b>   |
|---------------------|---|
| Luann D. Regensburg | Knickerbocker/True North DC Holding, LLC/ DaVita, Inc.                                |
| Adam Boll           | North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc. |
| Dayanand Huded, MD  | Quinum One, LLC   |

Dr. Ljubisa S. Micic will serve as Medical Director for Atlas Park and Dr. Stafford D. John will serve as Medical Director for Jamaica Hillside. Both are experienced, practicing physicians who are board-certified in Internal Medicine and Nephrology.

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

Mr. Ranieri disclosed a settlement reached on March 8, 2013 with the Securities and Exchange Commission (SEC) for failure to adequately oversee a consultant's (third party "finder") activities.

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.

Ms. Karch and Mr. Nappi disclosed an affiliation with Northern Westchester Hospital.

- On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine to Northern Westchester Hospital when Immediate Jeopardy was identified on April 22, 2016 during a complaint investigation. The allegations involved untimely calling of a code team for a newborn in distress. Hospital staff were not trained in the code policy and as such did not initiate the code via the proper procedure. The baby expired.

Knickerbocker Dialysis Inc. is the operator of Garden City Dialysis Center in Garden City.

- On November 20, 2017, the Department issued an enforcement and assessed a \$2,000 fine based on a recertification survey concluded in October 2016. Immediate Jeopardy was called when a surveyor observed a patient in an isolation room who could not be seen or heard by the staff. The facility had a video observation hook-up (which is not permitted) and the patient had been given a bell to summon staff, however the bell could not be heard at the nurse's station.

The Department has taken the following actions against Northwell affiliates:

- On July 8, 2010, the Department issued a S&O and \$42,000 fine against Syosset Hospital for deficient practice related to the care of a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and, despite multiple comorbidities, the child was not kept for observation post-operatively and subsequently expired after discharge.
- On November 21, 2016, the Department issued a S&O and \$4,000 fine to Long Island Jewish Medical Center for deficient practice related to Infection Control. The facility had 21 operating rooms (ORs) running and in 12 of the ORs, a total of 24 staff were observed not following acceptable standards of practice for Infection Control in Surgical Areas, specifically in regard to proper attire and exposure of hair during procedures.
- On March 6, 2017, the Department issued a S&O and \$4,000 fine to Plainview Hospital for deficient practice related to Infection Control. Observations revealed facility staff (i.e., physicians, podiatrists, radiologists, transporters, and physical therapists) failed to use standard infection control practices, specifically, wearing personal protective equipment, washing hands, cleaning equipment and following isolation precautions for patients with identified infectious diseases.

Northwell has made the following additional legal disclosures:

- In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the US Attorney's Office, the Office of the Inspector General (OIG) of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.
- In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the US Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.
- In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System stated that they have complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.
- In December 2010, the Civil Division of the United States Department of Justice (DOJ) alleged that, since 2003, certain Health System hospitals may have submitted claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. In 2016, the investigation was resolved by agreement with the DOJ.
- In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. In June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. Northwell reported that, to date, the government has not indicated whether there is any potential liability in either matter.
- In June 2012, the OIG and US Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. Northwell reported that, to date, the government has not indicated whether SIUH has any potential liability in this matter.

- In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

DaVita has made the following legal disclosures:

- In April 2013, a qui tam lawsuit was initiated in California alleging overpayments from government healthcare programs. There have been four subsequent amendments to add additional defendants and issues. The fourth amendment alleged a DaVita subsidiary performed one-way retrospective reviews to identify additional diagnoses that would drive higher risk scores and increase capitated payments made by the government. DaVita disputes the allegations and states an intention to defend accordingly.
- In October 2014, DaVita refunded \$712.66 to the State of Indiana Attorney General's Medicaid Fraud Control Unit as reimbursement for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.
- Also in October 2014, DaVita entered into a Settlement Agreement with the US Department of Justice (DOJ) and a Corporate Integrity Agreement with the Office of Inspector General (OIG) to resolve allegations from a qui tam suit alleging violations of the False Claims Act through payments of kickbacks to induce referral of patients to its dialysis clinics.
- In December 2014, DaVita refunded \$267,287.93 covering services provided at 19 DaVita dialysis facilities after an OIG investigation determined overpayment for claims that should not have been billed to Medicaid Fee-For-Service, but rather the Nursing Home Division Waiver Program.
- In March 2015, the OIG initiated an investigation into JSA HealthCare Corp., a subsidiary of DaVita Medical Group, concerning Medicare Advantage service providers' risk adjustment practices and data, including identification and verification of factors used for making diagnoses. More specifically, the investigation focused on two Florida physicians with whom JSA previously contracted. Subsequently, in June 2015, the Company received a subpoena from the OIG requesting a wide range of documents relating to the company and its subsidiaries' provision of services to Medicare Advantage plans and patient diagnosis coding practices for a number of conditions. The company reports that it is cooperating with the investigation.
- In June 2015, DaVita settled a qui tam in the amount of \$450,000,000 plus fees and costs. The suit alleged the company's drug administration practices for vitamin D and iron agents fraudulently created unnecessary waste which was billed to (and paid for by) the government.
- In February 2016, DaVita's pharmacy services wholly-owned subsidiary, DaVita Rx, received a Civil Investigative Demand (CID) from the US Attorney's Office for the Northern District of Texas regarding DaVita Rx's relationship with pharmaceutical manufacturers and alleging the presentation of false claims to the government for payment of prescription medications.
- In March 2016, DaVita, Inc. executed settlement agreements with the State of New York and the DOJ regarding an investigation initiated in October 2011 related to payments for infusion drugs covered by Medicaid composite payments for dialysis.
- In January 2017, DaVita executed a settlement agreement relating to a CID from the DOJ that was initiated in November 2015 through a qui tam complaint involving RMS Lifeline, Inc., a wholly-owned subsidiary of DaVita (d/b/a Lifeline Vascular Access). Allegations were both employment-related and that medically unnecessary angiograms and angiography procedures were performed on 10 patients at two vascular access centers in Florida.
- Also in January 2017, DaVita was subpoenaed by the US Attorney's Office, District of Massachusetts for records relating to charitable patient assistance organizations, particularly the American Kidney Fund, and documents providing information to patients concerning the availability of such assistance. DaVita reported that it is cooperating with the investigation.

- In February 2017, a federal securities class action complaint was filed in the US District Court for the District of Colorado alleging that the company violated securities laws concerning financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization and that the process by which patients obtained the insurance and premium assistance was improper and created a false impression of DaVita's business and growth prospects.
- Derivative shareholder lawsuits were filed in the US District Court for the District of Colorado (February 2017) and the District of Delaware (May and June 2017) alleging (among other assertions) a breach of fiduciary duty, unjust enrichment, and failure to disclose certain information in violation of federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize profits. DaVita disputes these allegations, as well as those in the aforementioned class action suit, and states an intent to defend the actions accordingly.

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

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

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

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

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

Knickerbocker Dialysis, Inc. is a 51% member of True North DC Holding, LLC which is an 88% member of True North IV DC, LLC. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. A comprehensive list of the Star Ratings for all Knickerbocker-affiliated facilities located in New York State is provided in **HSP Attachment A**.

#### Conclusion

The locations, service areas, and services will remain the same after approval, with no impact on the need or capacity for dialysis services. 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

### Contribution and Asset Purchase Agreements

The applicant has submitted executed contribution and asset purchase agreements (CAPAs) for the operating interests of Atlas Park and Jamaica Hillside. The agreements will become effectuated upon Public Health and Health Planning Council (PHHPC) approval of this CON application. The CAPAs include executed Forms of Assignment and Assumption and Bills of Sale. The terms of the agreement are summarized below:

#### **Atlas Park Dialysis**

|                            |  |
|----------------------------|--|
| Date:                      | July 28, 2017  |
| Purchaser:                 | True North IV DC, LLC  |
| Seller:                    | Knickerbocker Dialysis, Inc.   |
| Acquired Assets:           | All assets used in connection with the ownership and operation of Atlas Park Dialysis including inventory, supplies, prepaid expenses and fixed assets.  |
| Assumed Liabilities:       | All debts, obligations and liabilities incurred by Knickerbocker in connection with Atlas Park, regardless of when incurred.   |
| Purchase Price:            | \$4,406,819 (Start-up capital expenditures), \$1,192,594 (Start-up working capital – nine months of operating expenses), and \$181,587 (5% development fee) totaling \$5,781,000 as of 45 days prior to the execution of the CAPA. At least 5 days prior to the closing date these figures maybe adjusted. |
| Payment of Purchase Price: | Credit Facility from CoBiz Bank of \$4,013,800 and proposed members' contribution of \$1,767,200 of which \$971,081 has been deposited in escrow.  |

| Member Contributions       | Estimated Capital Requirements | Credit Facility    | Capital Contribution |
|----------------------------|--------------------------------|--------------------|----------------------|
| True North DC Holding, LLC | \$5,087,280                    | \$3,532,144        | \$1,555,136          |
| Quinum One, LLC            | 693,720                        | 481,656            | 212,064              |
| <b>Totals</b>              | <b>\$5,781,000</b>             | <b>\$4,013,800</b> | <b>\$1,767,200</b>   |

#### **Jamaica Hillside Dialysis**

|                            |  |
|----------------------------|--|
| Date:                      | July 28, 2017  |
| Purchaser:                 | True North IV DC, LLC  |
| Seller:                    | Knickerbocker Dialysis, Inc.   |
| Acquired Assets:           | All assets used in connection with the ownership and operation of Jamaica Hillside Dialysis including inventory, prepaid rent and numerous fixed assets but excluding the Excluded Assets.   |
| Assumed Liabilities:       | Salaries, wages, benefits and accrued paid time of all Jamaica Hillside employees; any and all existing debts, liens, claims, encumbrances, liabilities and obligations to which any of the Acquired Assets may be subject, including, without limitation, all capital lease obligations and all accounts payable incurred or accrued in connection with the operation of the Dialysis Business; and the obligations under those agreements and contracts. |
| Purchase Price:            | \$3,058,214 (Start-up capital expenditures), \$1,779,986 (Start-up working capital – 11 months of operating expenses), and \$110,800 (5% development fee) totaling \$4,949,000 as of 45 days prior to the execution of the CAPA. At least 5 days prior to the closing date these figures maybe adjusted.   |
| Payment of Purchase Price: | Credit Facility from CoBiz Bank of \$3,464,300 and proposed members' contribution of \$1,484,700 of which \$818,366.64 has been deposited in escrow.   |

| <b>Member Contributions</b> | <b>Estimated Capital Requirements</b> | <b>Credit Facility</b> | <b>Capital Contribution</b> |
|-----------------------------|---------------------------------------|------------------------|-----------------------------|
| True North DC Holding, LLC  | \$4,355,120                           | \$3,048,584            | \$1,306,536                 |
| Quinum One, LLC             | \$593,880                             | \$415,716              | \$178,164                   |
| <b>Totals</b>               | <b>\$4,949,000</b>                    | <b>\$3,464,300</b>     | <b>\$1,484,700</b>          |

The total estimated capital requirements of \$10,730,000 for both dialysis centers consist of the combined purchase price of \$7,622,596.81, expense adjustments of \$2,089,119.51 and working capital obligations of \$1,018,283.68. The purchase price reflects start-up capital expenditures and working capital requirements allocated to True North V DC, LLC and are not expected to vary significantly from the estimated amounts shown on the pro forma balance sheet under BFA Attachment D. Funding for this application will be provided through financing from CoBiz Bank, a Colorado Business Bank, and contributions from DaVita, Inc., Northwell Health, Inc., Dr. Alexander Bangiev, Dr. Dayanand V. Huded, Dr. Ljubisa S. Micic and Dr. Narayan Das Agrawal.

The credit facility totaling \$7,478,100 for both dialysis centers will consist of a series of advances from the effective date, July 28, 2017, to and including June 30, 2020. Provided no Event of Default has occurred and has not been cured by Borrower or waived by Bank, on June 30, 2020 the Revolving Loan will automatically be converted into a single term loan to be repaid in 60 equal monthly installments.

The capital contribution for both dialysis facilities as described in the purchase price of \$3,251,900 includes start-up capital costs, development fees and working capital.

The applicant has provided 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.

