

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

December 13, 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 10:00 a.m.)

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

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

Adoption of the New York State Prevention Agenda 2019 - 2024

III. APPROVAL OF MINUTES

October 11, 2018 Meeting Minutes

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Adoption

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

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

For Information

18-23 Addition of Section 415.32 to Title 10 NYCRR (Nursing Home Weekly Bed Census Survey)

18-21 Amendment of Sections 766.9 & 766.12(c)(4) of Title 10 NYCRR (New Requirements for Annual Registration of Licensed Home Care Services Agencies)

18-20 Amendment of Part 405 and Section 751.5 of Title 10 NYCRR (Hospital Policies for Human Trafficking Victims)

18-18 Amendment of Part 14 of Title 10 NYCRR (Food Service Establishments)

18-13 Amendment of Part 19 of Title 10 NYCRR (Clinical Laboratory Directors)

VI. HEALTH POLICY

Report on the Activities of the Health Planning Committee

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

Request for Stroke Center Designation

Applicant

Glens Falls Hospital

VII. 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

Residential Health Care Facilities - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182082 C	Menorah Home & Hospital for Aged & Infirm (Kings County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181329 C	Albany Medical Center Hospital (Schenectady County) Dr. Bennett – Interest/Abstaining Dr. Ruge - Interest	No Recommendation

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181277 E	The Surgery Center at Orthopedic Associates, LLC (Dutchess County)	Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181183 B	Visiting Services, LLC d/b/a Visiting Docs (Rockland County)	Contingent Approval
2.	182073 B	Union Square Eye Center, LLC d/b/a Union Square Eye Care – Harlem (New York County)	Contingent Approval

Certified Home Health Care Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181268 E	Oswego Health Home Care, LLC (Oswego 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 – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172379 E	St. Peter’s Health Partners (Albany County) Dr. Bennett – Interest/Abstaining	Contingent Approval
2.	182052 E	HQ-WCHN Health Systems, Inc. (Dutchess County) Dr. Bennett – Interest/Abstaining Mr. Kraut - Interest	Contingent Approval

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172406 B	Queens Boulevard Extended Care Dialysis Center II (Queens County) Mr. Kraut - Interest	Contingent Approval

Hospice Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181405 E	Visiting Nurse Hospice and Palliative Care (Monroe County) Ms. Baumgartner – Recusal Mr. Robinson – Recusal Mr. Thomas - Recusal	Contingent Approval

Certified Home Health Care Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181403 E	Visiting Nurse Service of Rochester and Monroe County (Monroe County) Ms. Baumgartner – Recusal Mr. Robinson – Recusal Mr. Thomas – Recusal	Contingent Approval
2.	171041 E	Shining Star Health Care (Kings County)	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

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181293 E	Carthage Center for Rehabilitation and Nursing (Jefferson County) Mr. Holt – Opposed at EPRC	Contingent Approval
2.	181295 E	New Paltz Center for Rehabilitation and Nursing (Ulster County) Mr. Holt – Opposed at EPRC	Contingent Approval
3.	181297 E	Onondaga Center for Rehabilitation and Nursing (Onondaga County) Mr. Holt – Opposed at EPRC	Contingent Approval

4.	181298 E	Schenectady Center for Rehabilitation and Nursing (Schenectady County) Mr. Holt – Opposed at EPRC	Contingent Approval
5.	181299 E	Slate Valley Center for Rehabilitation and Nursing (Washington County) Mr. Holt – Opposed at EPRC	Contingent Approval
6.	181300 E	Troy Center for Rehabilitation and Nursing (Rensselaer County) Mr. Holt – Opposed 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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181294 E	Glens Falls Center for Rehabilitation and Nursing (Warren County) Mr. Holt – Opposed at EPRC Dr. Rugge – Interest/Abstaining	Contingent Approval

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.	182217 E	St. Joseph’s Health, Inc. (Onondaga County)	Presented at the 10/11/18 Special Establishment/Project Review Committee No Recommendation

HOME HEALTH AGENCY LICENSURES

Serious Concern/Access

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182030 E	Amerita of New York LLC d/b/a Amerita (Nassau County)	Contingent Approval

Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182014 E	The Mohawk Homestead, Inc. d/b/a The Mohawk Homestead Licensed Homecare Services Agency (Herkimer County)	Contingent Approval
2.	182076 E	The Eliot at Troy, LLC (Rensselaer County)	Approval
3.	182078 E	The Sentinel of Amsterdam (Montgomery County)	Contingent Approval

VIII. NEXT MEETING

January 24, 2019 - NYC
February 14, 2019 – NYC

IX. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
October 11, 2018

The meeting of the Public Health and Health Planning Council was held on Thursday, October 11, 2018 at the New York State Department of Public Service Commission Offices at 90 Church Street, 4th Floor Board Room, NYC. Chairman, Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Glenn Martin
Dr. Lawrence Brown	Mr. Peter Robinson
Ms. Carver-Cheney	Dr. John Ruge
Dr. Angel Gutierrez	Ms. Nilda Soto
Mr. Thomas Holt	Mr. Hugh Thomas
Dr. Gary Kalkut	Dr. Kevin Watkins
Mr. Jeffrey Kraut	Dr. Patsy Yang
Mr. Scott La Rue	Commissioner Zucker – Ex-officio
Mr. Harvey Lawrence	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Suzanne Barg – Albany via video	Ms. Sylvia Pirani
Ms. Barbara DelCogliano – Albany via video	Ms. Tracy Raleigh
Ms. Alejandra Diaz	Ms. Gilda Riccardi
Mr. Mark Furnish	Mr. Daniel Sheppard
Ms. Yvonne Lavoie – Albany via video	Ms. Lisa Thomson
Ms. Colleen Leonard	Mr. John Walters – Albany via video
Mr. George Macko	Mr. Richard Zahnleuter

INTRODUCTION

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

APPROVAL OF THE MINUTES OF AUGUST 2, 2018

Mr. Kraut asked for a motion to approve the August 2, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to page 3 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

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

Dr. Gutiérrez described For Adoption the proposed Amendment of Section 405.4 of Title 10 NYCRR (Medical Staff – Sepsis Protocols) and motioned for adoption. Dr. Watkins seconded the motion. The motion carried. Please see page 3 and 4 of the transcript.

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))

Dr. Gutiérrez described For Information the proposed Addition of Section 405.34 to Title 10 NYCRR (Stroke Services) and the proposed Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS)). Please see pages 4 through 6 of the transcript.

Dr. Gutiérrez concluded his report. Mr. Kraut thanked Dr. Gutiérrez for his report.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Next, Mr. Kraut introduced Commissioner Zucker to give a report on the Department of Health report.

Dr. Zucker updated the Council on the flu season and urged everyone to receive their flu vaccine and pneumococcal disease vaccines. Dr. Zucker also updated the Council on cases of Acute Flaccid Myelitis among children associated with an infection of a specific strain of the enterovirus EVD68, reminded the Council there is a second wave of tic season in October and November. He also advised that October is Breast Cancer Awareness month and announced that nearly \$3 Million in funding will be dedicated to projects across New York for breast cancer research.

Commissioner Zucker announced that he went to Roswell Park Comprehensive Cancer Center for another exciting announcement highlighting the innovative immunotherapy alliance. This alliance builds on a landmark trade mission between New York and a mission down to Cuba back in April 2015 which allowed Roswell Park and New York State to be the first in the country to receive FDA permission to test SIMIVAX which is a drug with a proven track record of success with lung cancer patients in Cuba.

Commissioner Zucker stated that he has been touring the State for a series of listening tours regarding maternal mortality. He also spoke on the topic of Hepatitis C and described the work of the taskforce. Lastly, Dr. Zucker announced that that in August the ministry of health in the democratic republic of Congo declared an outbreak of Ebola.

Commissioner Zucker concluded his report. To read the complete report and questions from the Members, please see pages 6 through 19 of the attached transcript.

PUBLIC HEALTH SERVICES

Mr. Kraut briefly updated the members on the work of the Public Health Committee and the Ad Hoc Committee to Lead the Prevention Agenda and stated that the Committee has met three times this year to organize the revision process of the Prevention Agenda. Mr. Kraut noted that the Public Health Committee will convene on December 3, 2018 to review and approve the prevention agenda for 2019-2024 and will be presented to the Full Council on December 13, 2018 for their adoption.

Mr. Kraut concluded his report, to view the complete report, please see pages 20 through 23 of the attached transcript.

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Acute Care Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181279 E	Cortland Regional Medical Center Inc. (Cortland County) Mr. Kraut - Interest Mr. Robinson – Recusal Mr. Thomas – Interest	Contingent Approval

Dr. Kalkut called application 181279 and motioned for approval and Dr. Gutiérrez seconded the motion. The motion was amended by Dr. Brown and seconded by Dr. Gutiérrez adding conditions. The motion to amend the first motion passed. Mr. Kraut motioned for approval with the 2 additional conditions, the motion was seconded by Dr. Gutiérrez. The Council approved the motion. Please see pages 23 through 29 of the transcript for the complete discussion.

172379 E	St. Peter’s Health Partners (Albany County)	Deferred
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Mr. Robinson called application 172379 and motioned to defer the application. Dr. Gutiérrez seconded the motion. The motion to defer passed. See pages 29 and 30 of the transcript.

Dialysis Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172364 E	True North IV DC, LLC (Queens County) Mr. Kraut – Recusal Mr. Thomas - Recusal	Disapproved
172411 E	True North V DC, LLC (Kings County) Mr. Kraut – Recusal Mr. Thomas - Recusal	Disapproved

Mr. Robinson next moved to application 172364 and noted for the record that Mr. Kraut and Mr. Thomas have exited the meeting room after declaring conflicts. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconded the motion. The motion failed. Dr. Kalkut motioned to disapprove, Dr. Watkins seconded the motion. The motion to disapprove passes. Please see pages 30 through 39 of the transcript.

Mr. Robinson calls application 172411 and notes for the record that Mr. Kraut and Mr. Thomas have conflicts and have remained outside the room. Dr. Kalkut motions for disapproval, Dr. Gutiérrez seconds the motion. The motion to disapprove passes. Please see pages 39 through 41 of the transcript. Mr. Kraut and Mr. Thomas returned to the meeting room.

HOME HEALTH AGENCY LICENSURES

Affiliated with Assisted Living Programs (ALPs)

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181266 E	The Elliot at New Rochelle LLC (Westchester County)	Approved

181436 E

The Sentinel of Mohegan
Lake LLC
(Westchester County)

Approved

Certificates

Certificate of Merger

Applicant

Council Action

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

Approved

Mr. Robinson called application 181266, 181436 and the 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 and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. See pages 41 and 42 of the transcript.

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172101 C	Coney Island Hospital (Kings County) Dr. Yang – Recusal	Contingent Approval
181304 C	Arnot Ogden Medical Center (Chemung County) Mr. Robinson – Recusal	Contingent Approval
181334 C	Samaritan Hospital (Rensselaer County) Dr. Bennett - Interest	Contingent Approval

181404 C

Albany Medical Center Hospital
(Albany County)
Dr. Bennett – Interest

Contingent Approval

Mr. Robinson called applications 172101 and announced that Dr. Yang has a conflict however not present, 181334 and 181404 and noted for the record that Dr. Bennett has an interest and motioned for approval. Dr. Gutierrez seconds the motion. The motion passes. Please see pages 42 and 43 of the transcript.

Dr. Kalkut calls application 181304 and notes for the record that Mr. Robinson has a conflict and has exited the meeting room. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve passes. Please see page 43 of the transcript.

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181333 E	Lynbrook Surgery Center, LLC (Nassau County) Mr. Kraut – Recusal	Contingent Approval
181438 E	North County EC, LLC d/b/a The New York Eye Surgical Center (Saratoga County) Dr. Ruge – Recusal	Approval

Mr. Robinson calls application 181333 and noted that Mr. Kraut has a conflict and has exited the meeting room. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries. Mr. Kraut returns to the meeting room. Please see page 44 of the transcript.

Mr. Robinson calls application 181438 and notes for the record that Dr. Ruge has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries. Dr. Ruge returned to the meeting room. Please see pages 44 and 45 of the transcript.

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172387 E	Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point (Nassau County) Mr. Kraut - Interest	Contingent Approval
181219 E	AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center (Monroe County) Mr. Thomas - Interest	Contingent Approval
<p>Mr. Robinson called applications 172387 and states Mr. Kraut has an interest and 181219 and states that Mr. Thomas has an interest and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 45 and 46 of the transcript.</p>		
181050 E	Nesconset Operating LLC d/b/a The Hamlet Rehabilitation and Healthcare Center at Nesconset (Suffolk County) Mr. La Rue - Recusal	Contingent Approval
181366 E	Port Jefferson Operating, LLC d/b/a Waters Edge Rehab & Nursing at Port Jefferson (Suffolk County) Mr. La Rue - Recusal	Contingent Approval
181367 E	Glengariff Operating, LLC d/b/a Glengariff Rehabilitation and Healthcare Center (Nassau County) Mr. La Rue - Recusal	Contingent Approval
181387 E	Verrazano Nursing Home (Richmond County) Ms. Carver-Cheney – Recusal	Approval

Mr. Robinson calls applications 181050, 181366, and 181367 and noted for the record that Mr. La Rue has declared a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconded the motion. The motion to approve passes with Mr. La Rue’s noted conflicts. Mr. La Rue returned to the meeting room. See pages 46 and 47 of the transcript.

Mr. Robinson calls application 181387 and noted for the record that Ms. Carvery-Cheney has a conflict and has left the meeting room. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with the noted recusal. Ms. Carver-Cheney returned to the meeting room. Please see page 47 of the transcript.

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181348 E	North Shore Home Care (Westchester County) Mr. Kraut - Recusal	Contingent Approval

Mr. Robinson calls application 181348 and notes for the record that Mr. Kraut has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries. Mr. Kraut returns to the meeting room. Please see pages 47 and 48 of the transcript.

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181448 E	Brooklyn Surgery Center (Kings County)	Approval

Diagnostic and Treatment Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181307 E	Ajay 28 LLC d/b/a New York Preventive Health Center (Queens County)	Approval

Dialysis Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182012 B	Ditmas Park Dialysis Center, LLC (Kings County)	Contingent Approval

181419 B	Ulster Dialysis, LLC (Ulster County)	Contingent Approval
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Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172385 E	Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck (Nassau County)	Contingent Approval

Certificates

Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Faxton-St. Luke’s Healthcare Foundation	Approved

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

Diagnostic and Treatment Centers– Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172420 B	Doral Medical and Multispecialty Facility, LLC d/b/a Doral Medical and Multispecialty Center (Kings County)	Contingent Approval

Mr. Robinson calls applications 181448, 181307, 182012, 181419, 172385, Faxton-St. Luke’s Healthcare Foundation, and 172420 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 48 through 50 of the transcript.

Dialysis Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181177 B	Adira Dialysis, LLC d/b/a Adira Dialysis Center (Westchester County)	Contingent Approval

Mr. Robinson calls application 181177 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 50 and 51 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

NO APPLICATIONS

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

NO APPLICATIONS

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 **OCTOBER 11, 2018**

5 **NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE COMMISSION OFFICES**
6 **90 CHURCH STREET, 4TH FLOOR BOARD ROOM, NYC**

7
8 JEFF KRAUT: We'd like to start at least the process
9 while we wait for the Commissioner to arrive, and just everybody
10 gets a seat. Those members of the council we'll bring in
11 something for you to eat. It'll be on the dais behind you.
12 Please feel free to get up during the course of our
13 conversations. I think... let me just start the standard
14 conversation here.

15 So, Good afternoon. I'm Jeff Kraut and I have the privilege
16 to call to order the meeting of the Public Health and Health
17 Planning Council. I welcome our members. Members of the
18 Department, participants, and observers. I'd like to remind the
19 council members, staff and the audience. The meeting is subject
20 to the open meeting law, is broadcast over the internet. These
21 webcasts are accessed at the Department of Health's website at
22 NYHEALTH.GOV. These on-demand webcasts are going to be available
23 no later than seven days after the meeting and then a copy will
24 be retained for 30 days within the Department for up to four

1 months. In order to make this meeting successful, we're going to
2 have synchronized captioning. It's important that we do not
3 speak over each other. Obviously we can't do it correctly when
4 two people speak at the same time. When you speak for the first
5 time, please state your name and briefly identify yourself as a
6 council member or a member of DOH staff. This will be helpful in
7 who's broadcasting company to record the meeting and transcribe
8 it. And please know that the microphones are hot. They pick up
9 every sound. Please minimize the rustling of paper and any other
10 personal conversations. They will get picked up. A reminder for
11 our audience. There's a form that needs to be filled out before
12 you enter the room which records your attendance at this
13 meeting. It's a requirement of the joint commission on public
14 ethics in accordance with executive law section 166, and the
15 form is also posted on the Department of Health's website at
16 NYHEALTH.GOV under certificate of need tab. So in the future you
17 can fill out that form before you enter the council meeting, and
18 I really appreciate your cooperation in fulfilling our duties to
19 comply with the open meeting law.

20 We're going to move around the agenda a little. The most
21 important thing is that the members of the council, you
22 understand our agenda for the Establishment and Project Review
23 Committee report is organized by the batching of applications.
24 I'd ask the members in particular to take the time to review

1 those applications that are being proposed to be batched. If you
2 want them moved to another category please do so and let Coleen
3 know. And also if any of you have not declared a conflict or an
4 interest and you believe it's appropriate to do so at this
5 point, please tell that to Coleen before we call the
6 application.

7 My first member [sic] on the agenda is adoption of the
8 minutes and I need a motion for the adoption of the August 2,
9 2018 minutes. I have a motion, and I have a second. Motion by
10 Dr. Brown. Second by Dr. Gutierrez. Any comments? All those in
11 favor, aye?

12

13 [Aye]

14 Opposed? Abstentions? The motion carries.

15 Before we start with reports, just I'd like to do things,
16 I'd like to turn to Dr. Gutierrez and make a report of the Codes
17 and Regulations committee.

18

19 ANGEL GUTIERREZ: Good afternoon. At today's meeting of
20 the committee on Codes, Regulations, and Legislation the
21 committee reviewed three proposals; one for adoption and two for
22 information. For adoption sepsis protocols. This proposal will
23 amend section 405.2 of title 10 pertaining to hospital evidence
24 based protocols for the early recognition and treatment of

1 patients with severe sepsis and septic shock. The committee
2 voted to recommend adoption to the full council and I so move. I
3 should say that Dr. Marcus Freidrich from the Department is
4 available to answer any questions from the council members.

5

6 JEFF KRAUT: I have a motion from Dr. Gutierrez. Do I
7 have a second? Second by Dr. Watkins. Any comments or questions
8 from the council members? Hearing none, I'll call for a vote.
9 All those in favor, aye?

10

11 [Aye]

12 Opposed? Abstention? The motion carries. Thank you doctor...
13 oh no go ahead.

14

15 ANGEL GUTIERRZ: For information, we discussed stroke
16 center designation. This proposal would add a new section for
17 405.34 to title 10 related to stroke center designations. The
18 new section will create a voluntary stroke center designation
19 program and stroke system of care for hospitals in New York
20 State. Since this proposal was presented for information only,
21 there was no vote, and Dr. Friedrich from the Department is
22 still available to answer any questions from the council
23 members.

24

1 JEFF KRAUT: Any questions about this? You might've read
2 it. None? Anything else?

3
4 ANGEL GUTIERREZ: Last, for information, statewide
5 planning and research cooperative system. This proposal will
6 revise section 400.18 of title 10 regarding the statewide
7 planning and research cooperative system also known as SPRCS.
8 The proposal will make it necessary to update and grant the
9 Department the flexibility to explore new data intake options.
10 Again, this proposal was presented for information and there was
11 no vote. Mr. Scott Frankle from the Department is available to
12 answer any further questions from council members.

13
14 JEFF KRAUT: Thank you. Any questions for Dr. Gutierrez?
15 Dr. Berliner.

16
17 HOWARD BERLINER: Do we have to vote on your request?

18
19 JEFF KRAUT: Maybe we should just make note of the fact
20 that during the conversation on SPRCS and the update of the
21 information, the council, there was a comment made by me to
22 provide an update at the next full council meeting about the
23 status of releasing the updated SPRCS tape to the industry to
24 make sure that we're using the most recent information for

1 analysis and planning. And we've asked to be a standing agenda
2 item until that information is released. We were informed this
3 morning it should be released within the next month.

4

5 JOHN RUGGE: Nothing about friendship please.

6

7 ANGEL GUTIERREZ: And that should make it part of the
8 report. And that concludes my report.

9

10 JEFF KRAUT: Thank you very much Dr. Gutierrez.

11 I'm going to turn it over to introduce Dr. Zucker who is
12 going to update the council about the Department activities
13 since our last meeting.

14

15 HOWARD ZUCKER: Thank you. Good afternoon everyone. So,
16 couple things. A lot going on as always in the Department. Fall
17 is here. The weather is still warm. Leaves are changing but the
18 weather is relatively warm and so kids are back in school but
19 with the changing calendar there's some health threats we see.
20 Seasonal health threats that come up. So I wanted to bring that
21 up this afternoon. Some point of health messages that we're
22 sharing with the schools, with the pharmacies and the hospitals
23 along with another reminder about some of the preventive health
24 actions that New Yorkers can take as well.

1 So last winter we were hit pretty early with the flu
2 seasons. It was pretty tough season. At the peak of the flu
3 activity last year we had more than 18,000 lab confirmed cases
4 in a single week and by May when the season was quieting down,
5 we declared that flu was no longer prevalent and there had been
6 120,000 lab confirmed cases and influenza report and there more
7 than about 23,000 people hospitalized with Influenza. And
8 unfortunately there were six pediatric deaths as well from flu.
9 So as we approach a new flu season I urge everyone to remember
10 those numbers, keep in mind and get the flu vaccine. Talk to
11 your patients about them as well. And even in the seasons when
12 we've had less vaccine effectiveness, the flu vaccine really
13 does remain our best protection against influenza. I also want
14 to encourage everyone to discuss pneumococcal disease vaccines
15 with their patients, particularly those who are over the age of
16 65. It is recommended that patients 65 years and older should be
17 vaccinated with the PCB-13 vaccine and pneumococcal
18 polysaccharide vaccine which is PPSB-23.

19 In the last week some of you may have heard news from CDC
20 about cases of Acute Flaccid Myelitis among children associated
21 with an infection of a specific strain of the enterovirus,
22 EVD68. Unfortunately this is not a new occurrence. You may
23 recall the EVD68 emerged in 2014 in New York State and other
24 states as well across the country. At that time we closely

1 monitored the cases of disease in the parts of the state that
2 were impacted. Again, 2016 there was also a flurry of activity.
3 We conduct a weekly HERD surveys of hospitals to ensure adequate
4 capacity of pediatric ICU beds and ventilators. The assay
5 commonly used in the hospitals is not able to identify this
6 specific strain of enterovirus. Instead it reports it as
7 enterovirus or rhinovirus, but Wadsworth Center, our lab, is
8 able to perform the testing to identify the virus. And last week
9 there were cases of EVD68 in several regions of the state so
10 we're following up, we're looking at that right now. We'll
11 continue to perform the testing as requested in order to monitor
12 the number of cases in the areas of the State that are impacted,
13 and we'll issue a health advisory to clinicians and healthcare
14 facilities as well about this. There's no specific treatment for
15 EVD68, just supportive therapy, and the main recommendations is
16 always for control as prevention is good old fashioned hand
17 washing, stay home if you're sick, cover your mouth if you're
18 coughing, the usual things that we bring to the attention of
19 everyone.

20 We're also still enjoying some outdoor activities
21 relatively warm around the State. So I remind everyone there's
22 been a second wave of tic season occurs in October/November, so
23 consider reminding patients that they should perform full body
24 checks multiple times during the day if they're outdoors. They

1 should be aware of this. A patient should contact their
2 healthcare provider immediately if they have been bitten by a
3 tick or any kind of concern about a rash or flu-like symptoms
4 that occur. October is also national breast cancer awareness
5 month. So this is a great opportunity to address, raise
6 awareness about an importance of detecting breast cancer early.
7 Breast cancer is the most commonly diagnosed cancer and the
8 second leading cause of cancer death among women in New York
9 State. Each year over 16,000 women in New York State are newly
10 diagnosed with breast cancer, and approximately 2500 die from
11 the disease. Screening for breast cancer can increase the
12 likelihood of identifying cancer at an early stage when
13 treatment is most successful. Governor Cuomo recently announced
14 nearly \$3 million in funding to projects across New York for
15 breast cancer research, and the recipients of this funding
16 includes the Peter T. Rowley Breast Cancer Scientific Research
17 Projects, and the Patricia S. Brown Breast Cancer Risk Reduction
18 Education and Research Projects. These grants will encourage
19 innovative research into the cause of breast cancer as well as
20 prevention, detection, screening, treatment, survivorship, and
21 cure along with educational strategies to help people reduce
22 specific risk factors associated with the development of breast
23 cancer. We've made strong headway on this and we continue to do
24 so. The awards build on Governor Cuomo's significant commitment

1 to increasing public awareness and availability of resources for
2 breast cancer screening and treatment including the successful
3 Get Screened, No Excuses initiatives currently in place and
4 available to all New Yorkers regardless of insurance status.
5 This includes legislation requiring hospitals and hospital
6 extension clinics to offer extended hours for mammography
7 screening, legislation that prohibits insurers subject to New
8 York State Law from requiring quest sharing for screening
9 mammograms and diagnostic testing, expanded paid leave for
10 public employees to receive breast cancer screening and a public
11 awareness campaign to encourage screening. In New York cancer is
12 now the second leading cause of death behind heart disease,
13 cancer in general. Each year nearly 110,000 New Yorkers learn
14 they have cancer and tragically 35,000 die from the disease.
15 But New York continues to lead on this charge and the fight
16 against cancer. And last month had the pleasure of joining
17 Governor Cuomo at Roswell Park Comprehensive Cancer Center for
18 another exciting announcement highlighting the innovative
19 immunotherapy alliance. So this alliance builds on a landmark
20 trade mission between New York and a mission down to Cuba back
21 in April 2015 which allowed Roswell Park and New York State to
22 be the first in the country to receive FDA permission to test
23 SIMIVAX which is a drug with a proven track record of success
24 with lung cancer patients in Cuba. This new venture now gives

1 Roswell Park access to three additional cancer drugs and signals
2 another step toward researching, developing, and eventually
3 commercializing promising cancer drugs for the benefit of
4 patients in the United States. The Roswell Park announcement
5 underscores the administration's commitment to strengthening
6 life sciences in New York State. And life science commitment is
7 also evident when recently announced partnership between ILUM
8 Health Solutions which is a subsidiary of Merck. OpGen and the
9 Department of Health to develop a state of the art research
10 program to detect to track and to manage antimicrobial resistant
11 infections at health institutions statewide. Antimicrobial
12 resistance is a big issue and it's growing we're on top of this.
13 ILUM will partner with the Wadsworth Center and DOH to develop
14 an infectious disease digital health and precision medicine
15 platform. It'll connect healthcare institutions to DOH to better
16 track and prevent the spread of infectious disease. And the
17 partnership not only creates jobs, it literally will save lives
18 as a result of the concerns with antimicrobial resistance. Since
19 we last met I've been touring the state for a series of
20 listening tours regarding another important issue. This is
21 maternal mortality. And New York State has made improvements in
22 maternal mortality rates since 2010 when it was ranked 46th in
23 the nation with the lowest mortality rate, but the state still
24 ranks 30th in the nation. And the racial disparities still exist.

1 And they are concerning. Black women are almost four times more
2 likely nationally to die in childbirth than white women and
3 three times more likely in New York. So we are tackling this.
4 we are looking at what we can do. We heard some incredible
5 suggestions and comments from those when we went around the
6 state. Our taskforce met publicly for the first time last month
7 and we're advancing a number of the important initiatives that
8 come out of the recommendations from many people that we heard.
9 I'm honored to lead the taskforce and committed to improving
10 this, our numbers, and to lead the nation on this to tackle
11 this. And we should ensure that all women have access to the
12 type of care that will improve health outcomes all across the
13 State. So we're working on that. An equally important issue is
14 the State's commitment to eliminate Hepatitis C. And just today
15 the Governor announced a taskforce of experts that will build on
16 recommendations raised at the Hepatitis C Elimination Summit
17 that was held in 2017. More than 100,000 New Yorkers are living
18 with Hepatitis C, liver disease caused by Hepatitis C is virus
19 as many of us know and most aren't aware that they have it.
20 Hepatitis C is spread by blood to blood contact and with the
21 most common risk factor for Hepatitis C being injection drug
22 use. Over the past decade there's been a shift in the
23 distribution of Hepatitis C cases with a significant trend
24 emerging among younger people ages 20-40 fueled in part by the

1 growing opioid epidemic. The work of the taskforce will be
 2 supplemented by five workgroups; one on prevention, one on
 3 testing and linking to cure, one on care and treatment, another
 4 on surveillance data and metrics, and one on the social
 5 determinants. So we look forward to their important work in the
 6 weeks and months ahead.

7 And finally I wanted to leave a proactive public health
 8 message many of you received from my office or will received, I
 9 should say, later today. And in August the ministry of health in
 10 the democratic republic of Congo declared an outbreak of Ebola
 11 in two new provinces. So this declaration follows a similar
 12 outbreak in a different part of that country months earlier. And
 13 in total there are about 162 confirmed and probably cases of
 14 Ebola, including 106 deaths, and CDC is working closely with the
 15 ministry of health in Congo. The outbreak is in a part of the
 16 country identified United States State Department as a do
 17 not travel zone due to violence against civilians there. And
 18 while travelers could become infected with Ebola, if they come
 19 in contact with an infected person's blood or body fluids, the
 20 risk to most travelers is low. While the Republic of Congo might
 21 seem like a world away, New York is truly a global center and we
 22 have to be prepared. So we spoke with CDC and we listened to
 23 their reports. And in 2014 my predecessor in the commissioner's
 24 office issued an order for the prevention and control of Ebola

1 virus disease. A 2015 update followed, but both were related to
2 training, drilling, and patient registration protocols. And both
3 are still in effect. While the risk for spread of Ebola cases
4 from the Congo to the US is currently very low, it is essential
5 health care facilities in New York State maintain a high level
6 of readiness for Ebola and other global infectious disease
7 outbreaks as well. So later today we'll be issuing a health
8 advisory to the healthcare facilities in New York State to
9 advise them of the activities that they need to perform in order
10 to maintain readiness. I do thank you for attention to this
11 matter. We just simply have to be prepared and have to be ready
12 for anything that may occur. I will say that that last time we
13 were worried about this, the hospitals and physicians and all
14 the health workers in the state really led the charge and ended
15 everything that was necessary. So I thank everyone for their
16 work before, and I thank everyone for their work going forward.
17 I'm happy to answer any questions you may have.

18

19 ANGEL GUTIERREZ: Thank you Commissioner. What are we
20 doing, or where are we now in the fight against e-cigarettes?
21 California just passed a very strong measure with strong
22 opposition from lobbying groups.

23

1 HOWARD ZUCKER: So we actually have been speaking about
2 this, and literally within the last couple days we're trying to
3 figure out what the next step is and how to tackle this. We are
4 concerned about this the numbers have gone up. There's a lot of
5 marketing to children on this, and we need to tackle it. New
6 York has always been the leader when it comes to issues of
7 fighting cigarette smoking and will be the leader on this. But
8 we're working on figuring what our next strategy is on this.
9 Particularly, the federal government said some things but we're
10 working on this.

11

12 LAWRENCE BROWN: I certainly would like to commend the
13 Department and yourself and the leadership with respect to
14 Hepatitis C. It's certainly been something that has been on the
15 radar for public health for some time. Another aspect what I can
16 come to appreciate in terms of leadership of department is it's
17 being proactive in a number of areas. One of the areas we do
18 want to ask for some greater clarification. That area happened
19 to be for the treatment of opiate use disorder and the
20 recommendation of the emergency regulations that the medical
21 marijuana program might be an ingredient with respect to that. I
22 suspect by now you've seen the communications for the American
23 Society of Addiction Medicine as well as the Medical Society of
24 the State of New York. So it would be I think helpful to have

1 even greater proactive communications about the approach and the
2 data that we hope to see because usually when you have an FDA
3 approved therapy and you bring something else on board, you
4 usually do an equivalency type of a study to see whether or not
5 the new thing is actually just as effective with less risk. And
6 I think it's really useful to do that particularly given the
7 fact that I shared with your colleagues when I raised this
8 comment with my colleagues and addiction treatment it was
9 clearly something that I think the state could've benefited from
10 having a greater efforts to in fact communicate what the purpose
11 is so there'd be less questions. And I do say this advisedly
12 because I do appreciate the fact that you've been an outstanding
13 leader and the fact that you're from Brooklyn especially makes
14 it even closer to my heart.

15

16 HOWARD ZUCKER: Thank you.

17

18 HARVEY LAWRENCE: Good afternoon Dr. Zucker. As you're
19 probably aware, the Department of Homeland Security is in the
20 process of and probably has already posted new rules regarding
21 public charge and that's effecting immigrants and undocumented.
22 And in many cases some of the people in fact that are not even
23 showing up for healthcare and are pretty much going underground.

1 So is there something that the state is planning to do to raise
2 awareness and to compensate for what's happening in this area?

3

4 HOWARD ZUCKER: So we are working on this issue as we speak
5 on this, and the Governor is aware of the concerns with this as
6 are all of us, and we're going to figure out how to tackle this.
7 I recognize there's a big concern here about the potential for
8 individuals who potentially wouldn't get care, and I'm aware.

9

10 GLENN MARTIN: So I just want to go back a moment about the
11 subject that Dr. Brown raised. I understand the law has been
12 passed and it's been signed by the Governor so it will go from a
13 regulation to statute concerning the use of marijuana for acute
14 pain as well as substance abuse. I guess my plea is, and it may
15 already be taking place in which case that would be great, is
16 that we don't miss the opportunity to actually study what's
17 going on. Since, as you know, everything doing with Cannabis is
18 generally backed up with zero data. So since we're conducting
19 this big experiment it would be nice that we are looking at it
20 as best we can. So I don't know if the Department has activities
21 in that regard or if we need to start ...

22

23 HOWARD ZUCKER: So this is one of those complex issues
24 because it's important to have data. There's a lot of momentum

1 about this issue. There's sometimes anecdotal evidence and
2 there's also an effort. We have a major opioid crisis in the
3 country. So we recognize that, we have spoken to others. We're
4 trying to get some of the data we can, and it's a little bit
5 challenging. And we have been looking at our own data as well
6 which hopefully we will be able to get out as well on that. So I
7 hear you. Do you want to comment about the regulation? Back to
8 that public charge question.

9

10 RICK ZAHNLEUTER: Hi Mr. Lawrence. I'm Rick Zahnleuter
11 the general counsel. I wanted to tell you that we have been
12 working very hard to opposed that public charge regulation and
13 there's a comment period involved. It's not yet expired, but we
14 were taking it seriously and putting together opposition in
15 whatever way we think is appropriate.

16

17 HARVEY LAWRENCE: Yeah, I think one of the problems
18 that's happening is the people are in fact assuming that it is
19 already in place and that it will be retroactive so there may be
20 some sort of public awareness campaign that may be necessary to
21 reach those people who are potentially affected so that they are
22 not sort of not seeking services that they are entitled to and
23 can have.

24

1 JEFF KRAUT: Commissioner, I just would ask you, maybe
2 the last question before we move on is, we've had a spike in
3 legionnaire deaths. We spent substantial time here working on
4 regulations, inspecting and sanitizing water coolers and maybe
5 you can comment on what's happening.

6

7 HOWARD ZUCKER: Sure. This is the third time... a couple years
8 ago we had the legionella outbreak, then earlier this year we
9 had one, and now there have been cases in Washington Heights and
10 we're working closely with the city as well on those numbers of
11 patients that have been admitted to the hospital and
12 information. We have our regulations, clearly which were passed
13 here and to make sure that the cooling tower, if it's from
14 cooling towers that they're inspected and they're treated
15 appropriately. And so we're working on that. And we're also, our
16 lab is also trying to track and look at the sequencing to see if
17 this is the same type of legionella from before. We are
18 fortunate that science has moved forward where we actually can
19 identify and get some more information and try to get a better
20 way to look at the epidemiology of legionella and particularly
21 when some of these outbreaks occur. What we did notice is that
22 often this happens when the weather... there's a whole confluence
23 of factors that occur, sometimes like high level of humidity,
24 overcast, and all three times we've noticed the same thing.

1 Before these outbreaks. There's a perfect storm to this so we're
2 working with our environmental people on that as well.