#### Lease Agreements

The applicant will lease space under the terms of the executed lease agreements and executed assignment and assumption of lease agreements, summarized below:

#### Atlas Park Dialysis

| <b>Lease Agreement</b> |   |
|------------------------|---|
| Date:                  | September 18, 2015 (Second Amendment)   |
| Premises:              | Space 6001, consisting of approximately 9,500 square feet of floor area, in a commercial project commonly referred to as The Shops at Atlas Park, located at 8000 Cooper Avenue in the City of Glendale, County of Queens, State of New York. |
| Landlord:              | WMAP, L.L.C.  |
| Tenant:                | Knickerbocker Dialysis, Inc.  |
| Rent:                  | \$226,000, fixed annually (\$22,166.67 fixed monthly)   |
| Terms:                 | 120 months based on the initial date of executed lease on September 5, 2014   |
| Provisions:            | Tenant's share of real estate taxes, other taxes, assessments and public charges, insurance, gas, water and electricity.  |

| <b>Assignment and Assumption of Lease Agreement</b> |   |
|---|---|
| Date:   | July 28, 2017   |
| Assignor:   | Knickerbocker Dialysis, Inc.  |
| Assignee:   | True North IV DC, LLC   |
| Premises:   | 9,500 sq. ft. located at 8000 Cooper Avenue in the City of Glendale, County of Queens, State of New York. |

### **Jamaica Hillside Dialysis**

| <b>Lease Agreement</b> |  |
|------------------------|--|
| Date:                  | September 20, 2015 (First Amendment)   |
| Premises:              | 8,607 square feet of space located at 171-19 Hillside Avenue, Jamaica, New York  |
| Landlord:              | Lawnside Realty Corp.  |
| Tenant:                | Knickerbocker Dialysis, Inc.   |
| Rent:                  | \$307,632 annually (\$25,636 monthly) with annual increases of 2.5%  |
| Terms:                 | 120 months based on the initial date of executed lease on March 23, 2015   |
| Provisions:            | Tenant's proportionate share of all taxes, net cost of all utilities, including but not limited to gas, fuel oil, electrical, telephone and other utility charges, operating expenses and insurance. |

| <b>Assignment and Assumption of Lease Agreement</b> |  |
|---|--|
| Date:   | July 28, 2017  |
| Assignor:   | Knickerbocker Dialysis, Inc.                                       |
| Assignee:   | True North IV DC, LLC  |
| Premises:   | 8,607 sq. ft. located at 171-19 Hillside Avenue, Jamaica, New York |

Luann D. Regensburg, President and a Manager of True North IV DC, LLC, Assistant Secretary of Knickerbocker Dialysis, Inc. and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

#### Consulting and Administrative Services Agreement

The applicant has submitted executed consulting and administrative services agreements (CASAs) and executed assignment, assumption and restatement of consulting and administrative services agreements.

### **Atlas Park Dialysis**

| <b>Consulting and Administrative Services Agreement</b> |  |
|---|--|
| Date:   | July 28, 2017  |
| Established Operator:                                   | Knickerbocker Dialysis, Inc.   |
| Consultant:   | DaVita, Inc.   |
| Services Rendered:                                      | Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for the center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided. |
| Term:   | Yearly   |
| Compensation:   | \$120,537 annually   |

| <b>Assignment, Assumption &amp; Restatement of Consulting &amp; Administrative Services Agreement</b> |   |
|---|---|
| Date:   | July 28, 2017   |
| Established Operator:   | True North IV DC, LLC   |
| Assignor:   | Knickerbocker Dialysis, Inc.  |
| Consultant:   | DaVita, Inc.  |
| Services Rendered:  | In addition to the responsibilities outlined in the original CASA, True North IV DC, LLC will also Lease Knickerbocker employees through an executed employee lease agreement to include all salaries and benefits. |
| Term:   | 10-year initial term with option to renew at 5 years intervals  |
| Compensation:   | \$120,537 annually  |

### **Jamaica Hillside Dialysis**

| <b>Consulting and Administrative Services Agreement</b> |  |
|---|--|
| Date:   | July 28, 2017  |
| Established Operator:                                   | Knickerbocker Dialysis, Inc.   |
| Consultant:   | DaVita, Inc.   |
| Services Rendered:                                      | Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for the center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided. |
| Term:   | Yearly   |
| Compensation:   | \$159,984 annually   |

| <b>Assignment, Assumption and Restatement of Consulting and Administrative Services Agreement</b> |   |
|---|---|
| Date:   | July 28, 2017   |
| Established Operator:   | True North IV DC, LLC   |
| Assignor:   | Knickerbocker Dialysis, Inc.  |
| Consultant:   | DaVita, Inc.  |
| Services Rendered:  | In addition to the responsibilities outlined in the original CASA, True North IV DC, LLC will also Lease Knickerbocker employees through an executed employee lease agreement to include all salaries and benefits. |
| Term:   | 10-year initial term with option to renew at 5 years intervals  |
| Compensation:   | \$159,984 annually  |

While DaVita, Inc. will be providing all the above services, True North IV DC, LLC retains ultimate control in all the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

**Atlas Park Dialysis**

The applicant has submitted first and third year operating budgets, in 2018 dollars, summarized below:

|                           | <u>First Year</u>    |                    | <u>Three Year</u>    |                  |
|---------------------------|----------------------|--------------------|----------------------|------------------|
|                           | <u>Per Treatment</u> | <u>Total</u>       | <u>Per Treatment</u> | <u>Total</u>     |
| <u>Revenues</u>           |                      |                    |                      |                  |
| Commercial FFS            | \$1,112.92           | \$444,055          | \$1,114.08           | \$1,548,573      |
| Medicare FFS              | \$314.23             | 463,184            | \$296.38             | 1,564,000        |
| Medicaid FFS              | \$256.17             | 63,018             | \$263.06             | 239,649          |
| All Other                 | \$300.04             | <u>369,046</u>     | \$306.01             | <u>1,393,880</u> |
| Total Patient Revenues    |                      | \$1,339,303        |                      | \$4,746,102      |
| Less: Bad Debt            |                      | <u>\$56,920</u>    |                      | <u>\$201,709</u> |
| Total Net Patient Revenue |                      | \$1,282,383        |                      | \$4,544,393      |
| <u>Expense</u>            |                      |                    |                      |                  |
| Operating                 | \$307.76             | \$1,030,709        | \$246.00             | \$2,985,032      |
| Interest                  | \$ 33.06             | 110,711            | \$ 21.23             | 257,545          |
| Depreciation and Rent     | \$183.58             | <u>614,818</u>     | \$ 53.01             | <u>643,219</u>   |
| Total Expenses            |                      | \$1,756,238        |                      | \$3,885,796      |
| Net Income (Loss)         |                      | <u>(\$473,855)</u> |                      | <u>\$658,597</u> |
| Utilization (Treatments)  |                      | 3,349              |                      | 12,133           |
| Cost per Treatment        |                      | \$524.41           |                      | \$320.27         |

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

| <u>Payor</u>   | <u>Year One</u>   |          | <u>Year Three</u> |          |
|----------------|-------------------|----------|-------------------|----------|
|                | <u>Treatments</u> | <u>%</u> | <u>Treatments</u> | <u>%</u> |
| Medicare FFS   | 1,474             | 44.0%    | 5,277             | 43.5%    |
| Medicaid FFS   | 246               | 7.4%     | 911               | 7.5%     |
| Commercial FFS | 399               | 11.9%    | 1,390             | 11.5%    |
| All Other      | 1,230             | 36.7%    | 4,555             | 37.5%    |

**Jamaica Hillside Dialysis**

The applicant has submitted first and third year operating budgets, in 2018 dollars, summarized below:

|                           | <u>First Year</u>    |                    | <u>Three Year</u>    |                  |
|---------------------------|----------------------|--------------------|----------------------|------------------|
|                           | <u>Per Treatment</u> | <u>Total</u>       | <u>Per Treatment</u> | <u>Total</u>     |
| <u>Revenues</u>           |                      |                    |                      |                  |
| Commercial FFS            | \$1,106.26           | \$604,019          | \$1,106.61           | \$2,158,987      |
| Medicare FFS              | \$303.08             | 614,941            | \$297.47             | 1,763,716        |
| Medicaid FFS              | \$256.35             | 81,264             | \$262.28             | 250,218          |
| All Other*                | \$300.99             | <u>477,375</u>     | \$306.93             | <u>1,464,050</u> |
| Total Patient Revenues    |                      | \$1,777,599        |                      | \$5,636,971      |
| Less: Bad Debt            |                      | <u>\$75,681</u>    |                      | <u>\$240,255</u> |
| Total Net Patient Revenue |                      | \$1,701,918        |                      | \$5,396,716      |
| <u>Expense</u>            |                      |                    |                      |                  |
| Operating                 | \$321.08             | \$1,438,101        | \$279.76             | \$3,805,579      |
| Interest                  | \$ 24.71             | 110,711            | \$ 18.93             | 257,545          |
| Depreciation and Rent     | \$142.32             | <u>637,448</u>     | \$ 49.70             | <u>676,097</u>   |
| Total Expenses            |                      | \$2,186,260        |                      | \$4,739,221      |
| Net Income (Loss)         |                      | <u>(\$484,342)</u> |                      | <u>\$657,495</u> |
| Utilization (Treatments)  |                      | 4,479              |                      | 13,603           |

Cost per Treatment

\$488.11

\$348.40

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

| <u>Payor</u>   | <u>Year One</u>   |          | <u>Year Three</u> |          |
|----------------|-------------------|----------|-------------------|----------|
|                | <u>Treatments</u> | <u>%</u> | <u>Treatments</u> | <u>%</u> |
| Medicare FFS   | 2,029             | 45.3%    | 5,929             | 43.6%    |
| Medicaid FFS   | 317               | 7.1%     | 954               | 7.0%     |
| Commercial FFS | 546               | 12.2%    | 1,950             | 14.3%    |
| All Other*     | 1,587             | 35.4%    | 4,770             | 35.1%    |

\* All Other revenues and utilization is comprised of VA, Medicare Advantage, which is managed care, and Medicare Assigned.

The following is noted regarding the first and third year budgets:

- Revenue projections are based on current rates received by similar facilities operated by the members of the applicant.
- Expense and utilization assumptions are based on the historical experience of the existing dialysis centers.
- The 2017 Medicaid APG rate for renal dialysis is reflected in the first and third year budgets. The APG rate is the base rate for Knickerbocker Dialysis, Inc. plus additional patient factors

#### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirements for Atlas Park Dialysis and Jamaica Hillside Dialysis is estimated at \$647,632 and \$789,870, respectively, based on two months of third year expenses. Working capital will be provided through proposed members' equity and financing from CoBiz Bank as explained in the APA above. BFA Attachments B and C, Financial Summary of DaVita, grandparent of Knickerbocker Dialysis, Inc., and Northwell Health, Inc., respectively, indicate sufficient funds available for estimated working capital. BFA Attachments A1 and A2, net worth statements for the members of Quinum, LLC (Dr. Alexander Bangiev, Dr. Dayanand V. Huded and Dr. Ljubisa S. Micic) and Narayan Holding Company, LLC. (Dr. Narayan Das Agrawal), respectively, indicate sufficient funds available for estimated working capital.

BFA Attachment D is the pro forma balance sheet of True North IV DC, LLC.

The submitted budgets for Atlas Park Dialysis and Jamaica Hillside Dialysis projects a net loss of \$473,855 and \$484,342 for Year One, respectively, and net income of \$658,597 and \$657,495 during Year Three, respectively. The Division Vice President of DaVita, Inc and the Vice President for Joint Ventures Operations for Quinum One has submitted a deficit funding letter, attesting that the projected first year loss will be absorbed by the ongoing operations of DaVita, Inc., Northwell Health, Inc., and the individual members of Quinum, LLC and Narayan Holding Company, LLC. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, DaVita, Inc. has experienced positive working capital and stockholder's asset position as of September 30, 2017. The entity experienced net income from operations of \$1,074,029 for the nine months ended September 30, 2017. DaVita, Inc., a publicly traded company, is the ultimate parent of Knickerbocker Dialysis, Inc.

As shown on BFA Attachment C, Northwell Health, Inc. has maintained a positive working capital position, experienced a positive stockholder's position and generated \$34,390,000 in operating income as of September 30, 2017, showing sufficient resources for needed capital. Northwell Health, Inc., a not-for-profit corporation, is the ultimate parent of North Shore – LIJ Renal Ventures, LLC.

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 A1 | Net Worth Statement for Quinum, LLC   |
| BFA Attachment A2 | Net Worth Statement for Narayan Holding Company, LLC  |
| BFA Attachment B  | Certified 2016 and Internal Financial Statements as of September 30, 2017<br>financial statements – DaVita, Inc.        |
| BFA Attachment C  | Consolidated Financial Statements and For the Nine Months Ended September<br>30, 2017 and 2016 - Northwell Health, Inc. |
| BFA Attachment D  | Pro Forma Balance Sheets – True North IV DC, LLC  |
| BFA Attachment E  | Organizational Chart - True North IV DC, LLC  |
| HSP Attachment A  | Star Rating Profile for all Knickerbocker-affiliated facilities in New York State                                       |

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 True North IV DC, LLC as the new operator of Atlas Park Dialysis and Jamaica Hillside Dialysis both currently operated by Knickerbocker Dialysis, Inc., 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:

172364 E

True North IV DC, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended Operating Agreement of True North IV DC, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Quinum One, LLC acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended Operating Agreement of Quinum One, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization for Narayan Holding Company, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended Facility Medical Director Agreement by Knickerbocker Dialysis, Inc., Nephrology Medical Care, PLLC and Ljudisa Micic, M.D. that complies with the Department of Health guidelines for service contracts, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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 # 172411-E  
True North V DC, LLC

**Program:** Diagnostic and Treatment Center      **County:** Kings  
**Purpose:** Establishment      **Acknowledged:** January 4, 2018

**Executive Summary**

**Description**

True North V DC, LLC, an existing New York limited liability company, requests approval to acquire Brooklyn Chinatown Dialysis (BCD), a 24-station, proprietary Article 28 chronic renal dialysis center located at 730 64<sup>th</sup> Street, Brooklyn (Kings County). Knickerbocker Dialysis, Inc., which operates Bronx Dialysis Center, is the current operator of the facility. BCD was certified as an extension clinic of Bronx Dialysis Center under CON 152292 and became operational effective October 12, 2017. BCD is licensed to provide chronic renal dialysis, home peritoneal dialysis training and support, and home hemodialysis training and support services.

dialysis extension clinics in New York State. After the proposed change of ownership, True North V DC, LLC. True North V DC, LLC will continue to operate the facility under the name Brooklyn Chinatown Dialysis.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The location and primary service area for Brooklyn Chinatown Dialysis will be unchanged. True North V DC, LLC does not foresee any change in the operation of the facility or expansion of services after the change of ownership.

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

**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.

| <b>True North V DC, LLC</b>  |             |
|--|-------------|
| <b>Members</b>   | <b>%</b>    |
| <b>True North DC Holding, LLC</b>  | <b>80%</b>  |
| <b>Knickerbocker Dialysis, Inc. (51%)</b><br>DaVita of New York, Inc. (100%)<br>DaVita Inc. (100%)   |             |
| <b>North Shore LIJ Renal Ventures, LLC (49%)</b><br>North Shore University Hosp (100%)<br>Northwell Healthcare, Inc. (100%)<br>Northwell Health, Inc. (100%)     |             |
| <b>Sun, Liang, Yang &amp; Yap, LLC</b><br>Wei Y. Sun, M.D. (25%)<br>Elizabeth Q. Liang, M.D. (25%)<br>Li E. Yang, M.D., Ph.D. (25%)<br>Laurel W. Yap, M.D. (25%) | <b>20%</b>  |
| <b>TOTAL</b>   | <b>100%</b> |

**Financial Summary**

There are no project costs associated with this application. True North V DC, LLC will assume the lease for the site where BCD is located. The proposed budget is as follows:

|          | <u>Third Year</u> |
|----------|-------------------|
| Revenues | \$4,037,794       |
| Expenses | <u>3,894,173</u>  |
| Gain     | \$143,621         |

Knickerbocker Dialysis, Inc. is a wholly-owned subsidiary of DaVita of New York, Inc., which operates a significant number of chronic renal

## 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 amended Lease Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended Operating Agreement of True North V DC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed copy of the Certificate of Amendment of the Articles of Organization of Sun, Liang, Yang & Yap, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended Operating Agreement of Sun, Liang, Yang & YIP, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action

March 22, 2018 Establishment and Project Review Committee – **Deferred**

April 12, 2018 Establishment and Project Review Committee – **No Recommendation**

April 12, 2018 Public Health and Health Planning Council – **No motions passed**

May 17, 2018 Establishment and Project Review Committee – **No Recommendation**

June 7, 2018 Public Health and Health Planning Council – **Deferred**

**September 27, 2018** Establishment and Project Review

**October 11, 2018** Public Health and Health Planning Council

## Need and Program Analysis

### Background

True North V DC, LLC will continue to operate the facility under the current name after the change in ownership. There will be no changes to the location, service area or services as a result of this application and therefore no change to the need or capacity of dialysis services in the county.

### Program Description

|  |   |
|--|---|
| Proposed Operator  | True North V DC, LLC  |
| Doing Business As  | Brooklyn Chinatown Dialysis   |
| Site Designation   | Diagnostic & Treatment Center (Main Site)   |
| Site Address   | 730 64th Street<br>Brooklyn, NY 11220 (Kings County)  |
| Approved Services  | Chronic Renal Dialysis – (24 stations)<br>Home Hemodialysis Training & Support<br>Home Peritoneal Dialysis Training & Support |
| Shifts/Hours/<br>Schedule  | 6 days per week<br>Available hours will increase, as required, based on demand  |
| Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)                   | 5.4 FTEs / 12.3 FTEs  |
| Medical Director(s)  | Li E. Yang, M.D., Ph.D.   |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Will be provided by:<br>Maimonides Medical Center<br>1.3 miles / 8 minutes  |

### Character and Competence

The proposed membership interest of True North V DC, LLC is as follows:

| Members   | Interest    |
|---|-------------|
| <b>True North DC Holding, LLC</b><br><i>Knickerbocker Dialysis, Inc.</i> (51%)<br>DaVita of New York, Inc. (100%)<br>DaVita Inc. (100%)<br><b>North Shore LIJ Renal Ventures, LLC</b> (49%)<br>North Shore University Hospital (100%)<br>Northwell Healthcare, Inc. (100%)<br>Northwell Health, Inc. (100%) | <b>80%</b>  |
| <b>Sun, Liang, Yang &amp; Yap, LLC</b><br>Wei Yue Sun, M.D. (25%)<br>Elizabeth Q. Liang, M. D. (25%)<br>Li E. Yang, M.D., Ph.D. (25%)<br>Laurel Win Yap, M.D. (25%)   | <b>20%</b>  |
| <b>TOTAL</b>  | <b>100%</b> |

One of the members of True North DC Holding, LLC is Knickerbocker Dialysis, Inc. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. The sole member of Knickerbocker is DaVita of New York, Inc., which is owned by DaVita Inc. DaVita operates more than 2,300 dialysis facilities across the United States. The second member of True North DC Holding, LLC is North Shore LIJ Renal Ventures, LLC, whose sole member is North Shore University Hospital (NSUH). Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc., is the parent of NSUH. Sun, Liang, Yang & Yap LLC is an existing New York State limited liability company. Each of the members is a practicing physician, board-certified in Internal Medicine/Nephrology.

The Officers of True North V DC, LLC are:

| <b>Name</b>            | <b>Position</b>                 |
|------------------------|---------------------------------|
| Luann D. Regensburg    | President & Assistant Secretary |
| Matt H. Henn           | Vice President                  |
| Steven N. Fishbane, MD | Chief Medical Officer           |
| Gregory Stewart        | Treasurer                       |
| Laurence A. Kraemer    | Secretary                       |

The True North V DC, LLC managers and their affiliations are as follows:

| <b>Manager</b>      | <b>Representing/Affiliation</b>   |
|---------------------|---|
| Luann D. Regensburg | Knickerbocker/True North DC Holding, LLC/ DaVita, Inc.                                |
| Matt H. Henn        | Knickerbocker/True North DC, Holding, LLC/DaVita, Inc.                                |
| John McGovern       | North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc. |
| Adam Boll           | North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc. |
| Wei Yue Sun, M.D.   | Sun, Liang, Yang & Yap, LLC   |

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

Mr. Ranieri disclosed a settlement reached on March 8, 2013 with the Securities and Exchange Commission (SEC) for failure to adequately oversee a consultant's (third party "finder") activities.

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.

Ms. Karch and Mr. Nappi disclosed an affiliation with Northern Westchester Hospital.

- On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine to Northern Westchester Hospital when Immediate Jeopardy was identified on April 22, 2016 during a complaint investigation. The allegations involved untimely calling of a code team for a newborn in distress. Hospital staff were not trained in the code policy and as such did not initiate the code via the proper procedure. The baby expired.

Knickerbocker Dialysis Inc. is the operator of Garden City Dialysis Center in Garden City.

- On November 20, 2017, the Department issued an enforcement and assessed a \$2,000 fine based on a recertification survey concluded in October 2016. Immediate Jeopardy was called when a surveyor observed a patient in an isolation room who could not be seen or heard by the staff. The facility had a video observation hook-up (which is not permitted) and the patient had been given a bell to summon staff, however the bell could not be heard at the nurse's station.

The Department has taken the following actions against Northwell affiliates:

- On July 8, 2010, the Department issued a S&O and \$42,000 fine against Syosset Hospital for deficient practice related to the care of a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and, despite multiple comorbidities, the child was not kept for observation post-operatively and subsequently expired after discharge.
- On November 21, 2016, the Department issued a S&O and \$4,000 fine to Long Island Jewish Medical Center for deficient practice related to Infection Control. The facility had 21 operating

rooms (ORs) running and in 12 of the ORs, a total of 24 staff were observed not following acceptable standards of practice for Infection Control in Surgical Areas, specifically in regard to proper attire and exposure of hair during procedures.

- On March 6, 2017, the Department issued a S&O and \$4,000 fine to Plainview Hospital for deficient practice related to Infection Control. Observations revealed facility staff (i.e., physicians, podiatrists, radiologists, transporters, and physical therapists) failed to use standard infection control practices, specifically, wearing personal protective equipment, washing hands, cleaning equipment and following isolation precautions for patients with identified infectious diseases.

Northwell has made the following additional legal disclosures:

- In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the US Attorney's Office, the Office of the Inspector General (OIG) of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.
- In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the US Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.
- In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System stated that they have complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.
- In December 2010, the Civil Division of the United States Department of Justice (DOJ) alleged that, since 2003, certain Health System hospitals may have submitted claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. In 2016, the investigation was resolved by agreement with the DOJ.
- In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. In June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. Northwell reported that, to date, the government has not indicated whether there is any potential liability in either matter.
- In June 2012, the OIG and US Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. Northwell reported that, to date, the government has not indicated whether SIUH has any potential liability in this matter.
- In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

DaVita has made the following legal disclosures:

- In April 2013, a qui tam lawsuit was initiated in California alleging overpayments from government healthcare programs. There have been four subsequent amendments to add additional defendants and issues. The fourth amendment alleged a DaVita subsidiary performed one-way retrospective reviews to identify additional diagnoses that would drive higher risk scores and

increase capitated payments made by the government. DaVita disputes the allegations and states an intention to defend accordingly.

- In October 2014, DaVita refunded \$712.66 to the State of Indiana Attorney General's Medicaid Fraud Control Unit as reimbursement for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.
- Also in October 2014, DaVita entered into a Settlement Agreement with the US Department of Justice (DOJ) and a Corporate Integrity Agreement with the Office of Inspector General (OIG) to resolve allegations from a qui tam suit alleging violations of the False Claims Act through payments of kickbacks to induce referral of patients to its dialysis clinics.
- In December 2014, DaVita refunded \$267,287.93 covering services provided at 19 DaVita dialysis facilities after an OIG investigation determined overpayment for claims that should not have been billed to Medicaid Fee-For-Service, but rather the Nursing Home Division Waiver Program.
- In March 2015, the OIG initiated an investigation into JSA HealthCare Corp., a subsidiary of DaVita Medical Group, concerning Medicare Advantage service providers' risk adjustment practices and data, including identification and verification of factors used for making diagnoses. More specifically, the investigation focused on two Florida physicians with whom JSA previously contracted. Subsequently, in June 2015, the Company received a subpoena from the OIG requesting a wide range of documents relating to the company and its subsidiaries' provision of services to Medicare Advantage plans and patient diagnosis coding practices for a number of conditions. The company reports that it is cooperating with the investigation.
- In June 2015, DaVita settled a qui tam in the amount of \$450,000,000 plus fees and costs. The suit alleged the company's drug administration practices for vitamin D and iron agents fraudulently created unnecessary waste which was billed to (and paid for by) the government.
- In February 2016, DaVita's pharmacy services wholly-owned subsidiary, DaVita Rx, received a Civil Investigative Demand (CID) from the US Attorney's Office for the Northern District of Texas regarding DaVita Rx's relationship with pharmaceutical manufacturers and alleging the presentation of false claims to the government for payment of prescription medications.
- In March 2016, DaVita, Inc. executed settlement agreements with the State of New York and the DOJ regarding an investigation initiated in October 2011 related to payments for infusion drugs covered by Medicaid composite payments for dialysis.
- In January 2017, DaVita executed a settlement agreement relating to a CID from the DOJ that was initiated in November 2015 through a qui tam complaint involving RMS Lifeline, Inc., a wholly-owned subsidiary of DaVita (d/b/a Lifeline Vascular Access). Allegations were both employment-related and that medically unnecessary angiograms and angiography procedures were performed on 10 patients at two vascular access centers in Florida.
- Also in January 2017, DaVita was subpoenaed by the US Attorney's Office, District of Massachusetts for records relating to charitable patient assistance organizations, particularly the American Kidney Fund, and documents providing information to patients concerning the availability of such assistance. DaVita reported that it is cooperating with the investigation.
- In February 2017, a federal securities class action complaint was filed in the US District Court for the District of Colorado alleging that the company violated securities laws concerning financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization and that the process by which patients obtained the insurance and premium assistance was improper and created a false impression of DaVita's business and growth prospects.
- Derivative shareholder lawsuits were filed in the US District Court for the District of Colorado (February 2017) and the District of Delaware (May and June 2017) alleging (among other assertions) a breach of fiduciary duty, unjust enrichment, and failure to disclose certain information in violation of federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize profits. DaVita disputes these allegations, as well as those in the aforementioned class action suit, and states an intent to defend the actions accordingly.

## Star Ratings - Dialysis Facility Compare (DFC)

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

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

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

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

Knickerbocker Dialysis, Inc. is a 51% member of True North DC Holding, LLC which is an 80% member of True North V DC, LLC. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. A comprehensive list of the Star Ratings for all Knickerbocker-affiliated facilities located in New York State is provided in HSP Attachment A.