3

4 JEFF KRAUT: Commissioner, thank you very much. I'm just
5 going to do one quick other update that Dr. Boufford can't join
6 us but we've always promised we're going to do public health and
7 before we go to anything else. So she gave me a very brief
8 report that the public health and ad-hoc committees have met
9 three times this year jointly to organize the revision process.
10 The new prevention agenda plan is going to be based on an
11 updated assessment of morbidity, mortality data and the
12 underlying causes of death. And the specific inclusion of the
13 call for health across all policies and healthy aging approaches
14 in the work, and we've got a lot of stakeholder feedback from
15 the ad-hoc committee members and their networks. And over the
16 summer DOH, OMH, Office of Alcohol and Substance Abuse Services
17 as the long term partners met with a lot of stakeholders, over
18 200 organizations and people were involved in the review lead by
19 the DOH subject matter officers. And consistent with the
20 Governor's commitment to integrate social determinants and to
21 have all the agencies involved, New York State Office of Aging,
22 other agency for health across all policies and healthy aging
23 including the environmental conservation, agriculture markets,
24 department of state were actively involved in this process. So

1 the updated vision is going to be that New York becomes the
2 healthiest state, and now for all people of all ages. And the
3 prevention agenda for 19-24 will maintain the five current
4 priorities but updated specific focus areas in each priority.
5 Each plan is going to include a measurable objectives, a list of
6 evidence-based or promising practices that can be implemented
7 both at the state and local levels, and they're going to pay
8 special attention to interventions that can address those health
9 disparities, social determinants of health, and require
10 interventions specifically on healthy aging. The penultimate
11 drafts are reviewed on September 26 and the comments received
12 are being integrated into the final plan. The public health
13 committee is going to be meeting on Monday, December 3 from 10-
14 12 to review and vote and approve and forward the prevention
15 agenda to the full council. We'd encourage any council members
16 that want to hear a presentation on the plan, will be required
17 to vote on approving at our December 13 meeting. If you want to
18 attend this December 3 one please do so. And All of our
19 participation is welcomed at that December 3 meeting. There'll
20 be a special emphasis on our participation and the active
21 involvement as was discussed this morning about the prevention
22 agenda by the board and the implementation for healthcare
23 delivery systems in the next five years.

1 So, let me, if there's any questions about that I probably
2 won't answer them, but Sylvia Pirani is here. But I just please
3 try not to miss the next meeting because I think it's an
4 important part of what we're going to be asked to approve for
5 the next five year plan. Yes, Dr. Brown.

6

7 LAWRENCE BROWN: If we can, as much as we can, to
8 schedule it so it's not in conflict with meetings of behavioral
9 health society because the last one...

10

11 JEFF KRAUT: Yes, that's correct. Yes. I think we've
12 asked... that would cause a high level of interstate cooperation,
13 but we'll do that. OK.

14 I'm now going to introduce Mr. Robinson to give a report on
15 the Establishment and Project Review committee. Yes, Dr.
16 Martin.

17

18 GLENN MARTIN: If you'll allow me, I did have a question
19 for you and the commissioner actually dealing with public health
20 and the previous comment about administration's efforts to count
21 providing healthcare against somebody if they wish to come to
22 this country. Basically, it's a public health issue in my mind.
23 Does it make sense for this council to take a position also?

1 Would that be helpful and useful or would it be a waste of our
2 time?

3

4 JEFF KRAUT: I'll let the commissioner ask from the state
5 perspective. I think the state's taken a position and the
6 Department of Health by their actions that clearly show it's not
7 a waste of our time. And if that's the feeling of the group then
8 we will maybe try to put that up as a conversation at the next
9 meeting that would end in some sort of affirmative statement in
10 support of the state's actions maybe. That would probably be the
11 most productive way to do it. But I don't think it's a waste of
12 our time at all, unless anybody feels differently. OK. Then
13 we'll ask the Department to arrange that for the next council
14 meeting. Thanks very much Dr. Martin. Mr. Robinson.

15

16 PETER ROBINSON: Thank you Mr. Kraut. Let me immediately
17 turn this over to Dr. Kalkut because I'm recused from the first
18 item on the agenda.

19

20 JEFF KRAUT: And while Dr. Kalkut grabs the mic I believe
21 if those members of the council if you would like some lunch,
22 it's on the dais behind us and please grab it and come back to
23 your seat. And don't leave the room.

24

1 GARY KALKUT: I'd like to call application 181279E,
2 Cortland Regional Medical Center in Cortland County. There's a
3 conflict by Mr. Robinson who has left the room. An interest by
4 Mr. Kraut and Mr. Thomas. This is to establish the Guthrie
5 Clinic as the active parent of Cortland Regional Medical Center
6 to be renamed Guthrie Cortland Medical Center and it's
7 residential healthcare facility and long term healthcare
8 program. The Department recommends approval with condition and
9 contingencies. The Establishment and Project Review Committee
10 had no recommendation. And I so move.

11

12 JEFF KRAUT: I have a motion. Do I have a second? I have
13 a second by Dr. Gutierrez. So, Dr. Zucker you were not at the
14 special project review committee this morning, but I think for
15 the sake of the record we'd like to kind of bring you up to date
16 on what occurred. We heard from the applicant who outlines as
17 they did in their application, the rationale, the process they
18 went through, the solicitation and consultation with at least 20
19 different providers were invited in. 11 expressed interest. Four
20 made a RFP, and the vice chairman of the board described the
21 process by which they chose the Guthrie Healthcare to partner
22 with, and we heard of the track record of Guthrie, what they had
23 done in Corning and elsewhere, and the commitments they made to
24 invest substantial capital and operating support. They

1 recognized the concerns of others but also spoke to the
2 importance that it's going to be a medical decision as to where
3 people chose to go, and it would be directed in the conversation
4 with their physicians. There was other corroborating information
5 about the application, and then we had a pretty robust
6 conversation with the applicant. Several institutions came up to
7 speak in opposition to the applicant. They raised concerns about
8 the out migration of New York patients to an out-of-state
9 hospital, primary Packard which is about 1.5 miles south of the
10 New York border. They raised concerns about the economic impact
11 it had not only to doing that to New York State but also to the
12 institutions that are in and around the region. We gave out a
13 map indicating the travel distances or approximate travel
14 distances within the region. They expressed concerns about the
15 policy by which out of state institutions are trying to come in
16 here and form relationships with New York State facilities. We
17 also discussed what had occurred at Vermont Guthrie, primarily
18 at Corning and what that had produced. UPMC and WCA in
19 Jamestown and Vermont with Alice Hyde, Champlain, and Elizabeth
20 as examples. But really focused in on the benefits at Corning.
21 The group felt that the ... nobody spoke against the financial
22 feasibility necessarily, the character and competence of the
23 applicant, or necessarily the need for Cortland Hospital. There
24 was just concern about the unintended or intended projected

1 consequences that could occur if this institution were able to
2 strengthen itself with Guthrie and the impact it would have in
3 the region. I would ask any other members of the council who
4 were present for that conversation, I just wanted to try to give
5 kind of a quick overview. If there's anything I left out you'd
6 like to add, please do so just to bring the commissioner in,
7 then I'd like to call... if there's any other questions from
8 council members and then we'll call a vote. Dr. Brown.

9

10 LAWRENCE BROWN: I have a question with respect to
11 process. I'd like to ask the chair at what point in this process
12 I as a council member allowed to in fact, offer additional
13 condition for the application?

14

15 JEFF KRAUT: We'll call that a friendly amendment. Why
16 don't you express it now because I'd rather know now than go
17 through all the voting.

18

19 LAWRENCE BROWN: So I'd like to add a friendly amendment
20 that the applicant agrees that they will present back to this
21 council within one year a prevention agenda.

22

23 JEFF KRAUT: So, alright, so this was an issue that Dr.
24 Brown had raised about on a going-forward basis there be some

1 involvement. So let me ask, do I amend? So would you like to
2 make as secondary motion to add that as a...

3

4 LAWRENCE BROWN: I'd be happy to do so. Anything that
5 helps the process.

6

7 JEFF KRAUT: It's like Jeopardy. Please say it in the
8 form of a motion. You're proposing to add a condition? It's a
9 condition.

10

11 LAWRENCE BROWN: I am so proposing.

12

13 JEFF KRAUT: So I have a motion made by Dr. Brown to add
14 a condition to the approval for a prevention agenda plan to be
15 submitted within one year. And that's seconded. Now, do we have
16 to amend anything? So we're going to vote on the amendment
17 first. Just adding the condition. Is there anybody else that
18 wants to speak in opposition or for that? You understand?

19

20 HARVEY LAWRENCE: Can I amend his amendment?

21

22 JEFF KRAUT: Well, the whole point was that everybody... go
23 ahead.

24

1 HARVEY LAWRENCE: There was considerable discussion about
2 out migration of patients. So can we simply then have a
3 reporting back ...

4

5 JEFF KRAUT: Monitoring the out migration?

6

7 HARVEY LAWRENCE: Yeah.

8

9 LAWRENCE BROWN: I accept the agreement.

10

11 JEFF KRAUT: I have the amendment there, so, let me,
12 could I start again please. Dr. Gutierrez, it's ok, you
13 seconded. So I'd like to make an amendment to the
14 recommendation of the Department of Health that recommends
15 approval of this application with two additional conditions. One
16 the completion and submission of a prevention agenda report or
17 how the applicants are going to comply with the New York State
18 Prevention Agenda in the next year on a going-forward basis. And
19 the second is for the Department of Health to monitor, assuming
20 you have the data, because this goes back to the first SPRCS
21 discussion, out migration from the area looking at baseline and
22 current and let's at least bring that back two times a year? So
23 there should be two SPRC updates, at least, a year. That'll get
24 the SPRCS data update. So, that's the motion. Is there a second

1 for that amendment? I have a second by Dr. Watkins. Is there
2 any other questions or discussion? OK. Hearing none, this is
3 approval for the amendment of the two conditions. All those in
4 favor, aye?

5

6 [Aye]

7 Opposed? Abstentions? That motion carries.

8 Now I will ask us to vote on the amended motion which is
9 the Department of Health recommending approval with those two
10 conditions. The Establishment and Project Review without those
11 conditions made no recommendation. It came to us as is. So is
12 that clear? We're now going to vote on the motion to approve the
13 application with those two conditions. Any other questions? OK.
14 All those in favor, aye?

15

16 [Aye]

17 Opposed? Two opposed. Any abstentions. Do I have enough?
18 Commissioner voted. We have, the vote is 13-2 the motion
19 carries. We needed 13 affirmative in order to pass. Could we
20 ask Mr. Robinson to please return. We can ask him to refer... well
21 you want to read it why it is that it got deferred?

22

23 GARY KALKUT: 172379E, St. Peter's Health Partners in
24 Albany. This is to co-establish Trinity Health Corporation over

1 all the St. Peter's Health Partners facilities as a limited
2 purpose active parent cooperator. The Department recommended
3 conditions and... approval with conditions and contingencies. To
4 establish Trinity Health Corporation as the limited co-operator
5 of St. Peter's Health Partners and it's licensed article 28
6 facilities. The Establishment and Project Review Committee
7 recommended that we defer this application. And I so move.

8

9 PETER ROBINSON: And we have a second. Any comments from
10 the Department on this?

11

12 TRACY RALEIGH: Just questions.

13

14 PETER ROBINSON: Just questions. Thank you. Any
15 questions from the committee? The Council? So I'll call the
16 question. All in favor?

17

18 [Aye]

19 Opposed? Motion carries. Thank you very much.

20 Calling application 172364E, True North IV DC LLC in Queens
21 County. Noting a conflict and recusal by both Mr. Kraut and Mr.
22 Thomas. And Mr. Thomas is going to take his pizza and leave the
23 room. This is to establish True North IV DC LLC as the new
24 operator of Atlas Park Dialysis and Jamaica Hillside Dialysis

1 both currently operated by Knickerbocker Dialysis Inc. There's a
2 history to this application and I think most of the members of
3 this council are familiar with it, but just to put it on the
4 record, the application before us now has received the following
5 actions. Dating back to March 22 of 2018 where it was reviewed
6 by the Establishment and Project Review Committee and got a
7 deferral. At the April 12, 2018 Establishment and Project Review
8 Committee it moved forward with no recommendation. The full
9 council then took it up on the same day and there were no
10 motions that received a quorum and were passed. The application
11 came back through the following cycle and on May 17 it went
12 through the Establishment and Project Review Committee again
13 with no recommendation. It came back to the full council on June
14 7 and the application was deferred at that time. It is now back
15 up here after being reviewed again at the September 27, 2018
16 Establishment and Project Review Committee. And again we had no
17 recommendation. So the Department is recommending approval with
18 conditions and contingencies. This is coming forward with no
19 recommendation from the committee. Ms. Raleigh may I ask you to
20 lead the conversation. Oh, I'm sorry, I need a motion. I'm
21 sorry. And you so move. And a second from Dr. Kalkut. Thank you
22 for that. Ms. Raleigh.

23

1 TRACY RALEIGH: I would just like to point out to members
2 that you did receive a response from the applicant to questions
3 raised at the committee meeting with respect to participation in
4 the RHIO and information technology. I don't know if there's any
5 further questions on that but the applicant did respond to that.
6 Without going through in extreme detail, I think we heard from
7 the applicant at the committee meeting responses to address two
8 concerns; one was the issue of control and the applicant did
9 describe that in fact by Northwell coming in to these
10 applications the current control by DaVita in these clinics
11 would be diluted. And they also gave their rationale for the
12 purpose of this structure which was given the fragmentation of
13 services around dialysis between the actual dialysis clinics and
14 hospital care and transplant services. Probably much more to be
15 said on that, but that was a statement clearly made. We just
16 like to remind members that if this application doesn't move
17 forward, DaVita is currently established and is operating many
18 clinics in New York State today. There were concerns raised both
19 by members and the opposition regarding the disclosures that we
20 included in the staff report with respect to litigation issues
21 that primarily from the Department's read of them occurred
22 outside of New York State with respect to billing issues and
23 formulary issues. With that, I think, you know, I would take
24 questions.

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PETER ROBINSON: Questions from the council? Dr. Gutierrez.

ANGEL GUTIERREZ: I'm sorry, I heard you say, It's been diluted. Is the dilution a 1:10 a 1:5? 1:1? What are we talking about.

PETER ROBINSON: 49:51 I think.

TRACY RALEIGH: So, DaVita is... Northshore is coming into this Northshore LIJ Renal Ventures with 49 percent but it's also in conjunction with DaVita. So I've got to do some quick math her, I don't know if George can help me. DaVita's percentage, hang on just a second... would roughly be 45 percent whereas today it's 100 percent owning the clinic.

PETER ROBINSON: The physicians are another part of that group, are they not?

TRACY RALEIGH: And the physicians come in at overall 12 percent but that's 12 percent of 75 so doing the quick math... about 9 percent.

1 PETER ROBINSON: From the standpoint of just rough
2 orders of magnitude, does that answer your question?

3

4 ANGEL GUTIERREZ: Right, but I'm still concerned about
5 who controls the formulary?

6

7 TRACY RALEIGH: I think we heard without the transcript of
8 discussion occurred I think Northwell responded to that in that
9 they ultimately have control over that formulary. They have
10 certain procedures in place so that they ultimately do influence
11 the development of that.

12

13 ANGEL GUTIERREZ: Could you repeat who "they" is?

14

15 TRACY RALEIGH: Well, this was the physician representative
16 from Northwell who was speaking at the committee meeting.

17

18 ANGEL GUTIERREZ: So, the physicians of Northwell control
19 the formulary, is that what I hear you say?

20

21 TRACY RALEIGH: That's correct. Yes.

22

23 HARVEY LAWRENCE: As I recall, and response to a
24 question, they indicated the Northwell and the physician group

1 had a super majority vote in terms of quality, and I assume that
2 quality would also affect the pharmacy issues. So is that
3 something that's embedded in the approval, should this go
4 forward, that they would continue to maintain that supermajority
5 vote in the relationship, in the partnership structure?

6

7 TRACY RALEIGH: That's how the application was submitted. So
8 yes. The answer is yes.

9

10 PETER ROBINSON: OK, Dr. Ruge.

11

12 JOHN RUGGE: I just can't help but make the editorial
13 comment about how far we've come by way of character and
14 competence. And here we are dependent on a for-profit national
15 corporation for central services in New York that's been fined
16 not tens but hundreds of millions of dollars through their
17 failure of character or alternatively their failure of
18 competence. And recognize we have no choice in that we are
19 diluting their interest through this motion. I'm ok with making
20 the vote, but will be doing it by holding my nose in terms of
21 the values that we're trying to uphold and persevere with as a
22 council.

23

1 PETER ROBINSON: Thank you. OK. So, we are required in
2 order to get a positive result out of this to have 13 votes and
3 I think given the nature of the history of this I will do a roll
4 call on this vote as well. Motion for the Department's
5 recommendation?
6 Dr. Berliner
7 No
8 Dr. Brown
9 No
10 Ms. Carver-Cheney
11 Yes
12 Dr. Gutierrez
13 No
14 Mr. Holt
15 Yes
16 Dr. Kalkut
17 Yes
18 Mr. LaRue
19 I'm voting yes because it minimizes the role that DaVita has in
20 this entity.
21 Mr. Lawrence
22 Yes
23 Dr. Martin
24 (yes)

1 Mr. Robinson

2 Yes

3 Dr. Ruge

4 Together with Mr. LaRue and holding my nose, Yes.

5 Ms. Soto

6 No

7 Dr Watkins

8 Yes

9 Commissioner

10 Yes

11 PETER ROBINSON: So the vote is 10 to 4 the motion does
12 not carry and because we do not have the requisite 13 votes. I
13 think that as you recall the absence of a vote one way or the
14 other with a quorum, without hitting that 13 number actually
15 leaves this thing in limbo. And I'm wondering if in order to
16 allow the applicant the opportunity to take actions that they
17 would take subsequent to the actions of the council, we might
18 want to consider a motion to deny and therefore get to a
19 definitive point of getting it off the table and allowing them
20 to move forward in whatever direction they think is appropriate.
21 So, I'll entertain that motion.

22

23 GARY KALKUT: I'll make a motion to disapprove the
24 application.

1

2 PETER ROBINSON: To disapprove. With a second. Dr.

3 Watkins is the second. Thank you. I'm going to call that

4 question by roll call as well.

5 Dr. Berliner

6 yes

7 Dr. Brown

8 yes

9 Ms. Carver-Cheney

10 Yes

11 Dr. Gutierrez

12 yes

13 Mr. Holt

14 Yes

15 Dr. Kalkut

16 Yes

17 Mr. LaRue

18 yes

19 Mr. Lawrence

20 no

21 Dr. Martin

22 I voted yes before I voted yes.

23 Mr. Robinson

24 Yes

1 Dr. Ruge

2 No

3 Ms. Soto

4 Yes

5 Dr. Watkins

6 Yes

7 Commissioner

8 Yes

9

10 PETER ROBINSON: So that motion carries. The application
11 is denied and we will turn it back over to the applicants and
12 the Department now. So thank you very much.

13 Please have Mr. Kraut... oh I got one more? We have a
14 companion application. Thank you very much. So this is
15 application 172411E, True North V DC LLC in Kings County. Again
16 a recusal by Mr. Kraut and Mr. Thomas. The Department is
17 recommending approval with conditions and contingencies. The
18 committee made no recommendation. I would ask for a parallel
19 motion to the one that was just approved last time for
20 disapproval of the application because I'm assuming we're going
21 to go through the same process again. May I have that motion.
22 Dr. Kalkut, a second. Thank you. Dr. Gutierrez. Any further
23 questions on this application? Hearing none, we'll call the role
24 again.

NYSDOH20181011-PHHPC Council

72 min

- 1 Dr. Berliner
- 2 Yes
- 3 Dr. Brown
- 4 yes
- 5 Ms. Carver-Cheney
- 6 Yes
- 7 Dr. Gutierrez
- 8 yes
- 9 Mr. Holt
- 10 Yes
- 11 Dr. Kalkut
- 12 Yes
- 13 Mr. LaRue
- 14 Yes
- 15 Mr. Lawrence
- 16 No
- 17 Dr. Martin
- 18 Yes
- 19 Mr. Robinson
- 20 Yes
- 21 Dr. Ruge
- 22 Yes.
- 23 Ms. Soto
- 24 No... ok, I'm sorry. Thank you

1 Dr Watkins

2 Yes

3 Commissioner

4 Yes

5

6 PETER ROBINSON: Thank you. So that motion carries and
7 the application is disapproved. Thank you very much. Now we can
8 have Mr. Kraut and Mr Thomas return. I appreciate this. I think
9 it is better to clear the deck so to speak than to continue to
10 keep these applications in limbo. So I thank the council for
11 that, and will wait for. Now we can batch.

12 Calling application, so I'm batching the balance of the
13 applications in this section. 181266E, the Elliot at New
14 Rochelle LLC Westchester County; Application 181436E, The
15 Sentinel of Mohegan Lake LLC in Westchester County, Both the
16 Department and the committee recommend approval with a condition
17 and certificate of merger for the Translational Living Services
18 of Onondaga County into United Cerebral Palsy and Handicapped
19 Children's Association of Syracuse Inc., also with an approval
20 recommended by the Department. And I so move.

21

22 JEFF KRAUT: I have a motion. I have a second by Dr.
23 Gutierrez. Any questions from the council? Any comments from the
24 Department? All those in favor aye?

1

2 [Aye]

3 Opposed? Abstention? The motion carries.

4

5 PETER ROBINSON: OK. In this group of applications here
6 I think I'm going to have to do them individually. 172101C,
7 Coney Island Hospital in Kings County. Conflict and recusal by
8 Dr. Yang. Who is not here. Renovate space to repair damage
9 incurred during the superstorm and protect the hospital from
10 future damage and decertify one intensive care bed, four
11 medical-surgical beds, and 15 physical medicine and rehab beds
12 with a recommendation for approval with conditions and
13 contingencies by both the Department and the committee. Also
14 application 181334C, Samaritan Hospital In Rensselaer County,
15 with an interest by Dr. Bennett who is not here. To certify St.
16 Mary's Hospital as a division of Samaritan Hospital of Troy.
17 Noting that the first contingency has been satisfied and has
18 been removed. That has a recommendation of approval with a
19 condition and contingencies by the Department and committee.
20 Application 181404C, Albany Medical Center Hospital in Albany
21 County. Also an interest by Dr. Bennett who is not here.
22 Renovate two floors of the M building to add 32 net new medical
23 surgical beds. Also a recommendation for approval with

1 conditions and contingencies by the Department and the committee
2 and I so move.

3

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

6

7 [Aye]

8 Opposed? Abstentions? Motion carries.

9

10 GARY KALKUT: I'd like to call 181304C, Arnot Ogden
11 Medical Center in Chemung County. Conflict recusal by Mr.
12 Robinson who has left the room. This is to certify St. Joseph's
13 Hospital as division of Arnot Ogden Medical Center. The
14 Department and committee recommends approval with condition and
15 contingencies, and I so move.

16

17 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
18 comment? Any questions? All those in favor, aye?

19

20 [Aye]

21 Opposed? Abstention? The motion carries. Please ask Mr.
22 Robinson to return.

23 Want to start tee'ing up category two. He's here. Sorry.

24 Oh, I'm leaving now.

1 PETER ROBINSON: And out he goes. Application 18133E,
2 Lynbrook Surgery Center LLC in Nassau County. Conflict and
3 recusal by Mr. Kraut. To establish Lynbrook Surgery Center LLC
4 as the new operator of South Shore Ambulatory Surgery Center LLC
5 located at 44 Merrick Rd., Lynbrook. The Department recommends
6 approval with conditions and contingencies. As does the
7 committee. May I have a motion, Dr. Kalkut. Dr Gutierrez.
8 Questions from the committee? Council? Hearing none, call the
9 question. All in favor?

10

11 [Aye]

12 Opposed? Motion carries. Please have Mr. Kraut return and
13 have Dr. Rugge leave.

14

15 PETER ROBINSON: Application 181333E... sorry. Strike
16 that. 181438E, North County EC LLC d/b/a New York Eye Surgical
17 Center in Saratoga County. Dr. Rugge with a conflict and
18 recusal. This is a request for indefinite life for CON no.
19 112382. The Department and the committee both recommend approval
20 and I so move.

21

22 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
23 comment? Any questions? All those in favor, aye?

24

1 [Aye]

2 Opposed? Abstention? The motion carries. Please ask Dr.

3 Rugge to return.

4

5 PETER ROBINSON: Application 172387E, Grand South Point
6 LLC d/b/a The Grand Rehabilitation Nursing at South Point in
7 Nassau County. An interest declared by Mr. Kraut. To establish
8 Grand South Point LLC as the new operator of South Point Plaza
9 Nursing and Rehabilitation Center, 185 bed RHC located at One
10 Long Beach Rd., Island Park. The Department recommends approval
11 with a condition and contingencies as does the committee.

12 Application 121219E, AGA Operating LLC d/b/a the Brook at
13 High Falls Nursing and Rehabilitation Center in Monroe County,
14 with an interest declared by Mr. Thomas. To establish AGA
15 Operating LLC as the new operator of the 28 bed residential
16 healthcare facility located at 2150 St. Paul Street in
17 Rochester. Currently operated at the Baird Nursing Home. The
18 Department and the committee both recommend approval with a
19 condition and contingencies, and I so move.

20

21 JEFF KRAUT: Second by Dr. Gutierrez. Any comment? Any
22 questions? All those in favor, aye?

23

24 [Aye]

1 Opposed? Abstention? The motion carries.

2 PETER ROBINSON: Thank you. The next three applications
3 have a conflict and recusal declared by Mr. LaRue who is leaving
4 the room. Application 181050E, Nesconset Operating LLC d/b/a The
5 Hamlet Rehabilitation and Health Care Center at Nesconset
6 Suffolk County. To establish Nesconset Operating LLC as the new
7 operator of the 240 bed residential healthcare facility located
8 at 100 Southern Blvd., Nesconset, currently operated as the
9 Nesconset Center for Nursing and Rehabilitation. Department
10 recommends approval with condition and contingencies as does the
11 committee.

12 181366E, Port Jefferson Operating LLC, d/b/a Waters Edge
13 Rehab and Nursing in Port Jefferson, Suffolk County. To
14 establish Port Jefferson Operating LLC as the new operator of
15 Waters Edge at Port Jefferson for Rehabilitation and Nursing, an
16 existing 120 bed residential healthcare facility located at 150
17 Dark Hollow Rd., Port Jefferson. The Department here as well as
18 the committee recommend approval with a condition and
19 contingencies.

20 And application 181367E, Glen Garriff Operating LLC d/b/a
21 Glen Garriff Rehabilitation and Healthcare Center in Nassau
22 County. And that's to establish Glen Garriff Operating LLC as
23 the new operator of Glen Garriff Healthcare Center, an existing
24 262 bed residential healthcare facility located at 141 Dosorus

1 Ln., Glen Cove with the Department also recommending a condition
2 and contingencies, as did the committee with approvals. And I so
3 move.

4

5 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
6 comment? Questions? All those in favor, aye?

7

8 [Aye]

9 Opposed? Abstention? The motion carries. Please ask Mr.
10 LaRue to come in; Ms. Carver-Cheney to leave.

11

12 PETER ROBINSON: Application 181387E, Verrazano Nursing
13 Home in Richmond County. Transferring 30.5 percent stock from
14 one withdrawing member to one existing member and transfer seven
15 percent interest from one existing member to another. The
16 Department is recommending approval with a condition as does the
17 committee and I so move.

18

19 JEFF KRAUT: I have a second Dr. Gutierrez. Any comment?
20 Questions? All those in favor, aye?

21

22 [Aye]

23 Opposed? Abstention? The motion carries.

24

1 PETER ROBINSON: This next application includes a
2 conflict and recusal by Mr. Kraut. Calling application 181348E,
3 Northshore Home Care, Westchester County. Acquire and merge the
4 visiting nurse association of Hudson Valley certified home
5 health care agency and assets. The Department is recommending
6 approval with a condition and contingencies as does the
7 committee. May I have a motion? Dr. Kalkut. Dr. Gutierrez.
8 Anything from the Department on this one? Call the question. All
9 in favor?

10

11 [Aye]

12 Opposed? Motion carries. Please have Mr. Kraut return.

13 This will be a longer batch. Application 181448e, Brooklyn
14 Surgery Center, Kings County. Request for indefinite life for
15 CON 112222. The Department and the committee recommend approval.
16 Application 181307E, AJA 28 LLC d/b/a New York Preventive
17 Healthcare Center in Queens. To establish AJA 28 LLC as the new
18 operator of the main side of E&A Medical Solutions LLC known as
19 the Forest Hills Health Center. Located at 6860 Austin Street in
20 Forest Hills. The Department here recommends approval with
21 conditions as does the committee. And application for dialysis
22 services 182012B, Ditmas Park Dialysis Center LLC in Kings
23 County. To establish and construct a 21 station chronic health
24 renal diagnostic and treatment center in leased space at Ditmas

1 Park Care Center, a residential healthcare facility located at
2 2107 Ditmas Avenue, Brooklyn. This amends and supersedes CON
3 092169. The Department is recommending approval with conditions
4 and contingencies as does the committee. Application 181419B,
5 Ulster Dialysis LLC in Ulster County. Establish and construct a
6 13 station chronic renal dialysis diagnostic and treatment
7 center to be located at 900 Miron Lane in Kingston. Also note
8 that a revised projections chart was included in the updated
9 exhibit to this application. The Department here recommends
10 approval with conditions and contingencies as did the committee.
11 Application 172385E, Grand Great Neck LLC d/b/a The Grand
12 Rehabilitation and Nursing at Great Neck in Nassau County. To
13 establish Grand Great Neck LLC d/b/a the Grand Rehabilitation
14 and Nursing at Great Neck as the new operator of Grace Plaza
15 Nursing and Rehabilitation Center, a 214 bed residential
16 healthcare facility located at 15 St. Paul's Place, Great Neck.
17 The Department here recommends approval with a condition and
18 contingencies, as did the committee. And a restated certificate
19 of incorporation, Faxton St. Luke Healthcare Foundation name
20 change. That was also recommended for approval by the Department
21 and the committee. Application 172420B, Doral Medical and
22 Multispecialty Facility LLC, d/b/a Doral Medical and
23 Multispecialty Center in Kings County. Establish and Construct a
24 new diagnostic and treatment center to be located at Pitkin

1 Avenue, Brooklyn. The Department is recommending approval with
2 conditions and contingencies. Here the committee recommended
3 approval with conditions and contingencies but with one member
4 opposing.

5

6 JEFF KRAUT: I think you've got to stop here. The other
7 one has to go separately.

8

9 PETER ROBINSON: And I so move.

10

11 JEFF KRAUT: That's a motion. I have a second by Dr.
12 Gutierrez. Any comment? Questions about anything in this batch?
13 All those in favor, aye?

14

15 [Aye]

16 Opposed? Abstention? The motion carries.

17

18 PETER ROBINSON: Ok. So here's the one that's coming
19 separately.

20

21 JEFF KRAUT: That's correct.

22

23 PETER ROBINSON: 181177B. Adira Dialysis LLC d/b/a Adira
24 Dialysis Center in Westchester County. This is to establish and

1 construct a new 20 station dialysis center to be located at 120
2 O'dell Avenue in Yonkers, and an addition built on the Adira At
3 Riverside Rehabilitation Center. The Department recommends
4 approval with conditions and contingencies. The committee
5 recommended approval with conditions and contingencies with
6 three members abstaining and I so move.

7

8 JEFF KRAUT: I have a motion. I have a second by Dr.
9 Gutierrez. Is Dr. Berliner here? He was one of the abstentions.
10 Any comment? Questions? Just to let you know, we called the
11 application Adira Dialysis, an application you had previously
12 abstained at at the establishment review. Any comments here?

13

14 HOWARD BERLINER: The reason for the abstention was
15 because there was some questions, there was very little
16 identification of who the medical director was going to be and
17 the applicant submitted that information and I think it's
18 acceptable. Thank you.

19

20 JEFF KRAUT: Any other questions or comments? Hearing
21 non, All those in favor, aye?

22

23 [Aye]

24 Opposed? Abstention? The motion carries.

1

2 PETER ROBINSON: I believe, Mr. Chairman, that that
3 concludes our report.

4

5 JEFF KRAUT: OK. So it's now my pleasure to adjourn the
6 meeting. I just want to remind everybody... by the way, we did
7 everything? Nothing else? The next meeting is going to be held I
8 Albany, November 29, 2018. And followed by a December 13 meeting
9 in Albany. Now, the location of that is where? It's going to be
10 still in Albany meeting room six. So with that I'll have a
11 motion to adjourn. All those in favor?

12

13 [Aye]

14 We stand adjourned. Thank you very much.

15

16 [end of audio]

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

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

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

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

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

Patients' Bill of Rights

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

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

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

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

(4) Receive emergency care if you need it.

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

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

(7) [A no smoking room.] Identify a caregiver who will be included in your discharge planning and sharing of post-discharge care information or instruction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Current Requirements:

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

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

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

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

Needs and Benefits:

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

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

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

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

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

COSTS:

Costs to Private Regulated Parties:

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

Costs to Local Government:

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

Costs to the Department of Health:

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

Costs to Other State Agencies:

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

Local Government Mandate:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

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

Costs:

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

Minimizing Adverse Impact:

The impact is minimal.

Rural Area Participation:

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

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.

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2) of the Public Health Law, a new section 415.32 is added to Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to be effective upon publication of a Notice of Adoption in the New York State Register:

415.32 Weekly bed census data survey.

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

(1) “Communications Directory” (Directory) shall mean a listing of all organizations with access to the HCS, ordered by type, and including the identity of and contact information for individuals at each organization who: (i) perform specific job functions identified by the Department; and/or (ii) have access to perform certain data exchange functions on the HCS.

(2) “HCS Coordinator” shall mean the individual designated by each organization with access to the HCS to be responsible for authorizing and managing accounts and maintaining other key information about the organization’s HCS users.

(3) “Health Commerce System” (HCS) shall mean the Department’s secure Internet portal used for communications and information exchange with organizations including nursing homes and other health care providers or any successor system used for such information exchange as required by the Department.

(4) “Health Electronic Reporting Data System” (HERDS) shall mean the data reporting application on the HCS that houses the Survey or any successor system used for such

reporting as required by the Department.

(5) “Nursing Home Data Reporter” shall mean the name of the role in the Directory that provides access to an individual designated by a nursing home to use HERDS.

(6) “Nursing Home Weekly Bed Census Survey” (Survey) shall mean an electronic survey used by each nursing home to report its bed census to the Department using HERDS.

(7) “Role” shall mean the term used to indicate in the Directory the specific job functions and HCS data exchange functions assigned to individuals by each organization.

(b) Submission of Surveys.

(1) Each nursing home shall complete the Survey on HERDS on a weekly basis by indicating, for each category of bed, the total number of certified or approved beds and the number of those beds that are available. The Survey shall be submitted on a weekly basis by individuals at the nursing home who are assigned to the Nursing Home Data Reporter role within the Directory.

(2) Nursing homes shall report bed census data reflecting the weekly census taken every Wednesday at 12:00 a.m. The nursing home’s designated Nursing Home Data Reporter shall enter and transmit the survey census data to the Department between Wednesday at 12:01 a.m. and the following Tuesday at 11:59 p.m. Instructions for the Survey will be available on the HCS.

(c) Designation of Nursing Home Data Reporters. Nursing homes shall, through their HCS Coordinators, designate a sufficient number of Nursing Home Data Reporters to ensure that the Survey is submitted to the Department in a timely manner.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(a)(v) provides that the Public Health and Health Planning Council shall adopt rules and regulations, subject to the approval of the Commissioner of Health, governing the standards and procedures followed by nursing homes which, at a minimum, must meet federal standards.

Legislative Objectives:

The legislative objective of PHL Article 28, as set forth in PHL section 2800, includes the protection of the health of the residents of New York State through the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. This proposal, which requires nursing homes to submit weekly bed census data to the Department of Health (Department) through the Department's Health Commerce System, is consistent with that objective. Having current and accurate nursing home bed occupancy data is important in the event of natural disasters and to alert the Department to significant changes in nursing home occupancy, improving the Department's ability to take appropriate action. While facilities have already been advised administratively that they must submit this data, including the requirement in regulation will improve compliance.

Current Requirements:

The Health Commerce System (HCS), previously known as the Health Provider Network (HPN), is a highly secure, Internet-based, electronic portal for communications and critical data sharing with organizations including nursing homes and other health care providers. Section 400.10 of Title 10 (Health) of the New York Compilation of Codes, Rules and Regulations (NYCRR) requires providers, including nursing homes, to maintain and keep updated an active HPN account.