## Conclusion

There will be no change to services provided or the number of dialysis stations operated and therefore has no effect on need. 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

### Contribution and Asset Purchase Agreement

The applicant has submitted an executed contribution and asset purchase agreement (CAPA) for the operating interests of BCD. The agreement will become effectuated upon PHHPC approval of this CON application. The CAPA includes executed Forms of Assignment and Assumption and Bill of Sale. The terms of the agreement are summarized below:

|                            |   |
|----------------------------|---|
| Date:                      | August 23, 2017   |
| Purchaser:                 | True North V DC, LLC  |
| Seller:                    | Knickerbocker Dialysis, Inc.  |
| Acquired Assets:           | All assets used in connection with the ownership and operation of BCD including inventory, supplies, prepaid expenses and fixed assets.   |
| Assumed Liabilities:       | All debts, obligations and liabilities incurred by Knickerbocker in connection with the Dialysis business, regardless of when incurred.   |
| Purchase Price:            | \$3,884,935 (Start-up capital expenditures), \$1,776,205 (Start-up working capital – 13 months of operating expenses), and \$151,860 (5% development fee) totaling \$5,813,000. These figures are estimates and are subject to change. Sun, Liang, Yang & Yap, LLC and True North Holding each acknowledges and agrees that it may be required to contribute additional capital to Company if the actual amounts differ from the estimated amounts. |
| Payment of Purchase Price: | Credit Facility from CoBiz Bank of \$4,070,000 and proposed members' contribution of \$1,743,000 of which \$1,031,856 has been deposited in escrow.   |

| Member Contributions         | Estimated Capital Requirements | Credit Facility    | Capital Contribution |
|------------------------------|--------------------------------|--------------------|----------------------|
| True North DC Holding, LLC   | \$4,650,400                    | \$3,256,000        | \$1,394,400          |
| Sun, Liang, Yang, & Yap, LLC | 1,162,600                      | 814,000            | 348,600              |
| <b>Totals</b>                | <b>\$5,813,000</b>             | <b>\$4,070,000</b> | <b>\$1,743,000</b>   |

The total estimated capital requirement of \$5,813,000 consist of the purchase price of \$2,573,135.48, expense adjustments of \$678,069.84 and members' contribution obligations of \$2,561,794.68. Start-up capital expenditures and working capital requirements allocated to True North V DC, LLC are not expected to vary significantly from the estimated amounts shown on the pro forma balance sheet under BFA Attachment D. Funding for this project will be provided through a mix of financing from CoBiz Bank, a Colorado Business Bank, and contributions from DaVita, Inc., Northwell Health, Inc., Wei Y. Sun, M.D., Elizabeth Q. Liang, M.D., Li E. Yang, M.D., Ph.D. and Laurel W. Yap, M.D.

The credit facility totaling \$4,070,000 will consist of a series of advances from the Effective Date to the Conversion Date. Provided no Event of Default has occurred and has not been cured by Borrower or waived by Bank, on August 1, 2019, the Revolving Loan will automatically be converted into a single term loan to be repaid by either the earlier of: October 1, 2024 or the date which is 62 months following the Conversion Date.

The capital contribution of \$1,743,000 includes start-up capital costs, development fees and working capital.

The applicant has provided 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.

### Lease Agreement

The applicant will lease space on the first floor under the terms of the executed lease agreement summarized below:

|             |  |
|-------------|--|
| Date:       | December 4, 2015   |
| Premises:   | Space consisting of approximately 10,626 rentable square feet of floor area in a building located at 730 64th Street in the Borough of Brooklyn, County of Kings, City and State of New York |
| Landlord:   | 730 64th Street Company LLC  |
| Tenant:     | Knickerbocker Dialysis, Inc.   |
| Rent:       | \$393,162, annually (months 1-60) and \$432,478.20, monthly (months 61-120) with three renewal terms of 60 months each at \$39,643.84, \$43,608.22 and \$47,969.04 per year, respectively    |
| Terms:      | 120 months   |
| Provisions: | Tenant's share of real estate taxes, other taxes, assessments and public charges, insurance, gas, water and electricity.   |

### Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption of Lease agreement for the site, summarized below:

|           |   |
|-----------|---|
| Date:     | August 23, 2017   |
| Assignor: | Knickerbocker Dialysis, Inc.  |
| Assignee: | True North V DC, LLC  |
| Premises: | 10,626 sq. ft. located at 730 64 <sup>th</sup> Street, Brooklyn, New York |

Luann D. Regensburg, President and a Manager of True North V DC, LLC, Assistant Secretary of Knickerbocker Dialysis, Inc. and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

### Consulting and Administrative Services Agreement

The applicant has submitted an executed consulting and administrative services agreement (CASA). The terms of the agreement are summarized below:

|                       |  |
|-----------------------|--|
| Date:                 | August 23, 2017  |
| Established Operator: | Knickerbocker Dialysis, Inc.   |
| Consultant:           | DaVita, Inc.   |
| Services Rendered:    | Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided. |
| Term:                 | Yearly   |
| Consultant Fee:       | \$113,239 annually   |

Assignment, Assumption and Restatement of CASA

The applicant has submitted an executed assignment, assumption and restatement of consulting and administrative services agreement. The terms of the agreement are summarized below:

|                                    |   |
|------------------------------------|---|
| Date:                              | August 23, 2017 (Second Amendment)  |
| Company:                           | True North DC Holding, LLC  |
| Administrator:                     | DaVita, Inc.  |
| Responsibilities of Administrator: | Perform all bookkeeping and accounting procedures; maintain financial records; prepare and file all necessary local, state and federal income tax returns and all necessary business tax returns; institute, defend, appeal, mediate or arbitrate any and all legal actions or proceedings; comply with all provisions of federal, state and local laws, rules, regulations and ordinances; and assist Company in arranging for and secure on behalf of Company insurance coverage. |
| Term:                              | 10-year initial term with option to renew at 5 years intervals  |
| Compensation:                      | \$113,239 annually  |

While DaVita, Inc. will be providing all of the above services, the Company retains ultimate control in all of the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant has submitted first and third year operating budgets, in 2018 dollars, summarized below:

|                          | <u>First Year</u>    |                    | <u>Three Year</u>    |                    |
|--------------------------|----------------------|--------------------|----------------------|--------------------|
|                          | <u>Per Treatment</u> | <u>Total</u>       | <u>Per Treatment</u> | <u>Total</u>       |
| <u>Revenues</u>          |                      |                    |                      |                    |
| Commercial FFS           | \$871.10             | \$398,091          | \$902.35             | \$1,341,795        |
| Medicare MC              | \$286.51             | 881,694            | \$292.05             | 2,714,875          |
| Medicaid MC              | \$247.08             | 48,428             | \$252.69             | 161,977            |
| Total Revenues           |                      | <u>\$1,258,213</u> |                      | <u>\$4,218,647</u> |
| Less: Bad Debt           |                      | <u>\$54,002</u>    |                      | <u>\$180,853</u>   |
| Total Patient Revenue    |                      | <u>\$1,204,211</u> |                      | <u>\$4,037,794</u> |
| <u>Expenses</u>          |                      |                    |                      |                    |
| Operating                | \$344.86             | \$1,202,172        | \$254.81             | \$2,910,917        |
| Interest (P&I)           | \$22.55              | 78,617             | \$17.34              | 198,085            |
| Depreciation and Rent    | \$218.76             | 762,610            | \$68.73              | 785,171            |
| Total Expenses           |                      | <u>\$2,043,399</u> |                      | <u>\$3,894,173</u> |
| Net Income/(Loss)        |                      | <u>(\$839,188)</u> |                      | <u>\$143,621</u>   |
| Utilization (Treatments) |                      | 3,486              |                      | 11,424             |
| Cost per Treatment       |                      | \$586.17           |                      | \$340.88           |

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

| <u>Payor</u>   | <u>Year One</u> | <u>Year Three</u> |
|----------------|-----------------|-------------------|
| Commercial FFS | 13.1%           | 13.0%             |
| Medicare FFS   | 81.3%           | 81.4%             |
| Medicaid FFS   | 5.6%            | 5.6%              |

The following is noted regarding the first and third year budgets:

- Expense and utilization assumptions are based on the budgets that were included with CON 152292-C (Brooklyn Chinatown Dialysis), under which the existing facility was approved as an extension clinic of Knickerbocker Dialysis, Inc. The site commenced operations in 2017 and is still in the first year of operations at the time of this present CON submission. As shown in the projected operating budgets, the site is projected to have positive revenue over expenses by the third year of operation.
- The 2017 Medicaid APG rate for renal dialysis is reflected in the first and third year budgets. The APG rate is the base rate for Knickerbocker Dialysis, Inc. plus additional patient factors.

#### Capability and Feasibility

There are no project costs associated with this application. The working capital requirements for Brooklyn Chinatown Dialysis is estimated at \$649,029, based on two months of third year expenses. Working capital will be provided through a mix of proposed members' equity and financing from CoBiz Bank. BFA Attachments C and D, Financial Summary of DaVita, grandparent of Knickerbocker Dialysis, Inc. and Northwell Health, Inc., respectively, indicate sufficient funds available for estimated working capital. BFA Attachment A, net worth statements for the members of Sun, Liang, Yang & Yap, LLC (Wei Y. Sun, M.D., Elizabeth Q. Liang, M.D., Li E. Yang, M.D., Ph.D. and Laurel W. Yap, M.D.), indicates sufficient funds available for estimated working capital.

BFA Attachment D is the pro forma balance sheet of True North V DC, LLC.

The submitted budget projects a net loss of \$839,188 for Year One and a net income of \$143,621 during Year Three. The Acting Division Vice President of DaVita, Inc. and the Vice President for Joint Ventures Operations of North Shore-LIJ Renal Ventures, LLC and Managing Member of Sun, Liang, Yang & Yap, LLC has submitted a deficit funding letter, attesting that the projected first year loss will be absorbed by the ongoing operations of DaVita, Inc., Northwell Health, Inc. and the individual members of Sun, Liang, Yang & Yap, LLC. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, DaVita, Inc. has experienced positive working capital and stockholder's asset position as of as of September 30, 2017. The entity experienced net income from operations of \$1,074,029 for the nine months ended September 30, 2017. DaVita, Inc., a publicly traded company, is the ultimate parent of Knickerbocker Dialysis, Inc.

As shown on BFA Attachment C, Northwell Health, Inc. has maintained a positive working capital position, experienced a positive stockholder's position and generated \$34,390,000 in operating income as of September 30, 2017, showing sufficient resources for needed capital. Northwell Health, Inc., a voluntary not for profit corporation, is the ultimate parent of North Shore – LIJ Renal Ventures, LLC.

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 | Net Worth Statement for Sun, Liang, Yang & Yap, LLC   |
| BFA Attachment B | Certified 2016 and Internal Financial Statements as of September 30, 2017<br>financial statements – DaVita, Inc.        |
| BFA Attachment C | Consolidated Financial Statements and For the Nine Months Ended September<br>30, 2017 and 2016 - Northwell Health, Inc. |
| BFA Attachment D | Pro Forma Balance Sheet – True North V DC, LLC  |
| BFA Attachment E | Organizational Chart - True North V DC, LLC   |
| HSP Attachment A | Star Rating Profile for all Knickerbocker-affiliated facilities in New York State                                       |

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 11th day of October 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 True North V DC, LLC as the new operator of a 24-station chronic renal dialysis center located at 730 64th Street, Brooklyn, currently operated by Knickerbocker Dialysis, Inc., 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:

172411 E

True North V DC, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's amended Lease Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended Operating Agreement of True North V DC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed copy of the Certificate of Amendment of the Articles of Organization of Sun, Liang, Yang & Yap, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended Operating Agreement of Sun, Liang, Yang & YIP, 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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:** 181266  
**Name of Agency:** The Eliot at New Rochelle LLC  
**Address:** New Rochelle  
**County:** Westchester  
**Structure:** Limited Liability Company

The Eliot at New Rochelle LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be operated by The Eliot at New Rochelle LLC. The LHCSA and the ALP will have identical membership.

The membership of The Eliot at New Rochelle LLC comprises the following individual:

|  |   |
|--|---|
| <b>Eric Newhouse, Esq.</b> – 100% member | <u>Affiliations</u>                         |
| CEO, The Eliot at Erie Station           | Marquis Home Care, LLC (LHCSA)              |
| CEO, MedWiz Solutions, Inc.              | The Eliot at Catskill (Assisted Living)     |
| CFO, Adult Care Management, LLC          | The Eliot at Erie Station (Assisted Living) |
| President, Marquis Home Care LLC         | The Sentinel at Amsterdam (Assisted Living) |

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A Certificate of Good Standing has been received.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Westchester County from an office located at 41 Lockwood Avenue, New Rochelle, New York 10801.

The applicant proposes to provide the following health care services:

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

A seven-year review of the operations of the following facilities/ agencies was performed:

| Facility Name             | Agency Type     | Affiliation Dates |
|---------------------------|-----------------|-------------------|
| Marquis Home Care, LLC    | LHCSA           | 2013-present      |
| The Eliot at Catskill     | Assisted Living | 2010-present      |
| The Eliot at Erie Station | Assisted Living | 2007-present      |
| The Sentinel of Amsterdam | Assisted Living | 2016-present      |

The Eliot at Catskill, LLC was fined:

- \$7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017, and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.11(a).
- \$2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- \$5,700.00 pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015, and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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 violation.