DAL #09-02, effective April 8, 2009, was issued by the Department to require nursing homes to report weekly bed census data electronically to the Department through the HPN. The DAL provided for such data to be reported each week between Wednesday 8:00 a.m. and Friday 5:00 p.m. In 2013, via a notice sent through the HCS, the Department informed nursing homes that such data should be reported between Wednesday 12:01 a.m. and the following Tuesday at 11:59 p.m.

Needs and Benefits:

It is critical that the Department have accurate nursing home census data including occupancy and availability data by bed type. Natural events such as hurricanes and floods and other emergency events such as extended power outages could cause situations in which some nursing homes may have to transfer their residents to other facilities to ensure their safety. In those situations, the Department must be able to quickly assess the number and location of nursing home residents across the affected area, as well as the number of available beds. Furthermore, the ability to monitor a facility's current occupancy data

improves the Department's ability to identify a declining census and proactively take appropriate action.

Despite the current requirement for bed census data reporting, communicated via a DAL and a subsequent HCS notice, the Department often finds itself in the position of having to call some nursing homes repeatedly to obtain this information. This proposed regulation will add a new section 415.32 to Title 10 of the NYCRR to require that nursing homes submit bed census data on a weekly basis by electronically filing the Nursing Home Weekly Bed Census Survey (Survey). This will promote compliance and ensure that the Department has access to essential, current occupancy data as necessary to protect residents.

Accordingly, the proposed regulation provides that the Survey must be submitted via the HCS Health Electronic Response Data System (HERDS) application by a facility staff person assigned a Nursing Home Data Reporter role within the HCS Communications Directory. Nursing homes shall report bed census data reflecting the weekly census taken every Wednesday at 12:00 a.m. The facility's designated Nursing Home Data Reporter shall enter and transmit the survey census data to the Department between Wednesday at 12:01 a.m. and the following Tuesday at 11:59 p.m. Instructions for the Survey will be available on the HCS. The proposal further requires nursing homes, through their HCS Coordinators, to designate enough Nursing Home Data Reporters to ensure that the facility can submit surveys to the Department as required.

COSTS:

Costs to Private Regulated Parties:

New York State health care facilities are already required by section 400.10 of the NYCRR to have an HCS account to exchange electronic information with the Department. Moreover, nursing homes are already expected to send bed census information to the Department as communicated in the DAL. Therefore, nursing homes should not incur any additional costs related to the electronic submission of bed census information to comply with the proposed regulation.

Costs to Local Government:

This proposal will not impact local governments unless they operate a nursing home, in which case they will be impacted to the same extent as other nursing homes. As previously noted, nursing homes are not expected to incur any additional costs related to the electronic submission of bed census information.

Costs to the Department of Health:

The Department is not expected to incur any additional administrative costs as a result of the proposed regulation. The statewide HCS infrastructure and the mechanisms for nursing home bed census data collection are already in place.

Costs to Other State Agencies:

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

Local Government Mandates:

This proposed regulation does not impose any new mandates on local governments.

Paperwork:

Nursing homes are already expected to submit bed census information via the HCS. Accordingly, the proposal should not increase paperwork.

Duplication:

This proposed regulation reiterates and strengthens the existing requirement, set forth in the DAL, that nursing homes report census data on a weekly basis to the Department. Moreover, while federal regulations require submission of bed census data to the federal Centers for Medicare and Medicaid Services (CMS) on a quarterly basis, this regulation will ensure that the Department receive this information directly and more frequently.

Alternatives:

There are no other alternatives for the Department to reliably secure current bed census data from nursing homes.

Federal Standards:

Federal regulations require nursing homes to submit quarterly census data to CMS.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register. The statewide HCS infrastructure and the mechanisms for bed census reporting for nursing homes are already in place. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

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

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on small businesses or local governments. Nursing homes that constitute small businesses and local health departments that operate nursing homes, like all other nursing homes, are already required to have an HCS account to exchange electronic information with the Department and report bed census data.

**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 rule will not have an impact on nursing homes located in rural areas any differently than in any other areas. Such nursing homes are already required to have an HCS account to exchange electronic information with the Department and report bed census data.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 3605(7) of the Public Health Law, sections 766.9 and 766.12 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register.

Subdivision (n) of § 766.9 is amended to read as follows:

(n) ensure that any franchise agreement complies with the following:

* * *

(4) An agreement which contains elements of both a franchise agreement and a management contract shall be subject to the applicable provisions of this subdivision and subdivision (m) of this section[.]; and

A new subdivision (o) is added to § 766.9 to read as follows and existing subdivision (o) re-lettered (p):

(o) ensure registration of the licensed home care services agency with the commissioner through submission of annual registration forms included in the annual statistical report;

(1) no licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period;

(2) a licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered;

(3) a licensed home care services agency that fails to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any and all unpaid late fees;

(4) the department shall publish a listing of all licensed home care services agencies and their current registration status on its public website;

(5) the department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive; and

(6) the department shall pursue revocation of the license of a licensed home care services agency if it evidences a pattern of late registration over the course of multiple years without justification acceptable to the commissioner.

Subdivision (c) of § 766.12 is amended to read as follows:

(c) The home care services agency shall furnish annually to the department a copy of:

(1) statistical summaries of all health care services, including the type, frequency and reimbursement for services provided, including reimbursement from federal and state governmental agencies, on forms provided by the department;

(2) if a for-profit corporation, a list of the principal stockholders and the number and percent of the total issued and outstanding shares of the corporation held by each, duly certified by the

secretary of the corporation as to completeness and accuracy;

(3) if a not-for-profit corporation, a list of directors, officers and corporate members, if such members number 10 or fewer;

(4) the agency's registration in a manner prescribed by the department; and

(5) other such records and reports as may be legally required by the department.

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

This proposal will implement amendments to Public Health Law (PHL) §§ 3605-a and 3605-b requiring registration of licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Public Health Law Article 36 was intended to promote the quality of home care services provided to residents of New York State and to assure adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by developing a system for the Department of Health (Department) to identify agencies that are non-operational and aligns state regulations with the Department's strategic plan.

Needs and Benefits:

The proposed changes to 10 NYCRR §§ 766.9 and 766.12(c)(4) implement amendments to PHL §§ 3605-a and 3605-b made by Chapter 57 of the Laws of 2018, Part B, §§ 9-c and 9-d, requiring registration of licensed home care services agencies pursuant to PHL.

Annual registration of licensed home care services agencies will allow the Department, on an annual basis, to confirm operational entities in all regions of the state. The registration will confirm the number of agencies providing services in the defined services area and the types of services provided. The information will assist the Department in identifying potential gaps in provider capacity and consumer access to services, and is important as the Department develops a need methodology for licensed home care services agencies. It will also be useful to the Department's oversight and surveillance functions.

This will be integral in improving the overall quality of services provided to individuals who are receiving home care services.

Just as important, the information obtained from the licensed home care services agency registration will improve consumer access to information about licensed home care services agency availability. The information collected from the registration process will improve the currency and accuracy of provider-related information on the DOH public website, giving consumers meaningful information that can help them identify available options for home care services. Additionally, the public website will identify those agencies who are registered with the Department and those agencies who are not registered with the department, indicating their compliance with 10 NYCRR § 766.9.

To comply with the registration requirement, licensed home care services agencies will need to complete a section that will be added to the existing annual statistical report. These must be submitted during the annual data collection period, which commences in August of the preceding year of the registration deadline and ends by November 16th.

The proposed changes will provide a benefit to current licensed home care services agencies who complete the registration as required, as they will be listed on the public website as being currently registered and active.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. There are no additional costs to the Department of Health as a result of the proposed rule change.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require county operated agencies to complete one additional form.

Paperwork:

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed.

Duplication:

The proposed rule is not duplicative of any known rules or regulations.

Alternatives:

There are no alternatives to this proposal, which is necessary to implement a legislative enactment requiring licensed home care services agencies to register annually with the Department.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments, as the amendments ensure conformance with expectations that were already in effect. Those licensed home care services agencies who are operational should already be in compliance with the required annual statistical reports and should be readily able to comply. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th, established by the Commissioner of Health, is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period. The regulations will be effective 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 GOVERNMENTS

Effect of Rule:

Licensed home care services agencies, including those operated by county health departments, provide health services in the home pursuant to Public Health Law Article 36. There are currently 1,083 licensed operators providing home care services at 1,475 licensed sites. Local governments will not be affected by this rule except to the extent that they operate licensed home care services agencies; nor will small businesses be impacted in their routine cost of conducting business.

Compliance Requirements:

Regulated parties are expected to be in compliance beginning on and after January 1, 2019. The proposed regulations will implement the new registration requirement for licensed home care services agencies, which will be carried out through existing reporting mechanisms. The registration process is a new requirement; however, the registration process will be incorporated with existing statistical data collection requirements for licensed home care services agencies which are required annually. Therefore, compliance requirements are minimal.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of licensed home care services agencies are small businesses, the impact is expected to be minimal. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Record keeping and compliance requirements could be handled by existing staff, as it is the expectation that the administrator complete the registration.

Compliance Costs:

There are no capital costs associated with these proposed rules. Any costs are already incurred by agencies under the existing regulations.

Economic and Technological Feasibility:

The Department has considered feasibility and believes there will be minimal, if any, economic and technological impact. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation should not affect the routine cost of doing business, unless agencies have been non-compliant with existing requirements.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) § 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with requirements that are already in effect.

Small Business and Local Government Participations:

The Department will meet the requirements of SAPA § 202-b(6) in part by publishing a

notice of proposed rulemaking in the State register with a comment period. The Department has not solicited input prior to publication as the proposed amendments are required by statute, do not change existing procedures in any substantive manner and will, therefore, have no deleterious effect on small businesses and local governments.

Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

A licensed home care services agency which fails to submit a complete and accurate set of all required registration materials by the deadline established by the Commissioner shall be required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is in default. The statute allows for the LHCSA to register at any time, however, the fines will continue to be incurred.

A licensed home care services agency that failed to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any unpaid late fees.

A licensed home care services agency is prohibited from providing nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered with the Department.

The Department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive. The Department shall have the discretion to pursue revocation of the license of a licensed home care services agency on grounds that it evidences a pattern of late registration over the course of multiple years.

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

All counties in New York State (NYS) have rural areas with the exception of seven (7) downstate counties. Approximately 80% of licensed home care services agencies are licensed to serve counties with rural areas. No rural area flexibility analysis is required pursuant to § 202-bb(4)(a) of SAPA. The proposed amendment does not impose an adverse impact on facilities in rural areas and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment to require licensed home care agencies to complete registration seeks information regarding operational agencies and to assure home care availability in rural areas as an alternative to institutional care.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by sections 2803(2)(a) and 2805-y(4) of the Public Health Law, sections 405.9, 405.18, 405.19, 405.20, 407.5, and 751.5 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon filing of a Notice of Adoption in the New York State Register:

Subparagraph (ii) of paragraph (11) of subdivision (b) of section 405.9 of Title 10 is amended to read as follows:

(ii) If a patient eligible for transfer to a hospital operated by the Veteran's Administration requests such transfer, hospital staff shall make such arrangements. Transfer shall be effected in accordance with paragraph [(g)(7)] (h)(7) of this section.

Subdivision (g) is relettered as (h) and a new subdivision (g) is added to section 405.9 of Title 10 to read as follows:

(g) Human Trafficking. The hospital shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as that term is defined in section 483-aa of the Social Services Law and used in Article 10-D of the Social Services Law. The hospital shall establish and implement written policies and procedures, which shall apply to all service units of the hospital and, at a minimum, shall meet the following requirements:

(1) Policies and procedures shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims;

(2) In the case of individuals who are suspected to be human trafficking victims and are under eighteen years old, policies and procedures shall provide for the reporting of such persons as an abused or maltreated child if required under Title 6 of Article 6 of the Social Services Law;

(3) The hospital shall inform individuals who are suspected to be human trafficking victims of services that may be available, including those referenced in Article 10-D of the Social Services Law. Referrals also may be made to other health care providers, appropriate state agencies, and/or other providers of services as appropriate. Such information may be provided verbally and/or in writing as appropriate;

(4) The hospital shall post the human trafficking hotline poster issued by the National Human Trafficking Resources Center, or a variation of such poster created by the Office of Temporary and Disability Assistance (OTDA) consistent with section 483-ff of the Social Services Law, whichever OTDA makes available on its website. Posters shall be placed in conspicuous locations near primary public entrances and where other posters and notices are posted; and

(5) The hospital shall establish and implement training, which may be incorporated into current training programs, for all individuals licensed or certified pursuant to Title 8 of the Education Law who provide direct patient care, and for all security personnel, regarding the policies and procedures established pursuant to this subdivision. Such training shall include training in the

recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected as human trafficking victims.

Subdivision (h) of section 405.9 of Title 10 is relettered as (i) and subparagraph (ii) of paragraph (7) of the former subdivision (g), now relettered as subdivision (h), of section 405.9 of Title 10 is amended to read as follows:

(ii) Patients discharged from the hospital by their attending practitioner shall not be permitted to remain in the hospital without the consent of the chief executive officer of the hospital except in accordance with provisions of subdivision [(h)] (i) of this section.

Subparagraph (vi) of paragraph (2) of subdivision (b) of section 405.18 of Title 10 is amended to read as follows:

(vi) In accordance with the provisions of section [405.9(g)] 405.9(h) of this Part, rehabilitation therapy staff shall work with the attending practitioner, the nursing staff, other health care providers and agencies as well as the patient and the family, to the extent possible, to assure that all appropriate discharge planning arrangements have been made prior to discharge to meet the patient's identified needs.

New paragraph (6) is added to subdivision (c) of section 405.19 of Title 10 to read as follows, and existing paragraphs (6) through (10) are renumbered (7) through (11):

(6) The emergency service shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as described in subdivision (g) of section 405.9 of this Part.

Paragraph (5) of subdivision (c) of section 405.20 of Title 10 is amended, paragraph (6) is renumbered (7) and a new paragraph (6) is added to read as follows:

(5) identification, assessment, and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law, as described in subdivision (f) of section 405.9 of this Part; [and]

(6) compliance with the human trafficking provisions pertaining to the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as described in subdivision (g) of section 405.9 of this Part; and

Paragraph (6) of subdivision (b) of section 407.5 of Title 10 is amended to read as follows:

(6) Discharge/transfer. Hospitals shall comply with the provisions of paragraph (1) of subdivision [(h)](i) of section 405.9 of this Title concerning discharge/transfer. In addition, PCHs and CAHs shall comply with the following:

* * *

A new paragraph (8) is added to subdivision (a) of section 751.5 of Title 10, and paragraphs (8) through (16) are renumbered (9) through (17), to read as follows:

(8) the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as that term is defined in section 483-aa of the Social Services Law and used in Article 10-D of the Social Services Law; training in the recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected as human trafficking victims, the reporting of individuals who are suspected to be human trafficking victims and are under eighteen years old as abused or maltreated children if required under Title 6 of Article 6 of the Social Services Law; and the posting of the human trafficking hotline poster issued by the National Human Trafficking Resources Center, or a variation of such poster created by the Office of Temporary and Disability Assistance (OTDA) consistent with section 483-ff of the Social Services Law, whichever OTDA makes available on its website, in conspicuous locations near primary public entrances and where other posters and notices are posted;

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2803(2)(a) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement PHL Article 28 and establish minimum standards for health care facilities.

PHL § 2805-y(4) authorizes the Commissioner to issue regulations, in consultation with the Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services (OCFS), to implement the section, which requires “subject facilities” (general hospitals, public health centers, diagnostic centers, treatment centers, or outpatient departments) to develop, maintain, and train staff in policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims.

Legislative Objectives:

This proposal will implement PHL § 2805-y, added by Chapter 408 of the Laws of 2016, to require general hospitals and diagnostic and treatment centers (D&TCs), which encompass the entities referenced as “subject facilities” in the statute, to establish policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims and to train staff in such policies and procedures. The policies and procedures must include the posting of a human trafficking hotline poster consistent with the objectives of Social Services Law (SSL) § 483-ff, added by Chapter 311 of the Laws of 2016.

As explained below, a 2007 law established new crimes related to human trafficking and made various health and social services available to victims. More recent enactments reflect a

legislative desire to combat this growing issue by requiring that general hospitals and D&TCs adopt procedures to identify victims, treat and/or refer them for other services as appropriate, and post a hotline number in public areas where victims may be present.

Needs and Benefits:

The scale of the human trafficking problem constitutes a public health crisis impacting people and their families throughout New York. Legislation enacted in 2007 greatly expanded the tools available to address the issue, but human trafficking nevertheless remains prevalent. A recent study found that 69 percent of survivors surveyed indicated they had accessed health care services at some point during their trafficking. Chapter 408 of the Laws of 2016 recognized this additional opportunity to support human trafficking victims by requiring general hospitals and D&TCs to establish and implement policies to identify, assess, and treat or refer individuals suspected of being victims. Similarly, Chapter 311 of the Laws of 2016 sought to publicize information about resources for human trafficking victims in public areas where victims are likely to be present, including hospitals and clinics.

The New York State Anti-Trafficking Statute, Chapter 74 of the Laws of 2007, was enacted in light of the growing problem of human trafficking for “forced labor, involuntary domestic servitude, or sexual exploitation.” The sponsor’s memorandum noted that victims – frequently children – may be trafficked within or into the United States and New York often serves as a hub of such activity. Among other things, the law added Penal Law §§ 135.35 and 230.34 to establish the crimes of labor trafficking and sex trafficking, respectively.

The 2007 enactment, as amended in 2015, also added SSL Article 10-D providing for services to human trafficking victims. SSL § 483-aa(a) defines a “human trafficking victim” as a

victim of sex trafficking or labor trafficking under the above-referenced Penal Law sections. SSL § 483-bb provides that OTDA may contract with non-governmental entities to make available services, including case management, emergency temporary housing, health care, mental health counseling, and drug addiction screening and treatment, to “pre-certified” human trafficking victims. SSL § 483-aa(b) defines “pre-certified victim of human trafficking” as a person with a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

SSL § 483-cc sets forth procedures for confirming an individual’s status as a human trafficking victim. Under that section, a law enforcement agency or district attorney’s office that encounters a person who reasonably appears to be a human trafficking victim must notify OTDA and the Division of Criminal Justice Services (DCJS) that the individual may be eligible for services under SSL Article 10-D. To activate this process, a law enforcement agency or district attorney’s office must use the *New York State Referral of Human Trafficking Victim Form* available on the OTDA website at <http://otda.ny.gov/programs/bria/trafficking.asp>. Providers of social or legal services designated by an applicable state agency (OTDA, the Office for the Prevention of Domestic Violence, or the Office of Victim Services) that encounter a person who reasonably appears to be a human trafficking victim may submit the form if the individual consents.

Upon receipt of the form, DCJS, in consultation with OTDA and the referring agency or office, assesses whether the person meets the criteria for certification as a victim of a severe form

of trafficking in persons as defined in 22 U.S.C. § 7105 or appears to be otherwise eligible for any federal, state or local benefits and services. If so, OTDA reports such finding to the victim and the referring entity and may assist the victim in receiving services. This finding is referred to as “confirmation” as a victim of human trafficking.

Chapter 311 of the Laws of 2016 added a new SSL § 483-ff requiring OTDA to make available on its website the hotline poster issued by the National Human Trafficking Resources Center (NHTRC) or a version created by OTDA. The section provides for OTDA to consult with other state agencies to encourage that the posters be placed where human trafficking victims may be present, including hospitals and urgent care centers, in conspicuous places near primary public entrances or where posters and notices are customarily placed.

Chapter 408 of the Laws of 2016 added new PHL § 2805-y to require “subject facilities” to establish and implement policies and procedures pertaining to victims of human trafficking. New PHL § 2805-y(1) defines key terms such as “subject facilities,” defined to mean general hospitals, public health centers, diagnostic centers, treatment centers or outpatient departments, and provides that the requirements of PHL § 2805-y applies to all service units that include emergency services, pediatrics, obstetrics and gynecology, orthopedics, internal medicine, family medicine, radiology, surgery, psychiatry and dental services to the extent the facility maintains a dental clinic, center, or department on site of the facility.

New PHL § 2805-y(2) requires subject facilities to establish and implement written policies and procedures for the identification, assessment, and appropriate treatment or referral of persons suspected of being human trafficking victims, as that term is defined by SSL § 483-aa. Further, policies and procedures must provide for referral of human trafficking victims under the

age of 18 to the Statewide Central Register of Child Abuse and Maltreatment (SCR) established pursuant to SSL Title 6, Article 6 if required by that law.

New PHL § 2805-y(3) also requires subject facilities to require all “subject facility personnel” – defined as nursing, medical, social work and other clinical care personnel as well as security personnel – to complete training regarding such policies and procedures. This must include training in the recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected of being victims.

Finally, new PHL § 2805-y(4) authorizes the Commissioner to identify organizations or providers that could provide training for general hospitals consistent with the new provisions. The subdivision also authorizes the issuance of regulations, in consultation with OTDA and OCFS, as necessary to carry out the new section.

Consistent with these requirements, this proposal will amend 10 NYCRR §§ 405.9, 405.19, 405.20, and 751.5 to require general hospitals and D&TCs to establish written policies and procedures for the identification, assessment, and appropriate treatment or referral of individuals who are or appear to be a human trafficking victim and train staff in such policies and procedures. Referrals may be provided verbally and/or in writing as appropriate. Policies, procedures and training must include information about the referral process overseen by OTDA and DCJS. While the proposed regulations do not mandate that hospitals and D&TCs use the *New York State Referral of Human Trafficking Victim Form*, they are strongly encouraged to do so when they can secure the victim’s consent.

In addition, there are other sources of assistance that the victim can be referred to, such as the NHTRC hotline, that provide confidential assistance to those victims who do not feel comfortable being referred to OTDA and DCJS. Further, the proposed regulation requires

posting of the NHTRC hotline poster or other variation developed by OTDA in conspicuous locations, which is consistent with the objectives of SSL § 483-ff. The poster designated for such purpose by OTDA is available at <http://otda.ny.gov/programs/bria/trafficking.asp>.

Under the law, policies and procedures and training must also include the reporting of human trafficking victims under 18 years of age to the SCR if required under SSL Title 6, Article 6. Medical and hospital personnel already serve as mandated reporters who are required to make reports to the SCR if they suspect child abuse or maltreatment. As reiterated by Chapter 408, if an individual appears to be a human trafficking victim under the age of 18, mandated reporters in hospitals and D&TCs must make a report if required under SSL Title 6, Article 6.

COSTS:

Costs to Private Regulated Parties:

While current regulations do not specifically refer to individuals who are human trafficking victims, general hospitals and D&TCs are already required to have written policies and procedures for various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment, and appropriate treatment or referral of individuals who are suspected victims of human trafficking, consistent with PHL § 2805-y. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset

by a reduction in care provided at no, or low, cost to victims of human trafficking.

Costs to Local Government:

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

Costs to the Department of Health:

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

Costs to Other State Agencies:

The proposed regulatory changes may result in additional costs to other state agencies if referrals increase and more victims access available services, but this would be consistent with the objectives of the statute. OTDA, OCFS, and DCJS have existing materials related to human trafficking available on their websites.

Local Government Mandate:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, unless such local government operates a hospital or D&TC.

Paperwork:

General hospitals and D&TCs are already required to establish written policies and procedures related to various operational requirements, train staff, and refer patients. Therefore, the proposed regulations should not significantly increase their paperwork.

Duplication:

Existing regulations require hospitals to make appropriate referrals for patients to a variety of services, but do not specifically reference human trafficking victims. There otherwise are no relevant State or federal regulations which duplicate, overlap or conflict with the proposed regulations.

Alternatives:

There are no alternatives to the proposed regulations related to hospital policies and procedures, which are necessary to implement the provisions of PHL § 2805-y, added by Chapter 408 of the Laws of 2016, and SSL § 483-ff, added by Chapter 311 of the Laws of 2016.

Federal Standards:

There are currently no federal requirements for hospitals to adopt policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims.

Compliance Schedule:

The regulations will be effective 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 GOVERNMENTS

Effect of Rule:

The proposed regulatory provisions related to human trafficking will apply to all general hospitals and diagnostic and treatment centers (D&TCs) in New York State. This proposal will not impact local governments or small business unless they operate a general hospital or D&TC, in which case the requirements will be the same as for those entities.

Compliance Requirements:

These regulations will require general hospitals and D&TCs to develop, maintain and disseminate written policies and procedures for the identification, assessment, and appropriate treatment or referral of victims of human trafficking. These facilities will be required to train their licensed and certified clinical staff members as well as security staff members in such policies and procedures. In addition, the policies must incorporate the posting of a poster with human trafficking hotline information, available on the Office of Temporary and Disability Assistance website, in conspicuous places.

Professional Services:

While the current regulations do not specifically refer to individuals who are human trafficking victims, general hospitals and D&TCs are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. As such, the Department

anticipates that no additional professional services will be required for general hospitals and D&TCs to comply with this proposed regulation.

Compliance Costs:

While the current regulations do not specifically refer to individuals who are or may be victims of human trafficking, general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment and referral of individuals who are suspected victims of human trafficking, consistent with the requirements of PHL § 2805-y. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. Although existing regulations do not specifically refer to human trafficking victims, general hospitals and diagnostic and treatment centers are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal as general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

To assist hospitals and D&TCs with the development of their policies, procedures and training materials, several state agencies have provided resources that are free of charge to the public. For example:

- A course entitled "NYSDOH Human Trafficking Awareness Training," available on the Department's NYLearnsPH.com Learning Management System at [https://www.nylearnsph.com/public](https://www.nylearnsph.com/public;);
- Materials on human trafficking on the OTDA website at <https://otda.ny.gov/programs/bria/trafficking.asp>;
- Materials on human trafficking on the OCFS website at <http://ocfs.ny.gov/main/humantrafficking/default.asp>;
- Materials on human trafficking on the website of the Division of Criminal Justice Services <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm>

In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Small Business and Local Government Participation:

Organizations representing health care providers and other stakeholders, including organizations whose members include general hospitals or diagnostic and treatment centers that

are operated by local governments or that constitute small businesses, were consulted on the proposed regulations.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

The proposed regulation is applicable to those general hospitals and diagnostic and treatment centers located in rural areas and is expected to impose only minimal costs upon hospitals, which are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to substantially increase the administrative burden on these entities.

Costs:

While the current regulations do not specifically refer to individuals who may be victims of human trafficking, general hospitals and diagnostic and treatment centers (D&TCs) are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment and referral of individuals who are suspected victims of human trafficking, as well as the provision of information related to appropriate services, consistent with the requirements of the statute. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment

critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal as general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

To assist hospitals and D&TCs with the development of their policies, procedures and training materials, several state agencies have provided resources that are free of charge to the public. For example:

- A course entitled "NYSDOH Human Trafficking Awareness Training," available on the Department's NYLearnsPH.com Learning Management System at <https://www.nylearnsph.com/public>;
- Materials on human trafficking on the OTDA website at <https://otda.ny.gov/programs/bria/trafficking.asp>;
- Materials on human trafficking on the OCFS website at <http://ocfs.ny.gov/main/humantrafficking/default.asp>;
- Materials on human trafficking on the website of the Division of Criminal Justice Services <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm>

In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of

human trafficking.

Rural Area Participation:

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by Sections 225(4) and 201(1) of the Public Health Law, Subparts 14-1, 14-2, 14-4 and 14-5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended to be effective upon filing a Notice of Adoption in the New York State Register, to read as follows:

New sections 14-1.89 is added to read as follows:

14-1.89 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

- (a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.
- (b) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.
- (c) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.
- (d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

Section 14-2.3 is amended to include a new subdivision (g) to read as follows:

(g) For the purposes of this subdivision, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

- (1) Only food-grade liquid Nitrogen or Dry Ice may be added to food.
- (2) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.
- (3) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.
- (4) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

New section 14-4.96 is added to read as follows:

14-4.96 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

- (a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.
- (b) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.
- (c) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.

(d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

New sections 14-5.46 is added to read as follows:

14-5.46 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

(a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.

(b) Liquid Nitrogen, used in the preparation of food, is to be drained or allowed to evaporate completely prior to vending.

(c) Dry Ice, used in the preparation of food, shall be sublimated completely or removed prior to vending.

(d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The New York State Public Health and Health Planning Council is authorized by New York State Public Health Law (PHL) Section 225(4) to establish, amend and repeal sanitary regulations known as the Sanitary Code of the State of New York (Sanitary Code), subject to approval by the Commissioner. PHL Section 201(1)(m) authorizes the New York State Department of Health (Department) to supervise and regulate the sanitary aspects of public eating and drinking establishments.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Sections 225(4) and 201(1)(m) authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety through the regulation of the sanitary aspects of Food Service Establishments. In accordance with this objective, the proposed amendments prohibit Food Service Establishment operators from using liquid Nitrogen or Dry Ice at the point of sale to protect the health and safety of New Yorkers patronizing Food Service Establishments.

Needs and Benefits:

The Department is aware of new trends in food service that utilize liquid Nitrogen and Dry Ice at the point of sale. Using liquid Nitrogen and Dry Ice at the point of sale of

food products may cause serious injury if the consumer touches or consumes the residual liquid Nitrogen or Dry Ice.

One of these food trends is commonly referred to as “Dragon’s Breath.” Dragon’s Breath is made by pouring liquid Nitrogen over cereal puffs, popcorn or other similar foods, immediately before serving. The liquid Nitrogen (boiling point: -320°F) super cools the food which is then served in a cup with a skewer to be used to remove the puffs from the cup. When chewed the cold food condenses the moisture in the consumer’s breath creating the appearance of breathing smoke. The Department identified reports of injuries associated with Dragon’s Breath, including a 14-year old girl in Florida who suffered frost bite after touching liquid nitrogen in the cup, and a boy in Korea who suffered severe gastrointestinal injuries after drinking residual liquid Nitrogen. More recently, an incident was reported where a boy in Florida suffered an asthma attack which may have been triggered by consuming Dragon’s Breath. In September 2018, the Department received its first complaint of injury from liquid Nitrogen from a food product served in a New York State food service establishment. An 11-year old boy in Victor, NY reportedly experienced oral bleeding and burning sensation shortly after consuming Dragon’s Breath from a mall food service.

Currently, at least three local health departments in New York State have enacted local laws prohibiting the use of liquid Nitrogen at food service establishments and others are exploring similar actions. The US Food and Drug Administration (FDA), on August 30, 2018, issued a Consumer Advisory, advising consumers to avoid eating, drinking or handling foods prepared with liquid Nitrogen at the point of sale, citing the potential for injuries such as those described above. Consequently, the Department is proposing to

amend Part 14 to prevent consumers of Food Service Establishments from coming into contact with liquid Nitrogen or Dry Ice added at the point of sale of the food product.

Liquid Nitrogen is an FDA approved food additive and has various uses in the food service industry. Not all these uses of liquid Nitrogen have the potential for accidental service of liquid Nitrogen to the customer. Therefore, the proposed regulation amendment only pertains to the use of liquid Nitrogen just prior to service of the food product to the customer, to prevent accidental service of residual liquid Nitrogen.

The proposed amendment also restricts the use of Dry Ice (solid carbon dioxide) in foods at the point of service. Like liquid Nitrogen, Dry Ice is an approved food additive that is widely available and can be used to create a fog effect in foods. Dry Ice has a sublimation temperature of -109°F and, if touched or consumed in solid form, presents a risk of thermal injury like that of liquid Nitrogen. If the use of liquid Nitrogen is restricted without similar restrictions for Dry Ice, operators may use Dry Ice as a substitute ingredient.

Costs:

Cost to Regulated Parties:

The proposed amendments will impose minimal if any additional costs to regulated parties. Menu boards and signs may need to be updated to remove products that require the use of liquid Nitrogen or Dry Ice at point of sale. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Cost to State and Local Governments:

There are no direct costs to State or Local Governments associated with the proposed amendments as the State and Local Governments are currently inspecting Food Service Establishments.

Local Government Mandates:

The proposed amendments do not impose any new mandates, duties or responsibilities on any county, city, town, village, school district, fire district or special district. City and County health departments already enforce Part 14 therefore health department staff will incorporate the proposed amendment as part of their existing program responsibilities.

Paperwork:

Adoption of this regulation does not impose any new paperwork requirements for regulated parties or State or local health departments.

Duplication:

The proposed amendments do not duplicate existing State or Federal requirements.

Alternatives:

The Department considered two alternatives to the proposed amendments. The first was to propose no regulatory change but recognize that local health departments may

adopt more stringent requirements through local laws or regulations. The second alternative included amending Part 14 of the State Sanitary Code to incorporate the requirements of the Department's previously issued guidance that require operators to maintain a written safety plan for the use of liquid Nitrogen, approved by the permit-issuing-official, with an additional requirement of providing a written consumer advisory be conspicuously posted at the point(s) of sale and service.

Both alternatives are inconsistent with FDA guidance to avoid consuming products with liquid Nitrogen added at the point of service. They also create a paperwork burden for operators and local health departments staff.

Federal Standards:

Nitrogen is an approved food additive and there are no Federal regulations restricting the use of liquid Nitrogen in food service establishments. The FDA does not have any direct regulatory authority over retail food operations. However, the FDA's consumer advisory warning to not eat foods with liquid Nitrogen added at the point of service establishes a clear federal position that the practice is considered unsafe.

Compliance Schedule:

The proposed amendments will become effective upon publication of a Notice of Adoption in the State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENT

Effect on Small Business and Local Government:

While many of New York State's food service establishments are considered small businesses, none of the amendments are directed solely at small businesses. The rule will apply to all 100,000 regulated food service establishments operating in New York State, although the vast majority of establishments do not use liquid Nitrogen or Dry Ice in the preparation of food. These establishments are already required to comply with the food safety provisions of Part 14. The proposed amendments will not result in significant costs to comply for regulated parties and none of the proposed amendments will apply solely to small businesses. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Local Health Departments are already responsible for overseeing the food service operations of New York State, so there will not be a significant effect on local governments.

Compliance Requirements:

Small businesses must comply with the proposed regulation by not utilizing liquid Nitrogen or Dry Ice in food products at the point of sale. The proposed amendments do not create any new reporting or record keeping requirements.

Professional Services:

The proposed amendments do not create a need for regulated parties to seek any professional services.

Compliance Costs:

The proposed amendments will impose minimal, if any additional, costs to regulated parties. Menu boards and signs may need to be updated to remove products that require the use of liquid Nitrogen or Dry Ice at point of sale. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Cost to State and Local Governments:

There are no direct costs to Local Governments associated with the proposed amendments as Local Governments are currently inspecting Food Service Establishments.

Economic and Technological Feasibility:

The proposed amendments do not require any new technology and have a negligible economic impact.

Minimizing Adverse Economic Impact:

The regulations currently allow for a waiver to be granted at the discretion of the permit-issuing official, provided that alternative arrangements are made to protect the health and safety of the public.

Small Business and Local Government Participation:

The proposed amendments implement a recommendation received from the New York State Association of County Health Officials. When considering regulatory alternatives, the Department also sought input from the New York State Restaurant Association.

**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

Nature of the Impact:

The addition of Liquid Nitrogen and Dry Ice to food products at the point of service is a new novelty trend at food service operations. The proposed regulation's prohibition on the use of liquid Nitrogen and Dry Ice at the point of sale is expected to have no job impact on the majority of Food Service Establishments where such food products are not the focus of the business, as these food products make up only a small percentage of their sales. Businesses that specialize in or solely sell this type of product may be required to cease operating or modify their business to include other food items. We do not have an accurate estimate of the number of Food Service Establishments affected since there is no registration requirement for the use of liquid Nitrogen or Dry Ice, however the number is expected to be small.

Categories and Numbers Affected:

The main category affected by this regulation is the Food Service Establishment that focuses its primary business on the sale of novelty foods that have liquid Nitrogen or Dry Ice added to them at the point of sale. Because of the lack of data about the number of food establishments that sell these types of food products, it is not possible to accurately estimate the number of jobs affected, however the number is expected to be small.

Regions of Adverse Impact:

The Department anticipates any jobs or employment impacts will occur equally throughout the regions of the state.

Minimizing Adverse Impact:

The Department will consider different types/levels of enforcement while retailers adapt to the new regulation.