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

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

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 11th day of October 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:

181266 E

The Elliot at New Rochelle LLC

APPROVAL CONTINGENT UPON:

N/A

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:** 1814236  
**Name of Agency:** The Sentinel of Mohegan Lake LLC  
**Address:** Mohegan Lake  
**County:** Westchester  
**Structure:** Limited Liability Company

The Sentinel of Mohegan Lake, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be operated by the Sentinel of Mohegan Lake, LLC. The LHCSA and the ALP will have identical membership.

The membership of The Sentinel of Mohegan Lake, LLC is comprised of the following individual:

|  |   |
|--|---|
| <b>Eric Newhouse, Esq.</b> – 100% member | <u>Affiliations</u>                         |
| CEO, The Eliot at Erie Station           | Marquis Home Care, LLC (LHCSA)              |
| CEO, MedWiz Solutions, Inc.              | The Eliot at Catskill (Assisted Living)     |
| CFO, Adult Care Management, LLC          | The Eliot at Erie Station (Assisted Living) |
| President, Marquis Home Care LLC         | The Sentinel at Amsterdam (Assisted Living) |

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A Certificate of Good Standing has been received.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Westchester County from an office located at 3441 Lexington Avenue, Mohegan Lake, New York 10547.

The applicant proposes to provide the following health care services:

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

A seven-year review of the operations of the following facilities/ agencies was performed:

| Facility Name             | Agency Type     | Affiliation Dates |
|---------------------------|-----------------|-------------------|
| Marquis Home Care, LLC    | LHCSA           | 2013-present      |
| The Eliot at Catskill     | Assisted Living | 2010-present      |
| The Eliot at Erie Station | Assisted Living | 2007-present      |
| The Sentinel of Amsterdam | Assisted Living | 2016-present      |

The Eliot at Catskill, LLC was fined:

- \$7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017, and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.11(a).
- \$2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- \$5,700.00 pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015, and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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 violation.

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

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

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 11th day of October 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:

181436 E

The Sentinel of Mohegan Lake LLC

APPROVAL CONTINGENT UPON:

N/A

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*.



## MEMORANDUM

**To:** Public Health and Health Planning Council

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

**Date:** October 2, 2018

**Subject:** Proposed Change of Corporate Name from United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. to AccessCNY, Inc.

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The United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. changed its name to AccessCNY, Inc. and seeks Public Health and Health Planning Council (PHHPC) approval to effectuate the name change. The name was changed on January 1, 2015 as part of a merger with Transitional Living Services of Onondaga County, Inc.. However, through a filing error, PHHPC approval for the name change was not requested at that time. Sections 804(a)(i) and 404(o) and (t) of New York Not-for-Profit Law require PHHPC's approval over this name change.

There is no legal objection to the proposed corporate name change and the Certificate of Merger is in legally acceptable form.

Attachments

September 26, 2018

Mark Furnish, Director  
Bureau of Health Facility Planning and Development  
Division of Legal Affairs  
New York State Department of Health  
Room 2482, Tower Building  
Empire State Plaza  
Albany, NY 12237

Dear Mr. Furnish:

As you know, we have recently become aware that the change in our agency's name from United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. to AccessCNY, Inc. was not approved by the New York State Department of Health ("the Department"). I am writing to provide the history behind how and when this name change occurred as well a merger that occurred at the same time. This letter will also provide information on a second merger for which we seek the Department's approval.

As outlined in the attached Certificate of Merger (Attachment A) dated December 4, 2014, United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. was formed in 1948. This remained the legal name of the organization until January 1, 2015 when, as part of a merger with Transitional Living Services of Onondaga County, Inc., the name of the corporation was changed to AccessCNY, Inc. While approval of the name change and merger was received by our regulatory agencies and the NYS Department of State, we were unaware of the need to seek the Department's approval. This was likely due, at least in part, to the fact that the Articles of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. did not cite the Department within the Purposes section.

More recently, AccessCNY has received approval from the NYS Attorney General and our regulatory agencies for a second merger with Spaulding P.R.A.Y. Residence Corp. Included as Attachment B is a copy of the filing seeking approval of this merger.

We respectfully request the Department's approval of the name change to AccessCNY, Inc. and the two mergers outlined above. Please do not hesitate contacting me if you require additional information.

Sincerely,



Paul Joslyn  
Executive Director



# Attachment A

***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 December 4, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

**CERTIFICATE OF MERGER  
OF  
TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC.  
AND  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, INC.  
INTO  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, INC.**

**UNDER NEW YORK NOT-FOR-PROFIT CORPORATION LAW § 904**

The undersigned, Brian Hoke, being President of Transitional Living Services of Onondaga County, Inc., and Marvin Reed, being President of United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc., and said corporations both being domestic not-for-profit corporations organized and existing under and by virtue of the laws of the State of New York, hereby certify:

- (1) The names of the Constituent Corporations are Transitional Living Services of Central New York, Inc. and United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. shall be the Surviving Corporation, but shall assume be re-named: AccessCNY, Inc.
- (2) The Certificate of Incorporation of Transitional Living Services of Onondaga County, Inc. was filed by the Department of State on the 27th day of September, 1974, pursuant to the Not-for-Profit Corporation Law, under the name Transitional Living Services of Central New York, Inc.
- (3) The Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. was filed by the Department of State on the 25th day of February, 1948, Pursuant to the Membership Corporation Law, under the name Syracuse Cerebral Palsy and Handicapped Children's Association, Inc.
- (4) The Surviving Corporation, United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. is a corporation, as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law, was formerly considered a Type "B" Corporation, and is now classified as a "Charitable" Corporation under Section 201 of the New York Not-for-Profit Corporation Law.
- (5) There are no holders of certificates evidencing capital contributions or subventions for either Transitional Living Services of Onondaga County, Inc. or United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc.
- (6) The manner and basis of converting governing authority in each Constituent Corporation, Transitional Living Services of Onondaga County, Inc. and United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc., into governing authority and representational interest in the Surviving Corporation, United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. was accomplished as set forth herein. All individuals serving on the Board of Directors of each Constituent Corporation who were willing and able to serve on the Board of Directors of the Surviving Corporation upon effectuation of the instant merger were appointed to serve on the Board of Directors of the Surviving Corporation.

- (7) The amendments or changes in the Certificate of Incorporation of the surviving corporation to be effected by the merger are:

Paragraph 1, which stipulates the name of the corporation, is amended to read as follows:

*"1. The name of the corporation is: AccessCNY, Inc."*

Paragraph 2, which relates to the purposes for which the corporation was formed, is amended to read as follows:

*"2. The purposes for which it is to be formed are:*

- (a) sponsor, coordinate and provide programs and services that assess, counsel, support and otherwise assist individuals and families with cerebral palsy and other developmental disabilities, and those with mental health concerns, in an effort to facilitate and encourage their ability to live independently and self-sufficiently as fully integrated members of their communities;*
- (b) establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of People with Developmental Disabilities, for the benefit of people with cerebral palsy and other developmental disabilities;*
- (c) establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of Mental Health, for the benefit of people with mental health concerns;*
- (d) provide habilitation, rehabilitation, training, placement and other residence-based services incidental to the foregoing charitable purposes."*

- (8) This merger was authorized with respect to United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc., as set forth herein. United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. does not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. Said corporation is a "Charitable Corporation," as defined by Section 201 of the Not-For-Profit Corporation Law and is governed by a self-perpetuating Board of Directors, as authorized by Section 601 of said statute. There are no requirements in the Certificate of Incorporation of said corporation requiring the maintenance of a Membership. Rather, the By-Laws of the corporation provide for governance by a self-perpetuating Board of Directors. Said Board of Directors adopted and authorized this Certificate of Merger, together with a Plan of Merger at a meeting of the Board convened on the 17th day of June in the year 2013, by, at least, a two-thirds (2/3s) majority vote of the Directors present at the time of the vote, a valid quorum being present.

- (9) This merger was authorized with respect to Transitional Living Services of Onondaga County, Inc. as set forth herein. Transitional Living Services of Onondaga County, Inc., does not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. Said corporation is a "Charitable Corporation," as defined by Section 201 of the Not-For-Profit Corporation Law and is governed by a self-perpetuating Board of Directors, as authorized by Section 601 of said statute. There are no requirements in the Certificate of Incorporation of said corporation requiring the maintenance of a Membership. Rather, the By-Laws of the corporation provide for governance by a self-perpetuating Board of Directors. Said Board of Directors adopted and authorized this Certificate of Merger, together with a Plan of Merger at a meeting of the Board convened on the 17th day of June in the year 2013, by, at least, a two-thirds (2/3s) majority vote of the Directors present at the time of the vote, a valid quorum being present.
- (10) The instant merger shall become effective on January 1, 2015.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ONONDAGA

---

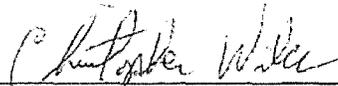
Certificate of Merger  
of

TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC.  
and  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, INC.  
INTO  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, IN.

UNDER NEW YORK NOT-FOR-PROFIT CORPORATION LAW §904

---

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 ORDERS, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER



CHRISTOPHER WILES    DATE: November 26, 2014  
ASSISTANT ATTORNEY GENERAL

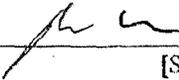
STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS.:  
CITY OF SYRACUSE )

On this 26<sup>th</sup> day of November 2014, before me personally came CHRISTOPHER WILES, to me known and known to me to be a duly constituted Assistant Attorney General, and the person who executed the foregoing instrument, and he duly acknowledged to me that he, as such Assistant Attorney General, had executed the same in the name and on behalf of the Attorney General, for the uses and purposes therein mentioned.



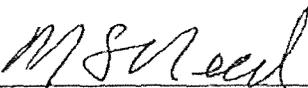
Assistant Attorney General of  
the State of New York, with  
the general powers of a Notary  
Public, pursuant to Section 73  
of the Executive Law of the  
State of New York.

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, subscribed this certificate and hereby affirm it as true under the penalties of perjury this 17 day of October, 2013.

  
\_\_\_\_\_  
[Signature]  
Brian Hoke, President of the Board of Directors

Attest:   
\_\_\_\_\_  
[Signature]  
Fred Fusco, Vice President of the Board of Directors

for  
TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC.

  
\_\_\_\_\_  
[Signature]  
Marvin Reed, President of the Board of Directors

Attest:   
\_\_\_\_\_  
[Signature]  
Harriet Silverman, Secretary of the Board of Directors

for  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF SYRACUSE,  
INC.

141203000747

RECEIVED  
2014 DEC -3 PM 2:52

**Certificate of Merger**

of

Transitional Living Services of Onondaga County, Inc.

(List Constituent Name)

And

United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc.

(List Survivor Name)

Into

United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc.

(Re-list Survivor Name)

(Under Section 904 of the Not-for-Profit Corporation Law)

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 03 2014

TAX \$ \_\_\_\_\_

BY:                     

2014 DEC -3 PM 3:45

Filed by:

Lauren Aokupto, Esq.  
(Name)  
272 Broadway Menands NY  
(Mailing address)  
Menands, NY 13204  
(City, State and Zip Code)

812

FILING RECEIPT

=====

ENTITY NAME: ACCESSCNY, INC.

DOCUMENT TYPE: MERGER (DOM. NFP)  
PURPOSES NAME

COUNTY: ONON

=====

FILED:12/03/2014 DURATION:\*\*\*\*\* CASH#:141203000812 FILM #:141203000747

FILER:

EFFECT DATE

-----  
LAUREN HOLUPKO, ESQ.  
272 BROADWAY

-----  
01/01/2015

MEANDS, NY 12204

ADDRESS FOR PROCESS:  
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REGISTERED AGENT:  
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CONSTITUENT NAME: TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC.

=====

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FEEES            190.00  
-----  
FILING            30.00  
TAX                0.00  
CERT              0.00  
COPIES            10.00  
HANDLING        150.00

PAYMENTS        190.00  
-----  
CASH              0.00  
CHECK            190.00  
CHARGE            0.00  
DRAWDOWN        0.00  
OPAL              0.00  
REFUND            0.00



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
Attorney General

REGIONAL OFFICE DIVISION  
SYRACUSE REGIONAL OFFICE

March 11, 2014

David J. Watson, Esq.  
Watson & West  
272 Broadway  
Albany, New York 12204

**Re: Merger of Transitional Living Services of Onondaga County, Inc. and United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc. into United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc.**

Dear Mr. Watson:

Enclosed you will find the Attorney General's Statement of No Objection to the merger with regard to the above-referenced matter. Please make sure that I receive a copy of the filing receipt from the Department of State once the certificate has been accepted for filing so that I can close my file.

Transitional Living Services should file an annual report for the year 2013, as well as a final report for the period January 1, 2014 through the effective date of the merger. The final report should show the assets and liabilities being transferred to United Cerebral Palsy.