SUMMARY OF EXPRESS TERMS

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 573 of the Public Health Law, Part 19 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, as follows:

Section 19.1 is amended to include definitions for “assistant director,” “board certified,” “earned doctoral degree,” “training,” and “experience.” The definitions of “acceptable laboratory” and “category” are also revised and clarified. Section 19.1 is further revised to expressly recognize physicians and dentists who are licensed in the countries in which they practice as being able to qualify as directors or assistant directors of clinical laboratories or blood banks.

Section 19.2 is amended to recognize additional accrediting boards for purposes of certifying that applicants meet the educational and training requirements needed to be a director or assistant director of a clinical laboratory or blood bank.

Section 19.3 is amended to provide the Department more flexibility in updating the certificate of qualification categories. Amendments to this section will also allow the Department to issue certificates of qualification with limitations based on an applicant’s specific experience. In addition, this section is amended to include additional director responsibilities, such as ensuring staff competency, specifying in writing the responsibilities and duties of all laboratory personnel, having standard operating procedure manuals, and participating in acceptable proficiency testing.

Section 19.4 is amended for clarity and to remove references to New York City laboratory permits, which are obsolete.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 573 of the Public Health Law, Part 19 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, as follows:

19.1 Definitions.

(a) [Clinical laboratory director] Director means the individual responsible for administration of the technical and scientific operation of a clinical laboratory or blood bank, including supervision of test procedures, the reporting of results, and the duties and responsibilities specified in section 19.3 of this Part. If a clinical laboratory or blood bank employs more than one director, the laboratory owner(s) shall designate in writing one such individual as the director of record for the laboratory.

(b) Assistant director means a director who has been designated by the owner(s) of the laboratory as having shared responsibility with a director for the technical and scientific operation of the clinical laboratory or blood bank in one or more categories and/or subcategories.

[(b)] (c) Acceptable laboratory means [a clinical laboratory or blood bank of a hospital, health department, university, medical research institution, independent clinical laboratory or blood bank, or other facility providing equivalent training and/or experience in patient specimen testing, which has a director who meets or would meet the requirements of this Part and which meets or would meet the commissioner's standard as outlined in Part 58 of this Title.] a facility, operating lawfully, that meets the definition of a clinical laboratory or blood bank as defined in Section 571 of the Public Health Law and which has a director who meets or would meet the

requirements of this Part, including the anatomic and clinical pathology facilities of a hospital or health department, a clinical testing unit of a university or medical research institution, an independent clinical laboratory or blood bank, a privately operated forensic testing laboratory, or a facility providing training and/or experience in the testing of human specimens.

[(c)] (d) Accredited means having the approval (accreditation) conferred on schools, institutions or programs by an accrediting agency or association recognized by the United States Secretary of Education and verified as such by the [commissioner] department.

[(d)] (e) Physician means a physician who is licensed and currently registered to practice medicine in New York State or in the state or the country in which he or she practices and is not subject to any disciplinary or non-disciplinary order by the applicable state or country except as otherwise allowed by the department.

[(e)] (f) Dentist means a dentist who is licensed and currently registered to practice dentistry in New York State or in the state or the country in which he or she practices and is not subject to any disciplinary or non-disciplinary order by the applicable state or country except as otherwise allowed by the department.

[(f)] (g) Certificate of qualification means a credential issued by the department to applicants [meeting] determined by the department to meet the requirements set forth in this Part.

[(g)] (h) Grandfathered laboratory director means a laboratory director who qualified for and received a certificate of qualification in one or more categories of testing prior to the amendment of this regulation which became effective January 25, 1988.

[(h)] (i) Category means an area, [procedure, or specialty of laboratory medicine specified in section 19.3(d) of this Part.] field, or discipline of laboratory medicine or laboratory science in

which a certificate of qualification is issued. The department may issue certificates of qualification in a specified subpart of a category, including, but not limited to, a subcategory, technology, method, or specific procedure, based on the applicant's education, training, and experience and the applicant's ability to demonstrate that tests performed under their direction generate reliable results. The department shall make available a list of: categories and subcategories in which certificates of qualification are issued; minimum qualifications for each category; and the corresponding categories of testing authorized by a laboratory permit.

(i) Blood banking-collection means collection of blood or blood components, or processing of blood or blood products.

(j) Referring physician means a physician or other person authorized by law to order laboratory tests and receive reports, as specified in Subpart 58-1 of this Title.

(k) Virology means isolation and other characterization of virus.

(l) Diagnostic immunology means application of immunologic techniques to detect the presence of antigens in biologic fluids and determine host-antibody responses.

(m) Transfusion service means a service which issues blood or blood components for administration into a person, but does not include a limited transfusion service, as defined in section 58-2.1(k) of this Title.

(n) Genetic testing means enzyme, substrate, and DNA-based analyses, or qualitative and/or quantitative measurement of other body analytes, undertaken to determine the genetic status (carrier or disease) of a person.]

(j) Department means the New York State Department of Health.

(k) Board certified means having completed all requirements set forth by an accrediting board

acceptable to the department, including a passing score on any qualifying examination and completion of all the requirements for recertification whenever the certifying board mandates recertification, provided such requirements are determined by the department to provide the applicant with the ability to effectively discharge the responsibilities described in Parts 10 and 58 of this title.

(l) Earned doctoral degree means a doctor of philosophy, doctor of science, or equivalent degree as determined by the department.

(m) Training includes participation in a residency, fellowship, or post-doctoral position, or participation in a training course approved by a board acceptable to the department.

(n) Experience includes post-doctoral employment or voluntary participation in an acceptable laboratory where the applicant performed, supervised or directed testing of human clinical specimens. Teaching experience directly related to a medical technology program, clinical laboratory sciences program, or a clinical laboratory section of a residency program is also considered acceptable experience.

19.2 Clinical laboratory or blood bank; qualifications of laboratory director.

[The] A director and any assistant director of a clinical laboratory or blood bank [must] shall possess training and/or experience acceptable to the department, obtained within the previous six years, [in generally accepted and currently used methods and techniques] in one or more categories, [listed in section 19.3(d) of this Part, and] Additionally, the applicant must meet one of the following requirements:

(a) be a physician who is currently certified by [the American Board of Pathology in]:

(1) the American Board of Pathology in:

[(1)](i) clinical pathology; or

[(2)](ii) anatomic pathology; or

[(3) An area of special competence relevant to the certificate of qualification sought; or] (iii) dermatopathology; or

(2) the American Osteopathic Board of Pathology in:

(i) laboratory medicine; or

(ii) anatomic pathology; or

(iii) dermatopathology; or

(b) be a physician in the State of New York who:

(1) is currently certified by the American Board of Pathology in Blood Banking and Transfusion Medicine; or

(2) is currently certified by the American Board of Pathology in Clinical Pathology or the American Board of Internal Medicine in Hematology, and possesses six months of training and/or experience in transfusion services; or

(3) possesses four years of training and/or experience in an acceptable laboratory including two or more years of training and/or experience in transfusion services and in general laboratory management.

[(b)](c) be a dentist who is currently certified by the American Board of Oral and Maxillofacial Pathology; or

[(c)](d) be a physician, or hold an earned doctoral degree from an accredited institution with a relevant chemical, physical or biological science major, and:

(1) is currently certified by one of the following boards and meets any supplemental requirements for experience as specified by the department:

- (i) [the American Board of Medical Microbiology] the American Board of Bioanalysis as a High Complexity Laboratory Director, provided the applicant has obtained a minimum of four years of post-doctoral experience equivalent to paragraph (2) of this subdivision; or
- (ii) the American Board of Clinical Chemistry in clinical chemistry; or
- (iii) the American Board of Clinical Chemistry in toxicological chemistry; or
- (iv) the American Board of Dermatology; or
- [(iv)](v) the American Board of Forensic Toxicology, provided the applicant has an earned doctoral degree; or
- [(v) the American Board of Medical Laboratory Immunology; or]
- (vi) the American Board of Internal Medicine in hematology or hematology and medical oncology; or
- (vii) the American Board of Medical Laboratory Immunology; or
- (viii) the American Board of Medical Microbiology; or
- (ix) dual certification by the American Board of Pathology in either Anatomic Pathology or Clinical Pathology, and Molecular Genetic Pathology; or
- (x) the American Board of Pathology in Medical Microbiology; or
- (xi) the National Registry for Certified Chemists, provided the applicant has obtained a minimum of four years of post-doctoral experience equivalent to paragraph (2) of this subdivision; or
- (2) subsequent to receiving a doctor of medicine, doctor of osteopathy or earned doctoral degree has had, and has documented to the department, four years of training and/or experience in an acceptable laboratory, including two or more years of training and/or experience in methods and techniques currently in use in the certificate category or categories sought and in general

laboratory management, or an equivalent combination of training and/or experience as verified by the [commissioner] department.

[(d) A transfusion facility director shall be a physician licensed to practice medicine in the State of New York.]

19.3 Director of a clinical laboratory or blood bank; certificate of qualification issuance, duties and responsibilities.

(a) Certificate required. [A]An individual serving as a director or assistant director of a clinical laboratory or blood bank must hold a certificate of qualification issued after the [commissioner] department has determined that the applicant meets the requirements specified in sections 19.2 and 19.3[(e)] of this Part, and has demonstrated, in accordance with subdivision (c) of this section and section 19.4(a) of this Part, that he or she possesses the character, competence, training, and ability to direct the technical and scientific operation of a clinical laboratory or blood bank, and ensure the proper supervision or performance of test procedures, adherence to the department's quality control standards, and accurate reporting of findings of tests.

(b) An applicant for a certificate of qualification must submit a complete, original, signed, and sworn application in such form and manner as may be required by the department, and must supply such additional information as may be required by the department. An individual seeking renewal of a certificate of qualification must submit an application no later than 90 days prior to expiration of the current certificate.

(c) [To function effectively in fulfilling his or her duties and responsibilities,] To qualify for, and maintain, a certificate of qualification, a laboratory director and any assistant director [should

possess a] shall demonstrate that he or she possesses knowledge of basic clinical laboratory sciences and operations, and [should] shall have the training and/or experience and physical capability to discharge the following responsibilities:

(1) provide advice to referring [physicians] health care providers regarding the significance of laboratory findings and ensure that reports of test results include pertinent information required for the interpretation of laboratory data;

* * *

(3) define, implement, and monitor standards of performance [in quality control and quality assurance] for the laboratory and for other ancillary laboratory testing programs in conformance with the department's clinical laboratory standards of practice;

* * *

(5) assure that the laboratory participates in monitoring and evaluating the quality and appropriateness of services rendered, within the context of [the quality assurance program] a quality management system, regardless of where the testing is performed;

* * *

(7) [set goals and develop and allocate resources within the laboratory] ensure that policies and procedures are established for monitoring staff to assess competency and, whenever necessary, to provide remedial training to improve skills;

(8) [provide effective and efficient administrative direction of the laboratory, including budget planning and controls in conjunction with the individual(s) responsible for financial management of the laboratory] specify in writing the responsibilities and duties of all laboratory personnel;

(9) provide [educational direction] continuing education to laboratory staff;

(10) [select all reference laboratories; and] ensure that a current and complete procedure manual

is available to all personnel;

(11) [promote a safe laboratory environment for personnel and the public.] set goals, develop and allocate resources within the laboratory;

(12) provide effective administrative direction of the laboratory, in conjunction with the individual(s) responsible for financial management of the laboratory, to ensure adequate resources are available to operate the laboratory in a manner consistent with all state and federal requirements;

(13) select all reference laboratories for services not offered by the laboratory;

(14) promote a safe laboratory environment for personnel and the public; and

(15) ensure that the laboratory, when applicable, is enrolled in a proficiency testing program acceptable to the department for the testing performed and that the laboratory adheres to the proficiency testing program's administrative and technical requirements.

[(d) Certification. Certificates of qualification are issued in one or more of the following categories, procedures or specialties:

(1) one or more of the subspecialties of microbiology: bacteriology, virology, mycology, mycobacteriology, diagnostic immunology, and parasitology;

(2) hematology;

(3) immunohematology, excluding testing performed solely for transfusion purposes;

(4) one or more of the subspecialties of clinical biochemistry: clinical chemistry, blood pH and gases, endocrinology, and therapeutic substance monitoring/quantitative toxicology;

(5) histopathology, and/or the subspecialties: oral pathology and dermatopathology;

(6) cytopathology;

- (7) cytogenetics;
- (8) histocompatibility;
- (9) cellular immunology;
- (10) oncofetal antigens, and/or the subspecialties: tumor markers, maternal serum, and amniotic fluid;
- (11) genetic testing;
- (12) transfusion services, including all pre-transfusion testing;
- (13) blood banking collection-comprehensive, including all tests required in Subpart 58-2 of this Title;
- (14) blood banking collection-limited, including collection of autologous blood for transfusion and excluding testing for transmissible disease markers;
- (15) one or more of the subspecialties of clinical toxicology: drug analysis, blood lead, erythrocyte protoporphyrin, and chlorinated hydrocarbons;
- (16) forensic toxicology; or
- (17) other specific categories, procedures, or specialties designated by the department.]

[(e)](d) Required qualifications.

(1) Applicants for a certificate of qualification in bacteriology, mycobacteriology, mycology, and/or parasitology must qualify under section 19.2[(a)(1), (c)(1)(i), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(viii), (d)(1)(x) or (d)(2) of this Part.

(2) Applicants for a certificate of qualification in virology must qualify under section 19.2[(c)(1)(i) or (c)(2)](d)(1)(viii), (d)(1)(x) or (d)(2) of this Part. Applicants for a certificate of qualification in virology limited to antigen detection and molecular methods must qualify under

section 19.2(a)(1)(i), (a)(2)(i) or (d)(1)(i) of this Part.

(3) Applicants for a certificate of qualification in diagnostic immunology must qualify under section 19.2[(a)(1), (c)(1)(i), (c)(2), or (c)(1)(v)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(vii), (d)(1)(viii), (d)(1)(x) or (d)(2) of this Part.

(4) Applicants for certificate of qualification in hematology must qualify under section 19.2[(a)(1), (c)(1)(vi), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(vi) or (d)(2) of this Part. Applicants qualifying under section 19.2[(c)(1)(vi)](d)(1)(vi) of this Part must document that the required training and/or experience includes or is supplemented by six months' training and/or experience in an acceptable laboratory.

(5) Applicants for a certificate of qualification in immunohematology must qualify under section 19.2[(a)(1) or (c)(2)](a)(1)(i), (a)(2)(i), or (d)(2) of this Part.

(6) Applicants for a certificate of qualification in [one or more of the subspecialties of clinical biochemistry] clinical chemistry, blood pH and gases, endocrinology, or therapeutic substance monitoring - quantitative toxicology must qualify under section 19.2[(a)(1), (c)(1)(ii), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(ii), (d)(1)(xi) or (d)(2) of this Part.

(7) Applicants for a certificate of qualification in histopathology and/or cytopathology must qualify under section 19.2[(a)(2)](a)(1)(ii) or (a)(2)(ii) of this Part.

(8) Applicants for a certificate of qualification in oral pathology must qualify under section 19.2[(a)(2) or (b)](a)(1)(ii), (a)(2)(ii), or (c) of this Part.

(9) Applicants for a certificate of qualification in dermatopathology must qualify under section 19.2[(a)(2) or (a)(3)](a)(1)(ii), (a)(1)(iii), (a)(2)(ii), (a)(2)(iii) or (d)(1)(iv) of this Part.

(10) Applicants for a certificate of qualification in cytogenetics, histocompatibility, cellular immunology, [oncofetal antigens, and/or] genetic testing, fetal defect markers, forensic identity,

oncology, parentage/identity testing, trace elements, and/or transplant monitoring must qualify under section 19.2[(c)(2)](d)(2) of this Part.

(11) Applicants for a certificate of qualification in transfusion services must be physicians and must qualify under section 19.2[(a)(3) or (c)(2)](b)(1), (b)(2) or (b)(3) of this Part[, or under section 19.2(a)(1) or (c)(1)(vi) of this Part including or supplemented by at least six months' training and/or experience in transfusion services].

(12) Applicants for a certificate of qualification in blood banking collection-comprehensive must qualify under section 19.2[(c)(2)](d)(2) of this Part. Required experience in blood services must include at least one year's training and/or experience in collection and testing of blood for [homologous]allogenic transfusion.

(13) Applicants for a certificate of qualification in blood banking collection-limited must qualify under section 19.2[(a)(1), (c)(1)(vi) or (c)(2)](a)(1)(i), (b)(1)(i), or (d)(1)(vi) of this Part.

(14) Applicants for a certificate of qualification in [one or more of the subspecialties of] clinical toxicology must qualify under section 19.2[(a)(1), (c)(1)(iii), (c)(1)(iv), or (c)(2)](a)(1)(i), (b)(1)(i), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(xi), or (d)(2) of this Part.

(15) Applicants for a certificate of qualification in forensic toxicology must qualify under section 19.2[(c)(1)(iii), (c)(1)(iv), or (c)(2)](d)(1)(iii), (d)(1)(v), or (d)(2) of this Part.

(16) Applicants for a certificate of qualification in andrology must qualify under section 19.2(d)(1)(i) or (d)(2) of this Part; or under section 19.2(a)(1)(i) or (b)(1)(i) of this Part including or supplemented by at least six months' training and/or experience in andrology.

(17) Applicants for a certificate of qualification in blood lead must qualify under section 19.2(a)(1)(i), (b)(1)(i), (d)(1)(i), (d)(1)(iii), (d)(1)(v), (d)(1)(xi), or (d)(2) of this Part.

[(f)] (e) Scope and limitations.

(1) The requirements for qualification set forth in section 19.2 of this Part shall apply to all laboratory directors, regardless of prior grandfathered status, upon expiration of current certificates of qualification[,] if the laboratory director is no longer employed in a laboratory or in the field of laboratory medicine.

(2) Additional categories of testing may not be added to a certificate of qualification issued on a grandfathered basis. Such a certificate [may] will not be renewed if allowed to lapse[, unless extenuating circumstances prevent timely reapplication and specific departmental approval is obtained].