Very truly yours,

CHRISTOPHER WILES  
Assistant Attorney General

CW/sb  
enc.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ONONDAGA

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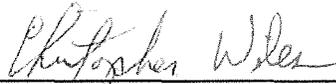
Certificate of Merger  
of

**TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC.  
and  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, INC.  
INTO  
UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF  
SYRACUSE, IN.**

**UNDER NEW YORK NOT-FOR-PROFIT CORPORATION LAW §904**

---

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 ORDERS, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER



CHRISTOPHER WILES    DATE: 3/11/14  
ASSISTANT ATTORNEY GENERAL

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS.:  
CITY OF SYRACUSE )

On this 3<sup>rd</sup> day of March 2014, before me personally came CHRISTOPHER WILES, to me known and known to me to be a duly constituted Assistant Attorney General, and the person who executed the foregoing instrument, and he duly acknowledged to me that he, as such Assistant Attorney General, had executed the same in the name and on behalf of the Attorney General, for the uses and purposes therein mentioned.



---

Assistant Attorney General of  
the State of New York, with  
the general powers of a Notary  
Public, pursuant to Section 73  
of the Executive Law of the  
State of New York.

# Attachment B



May 24, 2018

Colleen M. Leonard  
Executive Secretary, Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Rm 1805  
Empire State Plaza  
Albany, New York 12237

Re: *Proposed Certification of Merger*  
*AccessCNY, Inc.*  
*Spaulding P.R.A.Y. Residence Corp.*

Dear Sir or Madam:

My organization is assisting AccessCNY, Inc., and Spaulding P.R.A.Y. Residence Corp., each established Not-for-Profit Corporations with offices in Onondaga County, in effectuating a corporate merger. Enclosed herein, please find a copy of a proposed Certificate of Merger. We are writing to ask for your assistance relative to the filing of said Certificate.

Pursuant to Sections 909 and 404 of the Not-for-Profit Corporation Law, the approval of the Public Health and Health Planning Council is likely required in order to effectuate the contemplated corporate merger. AccessCNY, Inc., formerly United Cerebral Palsy and Handicapped Children's Association of Syracuse, Inc., is currently licensed by the NYS Department of Health to provide certain services pursuant to Article 28 of the Public Health Law. Enclosed herein, please find a copy of the Operating Certificate issued to AccessCNY by the NYS Department of Health.

If, in your opinion, the approval of the NYS Department of Health is required in order to effectuate the contemplated merger, we, respectfully, request that you consent to the filing of the enclosed Certificate of Merger with the Department of State. Conversely, if you are of the opinion that the approval of your Office would not be required, we would appreciate your efforts in advising in writing that such is the case as the Department of State may decline to file the instant Certificate in the absence of such confirmation.

If you should have any questions or concerns, please do not hesitate to contact me by telephone at 518.434.9194 ext. 109, e-mail at [lweinstein@nycon.org](mailto:lweinstein@nycon.org) or by mail at the following address:

New York Council of Nonprofits, Inc.  
272 Broadway  
Albany, New York 12204

Thank you for your time and consideration.

NEW YORK COUNCIL OF NONPROFITS, INC.

By:   
Lisa Weinstein, Esq.

**Community Focus ♦ Statewide Impact ♦ National Network**

272 Broadway, Albany NY, 12204 p. (800) 515-5012 f. (844) 802-2204 [www.nycon.org](http://www.nycon.org) [info@nycon.org](mailto:info@nycon.org)

New York City Office  
20 Jay Street, Suite 740  
Brooklyn NY 11201

Hudson Valley Office  
205 South Avenue, Suite 101  
Poughkeepsie NY 12601

Central New York Office  
310A Bugbee Hall, State St., SUNY Oneonta  
Oneonta NY 13820

Western New York Office  
75 College Avenue, 1st Floor  
Rochester NY 14607

**CERTIFICATE OF MERGER  
OF  
ACCESSSCNY, INC.  
AND  
SPAULDING P.R.A.Y. RESIDENCE CORP.  
INTO  
ACCESSSCNY, INC.**

**UNDER SECTION 904 OF THE NOT-FOR-PROFIT  
CORPORATION LAW**

The undersigned, respectively, being the President of ACCESSSCNY, INC., and the President of SPAULDING P.R.A.Y. RESIDENCE CORP., each being persons authorized and entitled to sign this document pursuant to Section 104(d) of the Not-for-Profit Corporation Law, and said corporations both being Charitable Not-for-Profit Corporations organized and existing under and by virtue of the By-Laws of the State of New York, hereby certify:

1. The names of the Constituent Corporations are: ACCESSSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. ACCESSSCNY, INC. shall be the Surviving Corporation.
3. The CERTIFICATE OF INCORPORATION of the Constituent Corporation, ACCESSSCNY, INC. was filed by the Department of State on the 25th day of February in the year 1948, pursuant to the Membership Corporation Law, under the name SYRACUSE CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION, INC.
2. The CERTIFICATE OF INCORPORATION of the Constituent Corporation, SPAULDING P.R.A.Y. RESIDENCE CORP. was filed by the Department of State on the on the 26th day of August in the year 1982, pursuant to Section 402 of the New York Not-for-Profit Corporation Law, under the name SPAULDING P.R.A.Y. RESIDENCE CORP.
4. The Surviving Corporation, ACCESSSCNY, INC. is a corporation, as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law and is a "Charitable Corporation," pursuant to Section 201 of said statute.
5. The amendment(s) or change(s) to the CERTIFICATE OF INCORPORATION of the surviving corporation, ACCESSSCNY, INC., to be effected by the merger are set forth as follows:

Paragraph 2, which relates to the purposes for which the corporation was formed, is amended to read as follows:

2. The purposes for which it is to be formed are:
  - (a) Sponsor, coordinate and provide programs and services that assess, counsel, support and otherwise assist individuals and families with cerebral palsy and other developmental disabilities, and those with mental health concerns, in an effort to facilitate and encourage their ability to live independently and self-sufficiently as fully integrated members of their communities;
  - (b) Establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of People with Developmental Disabilities, for the benefit of people with cerebral palsy and other developmental disabilities;
  - (c) Establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of Mental Health, for the benefit of people with mental health concerns;

- (d) Provide habitation, rehabilitation, respite, training, placement and other residence-based services incidental to the foregoing charitable purposes.

6. This merger was authorized with respect to ACCESSCNY, INC., as set forth herein. ACCESSCNY, INC. does not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. Said corporation is a "Charitable Corporation," as defined by Section 201 of the Not-For-Profit Corporation Law and is governed by a self-perpetuating Board of Directors, as authorized by Sections 601 and 701 of said statute. Said Board of Directors adopted and authorized this CERTIFICATE OF MERGER, together with a PLAN OF MERGER at a meeting of the Board convened on the 19<sup>th</sup> day of April in the year 2018, by, at least, a two-thirds (2/3s) majority vote of the Directors, a valid quorum being present.

7. This merger was authorized with respect to SPAULDING P.R.A.Y. RESIDENCE CORP., as set forth herein. SPAULDING P.R.A.Y. RESIDENCE CORP. maintains a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. Said corporation is a "Charitable Corporation," as defined by Section 201 of the Not-For-Profit Corporation Law and is governed by a sole, corporate Member, ACCESSCNY, INC., as authorized by Section 601 of said statute. As authorized by the By-Laws of SPAULDING P.R.A.Y. RESIDENCE CORP., the sole corporate Member and parent corporation has the sole authority to unilaterally authorize a corporate Merger on behalf of SPAULDING P.R.A.Y. RESIDENCE CORP., and no action by the subsidiary corporation's Board is required. The Board of Directors of the sole corporate Member, ACCESSCNY, INC., adopted and authorized this CERTIFICATE OF MERGER, together with a PLAN OF MERGER, on behalf its subsidiary corporation, SPAULDING P.R.A.Y. RESIDENCE CORP., at a meeting of the parent corporation's Board convened on the 19<sup>th</sup> day of April in the year 2018, by, at least, a two-thirds (2/3s) majority vote of the Directors, a valid quorum being present.

8. There are no holders of certificates evidencing capital contributions or subventions in either ACCESSCNY, INC. or SPAULDING P.R.A.Y. RESIDENCE CORP.

9. The instant merger shall become effective immediately upon the filing of this CERTIFICATE OF MERGER with the Department of State.

IN WITNESS WHEREOF, this CERTIFICATE OF MERGER has been subscribed on behalf of ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. by the undersigned, being a person authorized and entitled to sign this document pursuant to Section 104(d) of the Not-for-Profit Corporation Law, who has executed and signed the document and affirmed as true the statements made herein under the penalties of perjury.

ACCESSCNY, INC.

By:   
MICHAEL WIRTHEIM  
*President, Board of Directors*

STATE OF NEW YORK     )  
COUNTY OF               ) SS.:

On the 19 day of April 2018 in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL WIRTHEIM, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA6255030  
Qualified in Onondaga County  
Commission Expires January 30, 20 20

IN WITNESS WHEREOF, this CERTIFICATE OF MERGER has been subscribed on behalf of ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. by the undersigned, being a person authorized and entitled to sign this document pursuant to Section 104(d) of the Not-for-Profit Corporation Law, who has executed and signed the document and affirmed as true the statements made herein under the penalties of perjury.

SPAULDING P.R.A.Y. RESIDENCE CORP.

By: Martin J. Clark  
MARTIN CLARK  
*Secretary, Board of Directors*

STATE OF NEW YORK     )  
COUNTY OF             ) SS.:

On the 19 day of April 2018 in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared MARTIN CLARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Rachel Alice Garcia  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA6256030  
Qualified in Onondaga County  
Commission Expires January 30, 2020

---

**CERTIFICATE OF MERGER**  
**OF**  
**ACCESSCNY, INC.**  
**AND**  
**SPAULDING P.R.A.Y. RESIDENCE CORP.**  
**INTO**  
**ACCESSCNY, INC.**

**UNDER SECTION 904 OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

*Filed by:*

*Lisa Weinstein, Esq.*  
*New York Council of Nonprofits, Inc.*  
*272 Broadway*  
*Albany, New York 12204*  
*518-434-9194, x109*

**PLAN OF MERGER  
OF  
ACCESSCNY, INC.  
AND  
SPAULDING P.R.A.Y. RESIDENCE CORP.  
INTO  
ACCESSCNY, INC.**

**UNDER SECTION 902 OF THE NOT-FOR-PROFIT  
CORPORATION LAW**

ARTICLE I

NAMES OF CONSTITUENT CORPORATIONS  
AND SURVIVING CORPORATION

The names of the Constituent Corporations are: ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. and ACCESSCNY, INC. shall be the Surviving Corporation.

ARTICLE II

MEMBERSHIP, HOLDERS OF CAPITAL CONTRIBUTIONS AND SUBVENTIONS

Section 2.1. *Membership of ACCESSCNY, INC.* ACCESSCNY, INC. does not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. There are no requirements in the CERTIFICATE OF INCORPORATION, as amended, of said corporation requiring the maintenance of a Membership. Said corporation is a "Charitable Corporation" pursuant to Section 201 of the Not-For-Profit Corporation Law and is governed solely by a self-perpetuating Board of Directors, as authorized by Sections 601 and 701 of said statute.

Section 2.2. *Membership of SPAULDING P.R.A.Y. RESIDENCE CORP.* SPAULDING P.R.A.Y. RESIDENCE CORP. has a sole corporate Member, as defined by Section 601 of the Not-for-Profit Corporation Law, although there are no requirements in the CERTIFICATE OF INCORPORATION, as amended, of said corporation requiring the actual maintenance of such a Member. ACCESSCNY, INC. presently serves as the sole corporate Member of SPAULDING P.R.A.Y. RESIDENCE CORP. Based the foregoing, Section 4 of Article XI of the By-Laws of SPAULDING P.R.A.Y. RESIDENCE CORP. expressly provides that the Board of Directors of ACCESSCNY, INC. is unilaterally empowered to authorize any corporate merger or consolidation with SPAULDING P.R.A.Y. RESIDENCE CORP. As such, no approval by the subsidiary corporation, SPAULDING P.R.A.Y. RESIDENCE CORP., was required or sought with respect to authorizing and approving this PLAN OF MERGER. A copy of the By-Laws of SPAULDING P.R.A.Y. RESIDENCE CORP. is annexed hereto, and made a part hereof, as Appendix "A."

Section 2.3. *Holders of Certificates Evidencing Capital Contributions or Subventions.* There are no holders of certificates evidencing capital contributions or subventions in either ACCESSCNY, INC. or SPAULDING P.R.A.Y. RESIDENCE CORP.

ARTICLE III

STATEMENTS OF ASSETS AND LIABILITIES

The fiscal year for ACCESSCNY, INC. commences on the 1st day of January and concludes on the 31st day of December. The fiscal year for SPAULDING P.R.A.Y. RESIDENCE CORP. also begins

on the 1st day of January and concludes on the 31st day of December. The assets and liabilities of ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. are more fully described in the following stipulated financial information assessments and returns, which are attached hereto and made a part hereof in the manner indicated below:

- Annual Independent Audit and Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax of ACCESSCNY, INC. for the fiscal year 2016 (Appendix "B");
- Annual Independent Audit and Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax of SPAULDING P.R.A.Y. RESIDENCE CORP. for the fiscal year 2016 (Appendix "C")

#### ARTICLE IV

##### TERMS AND CONDITIONS OF PROPOSED MERGER

The manner and basis of converting governing authority in each Constituent Corporation into governing authority and representational interest in the Surviving Corporation was accomplished as set forth herein. In anticipation of the instant merger, the Board of Directors of each Constituent Corporation, ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP., duly authorized the amendment of their respective corporate By-Laws in an effort to align their governance structures and simultaneously appointed certain Directors to jointly serve on the Boards of Directors of each Constituent Corporation. The respective Boards of Directors additionally resolved that all individuals serving on the Board of Directors of each Constituent Corporation who were willing and able to serve on the Board of Directors of the Surviving Corporation would serve as the initial Board of Directors of said Surviving Corporation immediately upon legal effectuation of the merger.

#### ARTICLE V

##### AMENDMENTS OR CHANGES IN CERTIFICATE OF INCORPORATION, AS AMENDED, OF SURVIVING CORPORATION

The amendment(s) or change(s) to the CERTIFICATE OF INCORPORATION of the surviving corporation, ACCESSCNY, INC., to be effected by the contemplated Merger are set forth as follows:

Paragraph 2, which relates to the purposes for which the corporation was formed, is amended to read as follows:

2. The purposes for which it is to be formed are:
  - (a) Sponsor, coordinate and provide programs and services that assess, counsel, support and otherwise assist individuals and families with cerebral palsy and other developmental disabilities, and those with mental health concerns, in an effort to facilitate and encourage their ability to live independently and self-sufficiently as fully integrated members of their communities;
  - (b) Establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of People with Developmental Disabilities, for the benefit of people with cerebral palsy and other developmental disabilities;
  - (c) Establish, maintain and operate community residences, including temporary housing, assisted living facilities, group residences and apartments, certified, funded, or sponsored by the Office of Mental Health, for the benefit of people with mental health concerns;
  - (d) Provide habitation, rehabilitation, respite, training, placement and other residence-based services incidental to the foregoing charitable purposes.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.1. *Effective Date.* The proposed merger shall become effective immediately upon the filing of the CERTIFICATE OF MERGER with the Department of State. Prior to delivery of said CERTIFICATE OF MERGER for filing with the Department of State, it is, hereby, agreed between the Boards of Directors of the Constituent Corporations that if a later effective date is determined to be advisable, then the CERTIFICATE OF MERGER shall contain a provision specifying such later effective date as is agreed upon by the respective Boards. Said date, pursuant to Section 905(a) of the Not-for-Profit Corporation Law, may not exceed thirty (30) days subsequent to the filing of the CERTIFICATE OF MERGER with the Department of State.

Section 6.2. *Abandonment of Plan.* Notwithstanding authorization of this Plan by either Constituent Corporation, if at any time prior to the filing of a CERTIFICATE OF MERGER by the Department of State it becomes the opinion of the Board of Directors of either of the Constituent Corporations that events or circumstances have occurred which render it inadvisable to consummate the merger, this PLAN OF MERGER may be abandoned. The filing of the CERTIFICATE OF MERGER by the Department of State shall conclusively establish that said Plan has not been abandoned.

Section 6.3. *Expenses of Merger.* The Surviving Corporation shall pay all the expenses of carrying this PLAN OF MERGER into effect and of accomplishing the merger provided that if at any time this PLAN OF MERGER should become abandoned, SPAULDING P.R.A.Y. RESIDENCE CORP. shall reimburse ACCESSCNY, INC. for fifty percent (50%) of all expenses incurred and paid under this paragraph.

Section 6.4. *Purposes of Merger.* The purpose of the merger is to better enable the Constituent Corporations to advance their respective tax-exempt purposes by minimizing duplication of services and reducing administrative costs associated with conducting similar operations and activities.

## ARTICLE VII

### ADOPTION OF PLAN OF MERGER

Section 7.1. *Adoption by ACCESSCNY, INC.* This PLAN OF MERGER was authorized with respect to ACCESSCNY, INC., as set forth herein. ACCESSCNY, INC. does not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. There are no requirements in the CERTIFICATE OF INCORPORATION, as amended, of said corporation requiring the maintenance of a Membership. Said corporation is a "Charitable Corporation" pursuant to Section 201 of the Not-For-Profit Corporation Law and is governed solely by a self-perpetuating Board of Directors, as authorized by Sections 601 and 701 of said statute. Said Board of Directors adopted and authorized this PLAN OF MERGER, and authorized the subsequent filing of a CERTIFICATE OF MERGER at a duly convened meeting of the Board held on the 14<sup>th</sup> day of April in the year 2018. On the date of the aforementioned vote, there were 26 voting Directors of record serving on said Board, of which 20 were in attendance, which well-exceeded quorum requirements mandated by statute and the BY-LAWS of the corporation. Of the 20 Directors in attendance at said meeting, the Board authorized and approved the aforementioned measures by a vote 20 in favor and 0 opposed, with 0 abstentions, which also well-exceeded voting requirements mandated by statute and the BY-LAWS of the corporation.

Section 7.2. *Adoption by SPAULDING P.R.A.Y. RESIDENCE CORP.* This PLAN OF MERGER was authorized with respect to SPAULDING P.R.A.Y. RESIDENCE CORP., as set forth herein. SPAULDING P.R.A.Y. RESIDENCE CORP. maintains a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. Said corporation is a "Charitable Corporation," as defined by

Section 201 of the Not-For-Profit Corporation Law and is governed by a sole corporate member, ACCESSCNY, INC., as authorized by Section 601 of said statute. As authorized by the By-Laws of SPAULDING P.R.A.Y. RESIDENCE CORP., the sole corporate Member and parent corporation has the authority to unilaterally authorize a merger on behalf of SPAULDING P.R.A.Y. RESIDENCE CORP., and no action by the subsidiary corporation's Board is required. The Board of Directors of the sole corporate Member, ACCESSCNY, INC., adopted and authorized this PLAN OF MERGER, on behalf its subsidiary corporation, SPAULDING P.R.A.Y. RESIDENCE CORP., at a meeting of the parent corporation's Board convened on the 19<sup>th</sup> day of April in the year 2018, by, at least, a two-thirds (2/3s) majority vote of the Directors. On the date of the aforementioned vote, there were 26 voting Directors of record serving on said Board, of which 20 were in attendance, which well-exceeded quorum requirements mandated by statute and the BY-LAWS of the corporation. Of the 20 Directors in attendance at said meeting, the Board authorized and approved the aforementioned measures by a vote 20 in favor and 0 opposed, with 0 abstentions, which also well-exceeded voting requirements mandated by statute and the BY-LAWS of the Corporation.

IN WITNESS WHEREOF, this PLAN OF MERGER has been subscribed on behalf of ACCESSNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. by the undersigned, being a person authorized and entitled to sign this document pursuant to Section 104(d) of the Not-for-Profit Corporation Law, who has executed and signed the document and affirmed as true the statements made herein under the penalties of perjury.

ACCESSNY, INC.

By:   
MICHAEL WIRTHHEIM  
*President, Board of Directors*

STATE OF NEW YORK     )  
COUNTY OF             ) ss.:

On the 19 day of April 2018 in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL WIRTHHEIM personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA6255030  
Qualified in Onondaga County  
Commission Expires January 30, 2020

IN WITNESS WHEREOF, this PLAN OF MERGER has been subscribed on behalf of ACCESSNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. by the undersigned, being a person authorized and entitled to sign this document pursuant to Section 104(d) of the Not-for-Profit Corporation Law, who has executed and signed the document and affirmed as true the statements made herein under the penalties of perjury.

SPAULDING P.R.A.Y. RESIDENCE CORP.

By: Martin J. Clark  
MARTIN CLARK  
*Secretary, Board of Directors*

STATE OF NEW YORK     )  
COUNTY OF               ) ss.:

On the 19 day of April 2018 in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared MARTIN CLARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Rachel Alice Garcia  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA6255030  
Qualified in Onondaga County  
Commission Expires January 30, 2020

# **Appendix A**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Corporate By-Laws**

# **Appendix B**

**ACCESSCNY, INC.**

**Annual Independent Audit/Internal Revenue Service Form 990**

**Fiscal Year 2016**

# **Appendix C**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Annual Independent Audit/Internal Revenue Service Form 990**

**Fiscal Year 2016**

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**PLAN OF MERGER**  
**OF**  
**ACCESSCNY, INC.**  
**AND**  
**SPAULDING P.R.A.Y. RESIDENCE CORP.**  
**INTO**  
**ACCESSCNY, INC.**

**UNDER SECTION 902 OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

*Filed by:*

*Lisa Weinstein, Esq.*  
*New York Council of Nonprofits, Inc.*  
*272 Broadway*  
*Albany, New York 12204*  
*518-434-9194, x109*

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

---

*In re* Application of

ACCESSCNY, INC.

*and*

**VERIFIED PETITION**

SPAULDING P.R.A.Y. RESIDENCE CORP.,

for approval of their PLAN OF MERGER under §907-B  
& authorizing the filing of a CERTIFICATE OF MERGER  
under §904 of the Not-for-Profit Corporation Law

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TO: NEW YORK STATE ATTORNEY GENERAL  
SYRACUSE REGIONAL OFFICE  
615 ERIE BLVD. WEST, SUITE 102  
SYRACUSE, NEW YORK 13204

Petitioners, ACCESSCNY, INC., by MICHAEL WIRTHEIM, President of the Board of Directors, and SPAULDING P.R.A.Y. RESIDENCE CORP., by MARTIN CLARK, Secretary of the Board of Directors, for their VERIFIED PETITION herein, respectfully, allege:

1. ACCESSCNY, INC., is a domestic Not-for-Profit Corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal office located at 1603 Court Street, City of Syracuse, State of New York.
2. SPAULDING P.R.A.Y. RESIDENCE CORP., is also a domestic Not-for-Profit Corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal office located at 6520 Basile Rowe, City of East Syracuse, State of New York.
3. The names of the Constituent Corporations are: ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. ACCESSCNY, INC. shall be the Surviving Corporation.
4. The CERTIFICATE OF INCORPORATION of the Constituent Corporation, ACCESSCNY, INC., a photocopy of which is annexed hereto and made a part hereof as Appendix "A," was filed by the Department of State on the 25th day of February in the year 1948, pursuant to the Membership Corporation Law, under the name SYRACUSE CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION, INC.
5. A photocopy of the current BY-LAWS, of ACCESSCNY, INC. is annexed hereto and made a part hereof as Appendix "B."
6. The CERTIFICATE OF INCORPORATION of the Constituent Corporation, SPAULDING P.R.A.Y. RESIDENCE CORP., a photocopy of which is annexed hereto and made a part hereof as Appendix "C," was filed

by the Department of State on the on the 26th day of August in the year 1982, pursuant to Section 402 of the New York Not-for-Profit Corporation Law, under the name SPAULDING P.R.A.Y. RESIDENCE CORP.

7. A photocopy of the current BY-LAWS, of SPAULDING P.R.A.Y. RESIDENCE CORP. is annexed hereto and made a part hereof as Appendix "D."

8. In accordance with Section 907-B of the Not-for-Profit Corporation Law, a photocopy of the PLAN OF MERGER of the above-captioned corporations is annexed hereto and made a part hereof as Appendix "E."

9. A photocopy of the proposed CERTIFICATE OF MERGER of the above-captioned corporations required in order to effectuate the instant merger pursuant to Section 909 of the Not-for-Profit Corporation Law, is annexed hereto and made a part hereof as Appendix "F."

10. This Merger was authorized, pursuant to, and in accordance with, Sections 903 and 907(a)(5) of the Not-for-Profit Corporation Law, with respect to ACCESSSCNY, INC., as set forth herein. At the time of the authorization of the Merger, ACCESSSCNY, INC. did not maintain a Membership as defined by Section 601 of the Not-for-Profit Corporation Law. There are no requirements in the CERTIFICATE OF INCORPORATION of said corporation requiring the maintenance of a Membership. ACCESSSCNY, INC. is a "Charitable Corporation" pursuant to Section 201 of the Not-For-Profit Corporation Law and was governed by a self-perpetuating Board of Directors, as authorized by Section 601 of said statute. The Board of Directors adopted and authorized both a PLAN OF MERGER and CERTIFICATE OF MERGER (Appendices E and F, respectively) at a properly convened meeting of the Board held on the 19<sup>th</sup> day of April in the year 2018. Of 26 Directors qualified to vote, 20 Directors attended said meeting of the Board, which well exceeded the minimum quorum of Directors required by the Not-for-Profit Corporation Law and the BY-LAWS of said corporation. The Board of Directors adopted and authorized each the PLAN OF MERGER and CERTIFICATE OF MERGER (Appendices E and F, respectively) by a vote of 20 in favor, 0 opposed and 0 abstaining, which again well exceeded the minimum voting percentage required by statute and the governance documents of the corporation. In accordance with Section 907(a)(2) of the Not-for-Profit Corporation Law, a photocopy of the Resolution of the Board of Directors of ACCESSSCNY, INC. adopting and authorizing each the PLAN OF MERGER and CERTIFICATE OF MERGER, excluding redundant attachments, is annexed hereto and made a part hereof as Appendix "G."

11. This Merger was authorized, pursuant to, and in accordance with, Sections 903 and 907(a)(5) of the Not-for-Profit Corporation Law, with respect to SPAULDING P.R.A.Y. RESIDENCE CORP., as set forth herein. At the time of the authorization of the Merger, SPAULDING P.R.A.Y. RESIDENCE CORP. had a sole corporate Member, as defined by Section 601 of the Not-for-Profit Corporation Law, although there are no requirements in the CERTIFICATE OF INCORPORATION of said corporation requiring the actual maintenance of such a Member. ACCESSSCNY, INC. presently serves as the sole corporate Member and parent corporation of SPAULDING P.R.A.Y. RESIDENCE CORP. Based on the foregoing, Section 4 of Article XI of the BY-LAWS

of SPAULDING P.R.A.Y. RESIDENCE CORP. (Appendix D) expressly provides that the Board of Directors of the sole corporate Member, ACCESSCNY, INC., is unilaterally empowered to authorize any corporate Merger or Consolidation, and no action by the subsidiary corporation's Board of Directors is required.

12. SPAULDING P.R.A.Y. RESIDENCE CORP. is a "Charitable Corporation" pursuant to Section 201 of the Not-For-Profit Corporation Law. The Board of Directors of ACCESSCNY, INC., as the sole corporate Member of SPAULDING P.R.A.Y. RESIDENCE CORP., with authority to unilaterally authorize any corporate Merger, adopted and authorized both a PLAN OF MERGER and CERTIFICATE OF MERGER (Appendices E and F, respectively) at a properly convened meeting of the Board held on the 19<sup>th</sup> day of April in the year 2018. Of 26 Directors qualified to vote, 20 Directors attended said meeting of the Board, which well exceeded the minimum quorum of Directors required by the Not-for-Profit Corporation Law and the BY-LAWS of said corporation. The Board of Directors adopted and authorized each the PLAN OF MERGER and CERTIFICATE OF MERGER (Appendices E and F, respectively) by a vote of 20 in favor, 0 opposed and 0 abstaining, which again well exceeded the minimum voting percentage required by statute and the governance documents of the corporation. In accordance with Section 907(a)(2) of the Not-for-Profit Corporation Law, a photocopy of the Resolution of the Board of Directors of ACCESSCNY, INC. adopting and authorizing each the PLAN OF MERGER and CERTIFICATE OF MERGER, on behalf of SPAULDING P.R.A.Y. RESIDENCE CORP., excluding redundant attachments, is annexed hereto and made a part hereof as Appendix "H."

13. The manner and basis of converting governing authority in each Constituent Corporation into governing authority and representational interest in the Surviving Corporation shall be accomplished as set forth herein. The BY-LAWS of the Surviving Corporation, ACCESSCNY, INC. were amended in a manner that was mutually acceptable to the respective Constituent Corporations, and all individuals serving on the respective Boards of Directors who are willing and able to serve on the Board of Directors of the Surviving Corporation shall be seated as Directors of said Surviving Corporation, which shall occur immediately upon effectuation of the contemplated corporate merger.

14. As for the requirements of Section 907(a)(3) of the Not-for-Profit Corporation Law, the objects and purposes of each ACCESSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. to be promoted by the proposed merger are set forth as follows: each of the aforementioned corporations provide a variety of support services to individuals with developmental and intellectual disabilities, while ACCESSCNY, INC. also offers services for those with mental health issues, clinical services for those with disabilities, as well as several other services throughout the Central New York region, in the State of New York, and both corporations have decided that their common vision and interests would best be advanced by a single entity; and, the Boards of Directors of each Constituent Corporation believe that a merged entity would more efficiently and effectively operate their

programs and services and reduce operational costs. The objectives set forth herein indicate that the interests of the Constituent Corporations and the public, generally, will not be adversely affected by the proposed Merger.

15. As for the mandates of Section 907(a)(4) of the Not-for-Profit Corporation Law, the property, and manner in which it is held; liabilities; and, amount and sources of annual income of ACCESSSCNY, INC. for its most recently available fiscal year are set forth in the Corporation's Internal Revenue Service Form 990 Financial Information Return for the fiscal year 2016 and an Annual Independent Audit for the fiscal year 2016, a photocopy of which is annexed hereto and made a part hereof as Appendix "I."

16. As for the mandates of Section 907(a)(4) of the Not-for-Profit Corporation Law, the property, and manner in which it is held; liabilities; and, amount and sources of annual income of SPAULDING P.R.A.Y. RESIDENCE CORP. for its most recently available fiscal year are set forth in the Corporation's Internal Revenue Service Form 990 Financial Information Return for the fiscal year 2016 and an Annual Independent Audit for the fiscal year 2016, a photocopy of which is annexed hereto and made a part hereof as Appendix "J."

17. All necessary approvals from all federal, state and local governmental agencies whose approval is required to effectuate the proposed merger pursuant to Section 909 of the Not-for-Profit Corporation Law, or as otherwise required, shall be annexed to the proposed CERTIFICATE OF MERGER (Appendix F) to this Affidavit.

18. Pursuant to section 905(b)(3) of the Not-for-Profit Corporation Law, ACCESSSCNY, INC., as the Surviving Corporation, shall assume and be liable for all the liabilities, obligations and penalties of both ACCESSSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP., as Constituent Corporations.

19. ACCESSSCNY, INC. possesses restricted funds in the form of an endowment to be used for a particular purpose. There is no condition on the endowment requiring return, transfer or conveyance because of a merger. As the Surviving Corporation, ACCESSSCNY, INC. will maintain full ownership rights of the endowment and will remain liable for ensuring the assets are properly distributed in accordance with the specific purposes of the endowment. In all instances, the current assets of the corporation will continue to be used to support its current purposes and powers. Any new, incidental purposes or powers that may be stipulated in the CERTIFICATE OF MERGER and PLAN OF MERGER shall be supported solely by the corporation's future assets.

20. SPAULDING P.R.A.Y. RESIDENCE CORP. possesses restricted funds in the form of funding required to be used for a particular purpose. There is no condition on the funding requiring return, transfer or conveyance because of a merger. The Surviving Corporation, ACCESSSCNY, INC. will acquire full ownership rights of the funds and will become liable for ensuring the assets are properly distributed in accordance with the specific purposes for which they were allocated. In all instances, all restricted assets of SPAULDING P.R.A.Y. RESIDENCE CORP. will be used by the Surviving Corporation, ACCESSSCNY, INC., in accordance with and solely in support of the particular purposes for which they were granted. Any new, incidental purposes or powers

that may be implied in the CERTIFICATE OF MERGER and PLAN OF MERGER shall be supported solely by the Surviving Corporation's future assets.

21. The assets of the Constituent Corporations, ACCESSSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP., can properly be transferred and conveyed to the Surviving Corporation, ACCESSSCNY, INC., pursuant to Section 907(c) of the Not-for-Profit Corporation Law, because said assets would not be returnable due to the Merger and would be used for the same, or similar, purposes by the Surviving Corporation, for which they were held by the Constituents.

22. Although the instant application is not intended to fundamentally alter the charitable purposes of either ACCESSSCNY, INC. or SPAULDING P.R.A.Y. RESIDENCE CORP., the Board of Directors of each Constituent Corporation has been advised that any amendment to the Certificate of Incorporation of a Not-for-Profit Corporation that would, in fact, alter the purposes of the corporation must preserve any restrictions on gifts made for preexisting purposes. The Board of Directors of ACCESSSCNY, INC., as the Surviving Corporation, has enacted, and shall continuously monitor, controls to ensure that said corporation's current assets, and those acquired by virtue of the instant Merger, will not be inappropriately used to subsidize any new, incidental future purposes or powers upon the effective date of the Merger. In all instances, the current assets of ACCESSSCNY, INC. and SPAULDING P.R.A.Y. RESIDENCE CORP. will continue to be used to support the purposes for which they were derived. Any new, incidental purposes or powers that may be implied in the instant CERTIFICATE OF MERGER shall be supported solely by the Surviving Corporation's future assets.

23. No previous application for the relief prayed for herein has been previously made.

**WHEREFORE**, the Petitioner, ACCESSSCNY, INC., by the undersigned, a duly authorized Officer of said Not-for-Profit Corporation, hereby, respectfully, requests that the ATTORNEY GENERAL OF THE STATE OF NEW YORK, pursuant to Section 907-B of the Not-for-Profit Corporation Law, approve the above-referenced and annexed PLAN OF MERGER and authorize the filing of the above-referenced and annexed CERTIFICATE OF MERGER and for such other and further relief as may be just and proper.

IN WITNESS THEREOF, the Petitioner, ACCESSSCNY, INC., by the undersigned, has caused this Verified Petition to be executed this 19<sup>th</sup> day of April in the year 2018.

ACCESSSCNY, INC.

By:   
MICHAEL WIRTHHEIM  
*President, Board of Directors*

**WHEREFORE**, the Petitioner, SPAULDING P.R.A.Y. RESIDENCE CORP., by the undersigned, a duly authorized Officer of said Not-for-Profit Corporation, hereby, respectfully, requests that the ATTORNEY GENERAL OF THE STATE OF NEW YORK, pursuant to Section 907-B of the Not-for-Profit Corporation Law, approve the above-referenced and annexed PLAN OF MERGER and authorize the filing of the above-referenced and annexed CERTIFICATE OF MERGER and for such other and further relief as may be just and proper.

IN WITNESS THEREOF, the Petitioner, SPAULDING P.R.A.Y. RESIDENCE CORP., by the undersigned, has caused this Verified Petition to be executed this 19<sup>th</sup> day of April in the year 2018.

SPAULDING P.R.A.Y. RESIDENCE CORP.

By: Martin J. Clark  
MARTIN CLARK  
*Secretary, Board of Directors*

## VERIFICATION

STATE OF NEW YORK )  
COUNTY OF ) SS.

I, MICHAEL WIRTHEIM, having been duly sworn, hereby, state, under penalty of perjury, as follows: I am the President of the Board of Directors of ACCESSCN, INC., a Not-for-Profit Corporation named in this VERIFIED PETITION; I make this verification at the direction of the Board of Directors of said Not-for-Profit Corporation; and, I have read the foregoing VERIFIED 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.

ACCESSCN, INC.

By:   
MICHAEL WIRTHEIM  
*President, Board of Directors*

On the 19 day of April 2018 in the year 2018 before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL WIRTHEIM, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA6255030  
Qualified in Onondaga County  
Commission Expires January 30, 2020

VERIFICATION

STATE OF NEW YORK )  
COUNTY OF ) SS.

I, MARTIN CLARK, having been duly sworn, hereby, state, under penalty of perjury, as follows: I am the Secretary of the Board of Directors of SPAULDING P.R.A.Y. RESIDENCE CORP., a Not-for-Profit Corporation named in this VERIFIED PETITION; I make this verification at the direction of the Board of Directors of said Not-for-Profit Corporation; and, I have read the foregoing VERIFIED 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.

SPAULDING P.R.A.Y. RESIDENCE CORP.

By: Martin J. Clark  
MARTIN CLARK  
*Secretary, Board of Directors*

On the 19 day of April 2008 in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared MARTIN CLARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Rachel Alice Garcia  
Notary Public

RACHEL ALICE GARCIA  
Notary Public - State of New York  
No. 01GA8255030  
Qualified in Onondaga County  
Commission Expires January 30, 2020

# **Appendix A**

**ACCESSCNY, INC.  
Certificate of Incorporation**

# **Appendix B**

**ACCESSCNY, INC.  
By-Laws**

# **Appendix C**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Certificate of Incorporation**

# **Appendix D**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
By-Laws**

# **Appendix E**

**Plan of Merger**

# **Appendix F**

**Certificate of Merger**

# **Appendix G**

**ACCESSCNY, INC.  
Resolution of Board of Directors  
Authorizing  
Adoption of Plan of Merger  
& Filing of Certificate of Merger**

# **Appendix H**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Resolution of Board of Directors of Sole Corporate Member  
Authorizing  
Adoption of Plan of Merger  
& Filing of Certificate of Merger**

# **Appendix I**

**ACCESSNY, INC.  
Internal Revenue Service Form 990/Annual Independent Audit  
Fiscal Year 2016**

# **Appendix J**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Internal Revenue Service Form 990/Annual Independent Audit  
Fiscal Year 2016**

# **Appendix K**

**ACCESSCNY, INC.  
List of Restricted Funds**

# **Appendix L**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
List of Restricted Funds**

# **Appendix M**

**ACCESSNY, INC.  
Roster of Currently Serving Directors**

# **Appendix N**

**SPAULDING P.R.A.Y. RESIDENCE CORP.  
Roster of Currently Serving Directors**

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**VERIFIED PETITION  
OF  
ACCESSCNY, INC.  
AND  
SPAULDING P.R.A.Y. RESIDENCE CORP.  
INTO  
ACCESSCNY, INC.**

**UNDER SECTIONS 904 & 907-B OF THE NOT-FOR-PROFIT CORPORATION LAW**

---

*Filed by:*

*Lisa Weinstein, Esq.  
New York Council of Nonprofits, Inc.  
272 Broadway  
Albany, New York 12204  
518-434-9194, x109  
lweinstein@nycon.org*

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council on this 11th, day of October 2018, approves the filing of the Certificate of Merger of TRANSITIONAL LIVING SERVICES OF ONONDAGA COUNTY, INC. AND UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF SYRACUSE, INC. INTO UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF SYRACUSE, INC., dated November 26, 2014.