19.4 Denial of an application for a certificate of qualification.

(a) In determining whether to deny an application for a certificate of qualification in whole or in part, the department shall consider: the applicant's education, experience, and licensure as required in sections 19.2 and 19.3 of this Part; the applicant's demonstrated ability to discharge the responsibilities set forth in section 19.3(c) of this Part; the character and competence of the applicant and the laboratory or laboratories directed; and any other factors the department considers relevant, including, but not limited to:

* * *

(3) false representation or omission of any material fact in making an application in any state or city of the United States for any license, permit, certificate, or registration related to a profession or business, or in making an application for a certificate of qualification or laboratory permit to New York State [or New York City];

* * *

(6) on the part of any laboratory, category, or subcategory directed by the applicant, a pattern of

repetitive failures of required proficiency testing performance in one or more proficiency testing categories, excluding failure for administrative reasons such as late result submission;

(7) on the part of any laboratory, category, or subcategory directed by the applicant, a pattern of deficiencies on onsite inspection, especially in areas of quality control, quality assurance, laboratory management, and handling of regulated medical waste and radioactive materials, including refusal or inability to produce records as requested by department employees, which deficiencies are not corrected from inspection to inspection or which recur at each [annual] inspection despite written notice of violations by a state or Federal licensing or auditing agency and which jeopardize the quality of test results and resulting patient care, even if interim corrections have occurred;

(8) on the part of any laboratory, category, or subcategory directed by the applicant, performance of any laboratory procedures not authorized by the laboratory permit issued pursuant to article 5, Title V of the Public Health Law; or operation or direction of a laboratory without a permit; or continuing operation or failure to notify the department after a change in director, ownership, or location has voided the permit;

[(9) unless the laboratory is owned and operated by the State of New York, performance of tests on specimens collected in New York City while the laboratory directed by the applicant lacks a New York City permit to perform such tests;]

[(10)](9) on the part of any laboratory, category, or subcategory directed by the applicant, referral of specimens collected in New York State [outside of New York City] to laboratories which do not possess a New York State permit;

[(11)](10) on the part of any laboratory, category, or subcategory directed by the applicant, knowing acceptance of specimens or requisitions for laboratory examination from, or issuance of

reports to, a person or persons not authorized by law to submit such specimens or requisitions, or receive such reports;

[(12)](11) on the part of any laboratory, category, or subcategory directed by the applicant, issuance of reports on laboratory work, including both patient samples and proficiency testing, actually performed in another laboratory, without designating the fact that the examinations or procedures were performed in another laboratory; and/or testing and reporting results on unsatisfactory specimens as defined by the department, including unlabeled specimens or specimens of insufficient quantity to conduct the analyses requested;

[(13)](12) on the part of any laboratory, category, or subcategory directed by the applicant, failure to establish and ensure that employees follow procedures for disposal or handling of specimens or infectious or radioactive medical waste, in violation of applicable state and Federal laws, rules and regulations, or in a manner which endangers the public, the laboratory's employees, or the environment;

[(14)](13) employment of unqualified or unlicensed technical personnel or an insufficient number of such personnel;

[(15)](14) failure of the [laboratory director] applicant to be responsible for adequately supervising laboratory personnel to ensure the proper performance of all tests conducted in the laboratory; and

[(16)](15) any other factor having a direct bearing on the applicant's ability to provide or supervise the provision of high quality laboratory services, or to ensure compliance with statutory and regulatory requirements.

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 573 establishes the authority of the Department to promulgate criteria for the issuance of a certificates of qualification. PHL section 573(2) specifically states that the Department shall issue a certificate of qualification to any person who meets such minimum qualifications and who otherwise demonstrates to the Department that he or she possesses the character, competence, training and ability to administer properly the technical and scientific operation of a clinical laboratory or blood bank, including supervision of procedures and reporting of findings of tests.

Legislative Objectives:

The legislature enacted PHL section 573 to protect the health and safety of the public by requiring that only properly educated and experienced individuals be issued certificates of qualification and subsequently assigned responsibility as clinical laboratory directors. Such directors are responsible for the proper operation of clinical laboratories to ensure accurate and reliable results for clinical testing. Part 19 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), in its original adoption and all subsequent revisions, has been crafted to ensure that applicants have the necessary education, training and experience to effectively direct a laboratory. The proposed amendment is consistent with this legislative objective as it will include the recognition of additional accrediting boards that have been developed since the last regulatory amendment, in response to changes and advances in clinical laboratory testing.

Needs and Benefits:

Part 19 regulates the issuance of certificates of qualification. An individual must hold such certificate to be a clinical laboratory director or assistant director at a clinical laboratory or blood bank permitted by New York under the authority of PHL section 572. The intent of these regulations is to ensure that individuals who are granted certificates of qualification have the necessary education, experience, and training to effectively operate a clinical laboratory.

Successful applicants for a certificate of qualification must demonstrate both experience in laboratory management, such as management of resources (e.g. budget allocation, staffing), implementation of a quality management system, development of standard operating procedures; and experience specific to a category of testing defined in Part 19.

Several revisions to the regulatory definitions are proposed. Most notable are the inclusion of a definition for assistant director and revision to the definition of category. Assistant directors are jointly accountable with the laboratory director for the categories of testing on the laboratory permit. In many instances, however, the assistant director may be the only individual qualified to supervise testing in a specific category on the laboratory permit.

Language is proposed in sections 19.2 and 19.3 that clarifies the role and responsibilities of assistant directors of clinical laboratories. With these revisions, assistant directors will be held to the same standards as laboratory directors.

The definition of “category” was revised to strengthen the Department’s authority to limit the approval of a certificate of qualification to a subcategory, technology, method or specific

procedure based on the applicant's documented experience. Extensive experience in a single method of testing does not necessarily translate to breadth of knowledge across an entire category of testing. Indeed, as innovations in laboratory medicine continue, an individual's experience in a proven technology may quickly become obsolete without continued education and training. The proposed revisions to the definition of category allow the Department to ascertain an individual's specific breadth of experience upon each application and re-application for a certificate of qualification.

The definitions of the following terms are being proposed for the first time; board certified, earned doctoral degree, training, and experience.

A review of the accrediting boards currently recognized in Part 19 and those included in the proposed revisions was performed to ensure that the requirements for each board were consistent with the rules set forth in federal regulation. This included a review of both the educational and training requirements for the accrediting board. As noted in the proposed revisions, certain boards mandate the appropriate educational requirement of a doctoral degree, but do not specify that the candidate for the board demonstrate the required four years of post-doctoral experience. Therefore, language clarifying the post-doctoral degree experience required by the Department has been proposed for these boards (American Board of Bioanalysts High Complexity Laboratory Director and the National Registry of Clinical Chemists) to ensure that the requirements for all applicants are consistent.

The duties and responsibilities of laboratory directors and assistant directors set forth in subdivision 19.3(c) were revised to provide clarity and introduce new responsibilities. Of note are the added responsibilities of ensuring the availability of procedures for monitoring staff competency and improvement of skills. These new responsibilities are currently included in the New York State Clinical Laboratory Standards of Practice; however, formal codification in regulation is desired.

Finally, subdivision 19.3(d) has been removed since the certificate of qualification categories are repeated in the current subdivision 19.3(e), and therefore 19.3(d) was considered redundant. The Department currently maintains a list of certificate of qualification categories on its publicly accessible website, and revisions were made in proposed subdivision 19.1(i) to outline the necessary contents of this list.

Costs:

Costs to Regulated Parties:

The proposed amendment will not impose costs on regulated parties. The current regulation already requires clinical laboratories and blood banks to have directors who hold certificates of qualification.

Costs to the Agency, State and Local Governments:

The proposed amendment will not impose additional costs to the New York State Department of Health, the program responsible for oversight of clinical laboratories, or to local governments. The program responsible for the oversight of clinical laboratories is a well-established program

operated at the State level and the new language does not impact the costs of the oversight program.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district.

Paperwork:

The proposed revisions to Part 19 do not require any additional forms or paperwork from applicants. All candidates are required under the current rule to provide a complete application, a curriculum vitae, and proof of licensure for physicians or granting of an earned doctoral degree. Additionally, candidates must submit proof of any accreditation by a recognized board and/or letters from third parties attesting to the candidate's training and experience. The proposed revisions expand the list of recognized accrediting boards, which may in fact reduce the paperwork needed for candidates holding those accreditations.

Duplication:

The federal government also recognizes clinical laboratory directors. The Department has applied and been approved for an exemption from the federal government continuously since 1995 that grants the Department the authority to act as the primary accrediting body for clinical laboratories and clinical laboratory directors operating in New York.

Alternatives:

The alternative to this proposal would be to maintain the existing regulatory requirements. However, the proposed amendments are necessary to update the regulations to include new definitions, update the list of acceptable accrediting boards, and clarify and expand the responsibilities of laboratory directors and assistant directors.

Federal Standards:

The Federal Code of Regulations (CFR) sets forth rules for the education and experience of clinical laboratory directors (CFR 493.1443). The proposed revisions to Part 19 will incorporate several of the accrediting boards that are already recognized under the federal rule.

Compliance Schedule:

Regulated parties are expected to comply with the proposed regulation by its effective date.

Contact Person:

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

No regulatory flexibility analysis is required. 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. At present the regulations require clinical laboratories and blood banks to be directed by individuals who hold a certificate of qualification. This proposed amendment would update and expand the list of acceptable accrediting boards for obtaining a certificate of qualification and is therefore anticipated to have a positive impact by increasing the number of individuals who may qualify for a certificate of qualification.

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.

MEMORANDUM

TO: Members of the Health Planning Committee

FROM: George Macko
Director Division of Planning and Licensure, Office of Primary Care and
Health Systems Management

DATE: November 12, 2018

SUBJECT: **Application for Designation as Hospital Stroke Center –Glens Falls
Hospital (Glens Falls, New York)**

Enclosed is the staff recommendation requesting support to designate Glens Falls hospital in Glens Falls, New York as a NYS Designated Stroke Center

Glens Falls Hospital application has been reviewed by staff in the Western Regional and Albany Offices, and they have found the application to be acceptable. Following the application review, a site visit was conducted by staff from the Western and Central Regional Offices on November 1, 2018. This visit confirmed that the facility satisfies all the key elements of a NYS Designated Stroke Center.

The NYS Stroke Designation Program recommends designating this facility as a stroke center. The Department is seeking the Council's endorsement of this recommendation.

Glens Falls Hospital will be the 121st designated stroke center in the state.

Once designated, the regional emergency medical services council will be notified and local EMS can begin directing patients with signs and symptoms of stroke to Glens Falls Hospital Health Center. EMS protocol provides for bypass of hospitals which are not stroke designated.



**New York State Department of Health Stroke Center Designation
Onsite Audit Tool**

Hospital Name: Glens Falls Hospital Health Center (Glens Falls, New York)

Visit Date: November 1, 2018

Site Visit Participants: Gregory E. Young MD, Associate Commissioner & Medical Director/Western Region; Cindy S. Pullano RN, NH Regional Program Director/Central NY Regional Office

Elements	Mode of Validation	Yes	No	Comments:
<p>1. Stroke Team: Acute Stroke team coverage 24/7</p> <p>Team of Health Care Professionals available 24/7</p> <p>Team arrives within 15 minutes of patient arrival</p>	<p>Review list of members of stroke team</p> <ul style="list-style-type: none"> • Observe on call schedules/Evidence of drills • Ensure that drills have been practiced at least once 	<p>X</p>		<p>A member of the stroke team must be available within 15 minutes of patient arrival.</p> <p>Identify person on site and interview if possible, i.e. triage nurse, ED physician.</p> <p>Is the team knowledgeable re: stroke team members and system including activation of the stroke code. Determine continuity/coordination of members and services.</p> <p>Registration staff is present 24/7 in the 46 bed ED; inservicing is being conducted to train the Patient Access staff in recognizing stroke symptoms and actions to take (immediate call to triage, patient not to sit in waiting room). ED practice is to place a stroke patient in a hall stroke bed with built-in bed scale. A MD determines if Code Stroke should be called. ED staff then call #5555 and inform the operator of onset time frame (<6 hours, >6 <24 hours, or >24 hours from Last Known Well) and room number, which are paged to stroke team staff. There have not been issues with neurology service availability.</p>

			<p>ED staff interviewed were knowledgeable about the Code Stroke process, as per the stroke policies. Drills had been performed and are not currently needed, as actual Code Strokes are called daily.</p> <p>Doses of tPA are maintained in pharmacy, and a pharmacist pre-mixes tPA, which is delivered to the bedside on day shift, or picked up by an ED tech on other shifts. Patient weight is not estimated – if one of the two weighted beds (1 in ED, 1 in CT) is not available upon patient arrival, the patient is transferred to a weighted bed. The tPA is administered by RNs.</p> <p>Labs are drawn in CT between CT and CTA. At times, labs are drawn prior to arrival by EMS; there have not been issues noted with specimens. Blood specimens are labeled Code Stroke and are sent via pneumatic tube system from ED, or hand-carried if obtained in imaging.</p> <p>Consent for tPA administration is sought if LKW is over 3 hours. If no consent is available, tPA is administered under emergency protocols.</p>
<p>2. Protocols: Emergency care of patients with stroke</p> <ul style="list-style-type: none"> • Ischemic, Hemorrhagic and tPA, blood pressure management 	<ul style="list-style-type: none"> • Observe that protocols exist in Emergency Department. 	<p style="text-align: center;">X</p>	<p>Protocols must be in the ED at all times. They have been reviewed in detail by Central Office Reviewers.</p> <p>The facility’s stroke policies/protocols and order sets (3 order sets based on time elapsed since LKW) are available online and available to staff throughout the facility. They are also kept in binders in the ED and inpatient units. There is a down-time computer system where hard copies can be printed if needed.</p>

<p>3. Facility Support Stroke Center Medical Director training Medical Director requirements, 2 of the following</p> <ul style="list-style-type: none"> • Completion of stroke fellowship • Participation in at least 2 regional, national, or international conferences on stroke each year • Five or more peer-reviewed publications on stroke • Eight or more CME credits each year in the area of cerebrovascular disease <p>Clinicians' training must be one of the above or equivalency.</p>	<p>Interview select stroke team staff members to assess knowledge of team function</p>	X		<p>Stroke team credentials have been submitted with application and reviewed by DOH staff prior to site visit.</p> <ul style="list-style-type: none"> • Determine continuity of team credentials • Review schedule for ongoing training <p>Medical staff had completed more than the annual training required.</p> <p>Nursing and ancillary staff training was acceptable in both amount of hours and content. All stroke nursing staff are trained in NIHSS and dysphagia screening. Ancillary staff such as PT/OT/ST, EMS staff, and the community all received stroke education at least twice annually, with continuing plan for biannual training.</p>
<p>4. Laboratory/Other Services: Lab work performed and reported within 45 minutes of being ordered 24/7</p>	<p>Documentation of lab reports with reports given to physician within 45 minutes of being ordered</p> <p>Observe CT/MRI unit and system for timely interpretation of diagnostic results</p>	X		<p>Laboratory and ED must have written agreement in application – previously reviewed by staff.</p> <p>Blood work is sent to the lab either via pneumatic tube system from ED, or hand-carried from CT and announced upon arrival and handed off for immediate processing. Lab results are available in the EMR system (Cerner) with critical labs verified via phone calls. In the case of downtime, the results are called to ED.</p> <p>The hospital has a 64-slice CT scanner down the hall from the ED, and another 16-slice CT without perfusion capability. CT technicians are onsite 24/7. CT, CT angiography, and CT perfusion studies are performed on stroke patients. MRI is available</p>

			<p>Monday- Friday 7am to 11pm, and on weekends 7am to 5pm. Facility radiologists perform readings during the day and evening hours, with readings done via vRAD at night.</p>
<p>5. Stroke Unit: Designated Stroke Beds</p> <p>Written Care Protocols on Unit including:</p> <ul style="list-style-type: none"> • Ischemic Stroke • Hemorrhagic Stroke • tPA administration • Admission\Discharge criteria • Patient census and outcome data 	<ul style="list-style-type: none"> • Observe Designated beds • Review bed assignment protocol: evidence that stroke patient is the priority for stroke unit beds • Observe written care protocols • Documentation is provided on unit: admission/discharge criteria, protocols, patient census • Evidence of monitoring capabilities, continuous non-invasive telemetry • Interview select staff: determine their familiarity with care protocols on unit • Ask about ongoing or planned training for staff in unit 	<p>X</p>	<p>Designated beds do not have to be a separate unit. However, specific beds do need to be a priority for post acute stroke patients.</p> <p>Patients who received tPA or who have intracranial hemorrhages are admitted to T5, the 16-bed ICU, for at least 24 hours. All ICU nurses are stroke-trained. Safety rounds with the charge RN are conducted on each 12-hour shift. The bedside RN presents the patient during multidisciplinary rounds held daily at 10 AM with the intensivist, charge nurse, RD, RRT, dedicated pharmacist, and sometimes a PT. A telemed iPad is used for audiovisual communication with the Stroke Medical Director when he is off-site.</p> <p>The stroke unit is a 15-bed telemetry unit, T5, which has beds #1-8 used for stroke patients. The majority of T5 nurses are stroke-trained, with some nurses only providing care to cardiac patients in the other beds. Multidisciplinary rounds are held each morning on T5, with the case manager, PT, OT, and at times ST, RD, and RRT; the hospitalist comes afterward and discusses the patients with nursing. All stroke patients are admitted on the hospitalist service, and the neuro team rounds on them daily. Rehab staff come to the patients' bedsides, with PT available 7 days/week, and ST and OT available 6 days/week.</p> <p>All stroke-trained nurses in ICU and T6 have been trained in dysphagia screens. Stroke patients are kept NPO in the ED, and upon their arrival to ICU or T6,</p>

			<p>a stroke-trained nurse performs a bedside swallow screen.</p> <p>Interviewed staff on both units were knowledgeable about the stroke patient care protocols, which are available online and in binders. Staff had participated in drills or actual Code Strokes. Patient/family stroke education was comprehensive, including development of two brochures. Stroke support groups are held monthly.</p> <p>In the event of new-onset stroke symptoms in an inpatient, nursing staff call the Rapid Response Team, which consists of a respiratory therapist and a critical care RN. If indicated, Code FAST is called, to which a hospitalist responds who then determines to call a Code Stroke, if indicated.</p>
<p>6. Neurosurgery Services Capability</p> <ul style="list-style-type: none"> • Within 2 hours deemed necessary 	<ul style="list-style-type: none"> • Observe that coverage exists as evidenced by call schedules 	X	<p>Transfer agreements have been reviewed in application.</p> <p>The hospital has a transfer agreement with Albany Medical Center Hospital for neurosurgical services.</p>
<p>7. Quality Improvement</p> <p>The Stroke Center director has established quality assurance committees that meet regularly to review prepared reports, discuss opportunities for improvement.</p>	<p>Observe minutes of quality assurance meetings or at a minimum the schedule of quality assurance activity</p>	X	<p>Discuss activity of quality assurance committee.</p> <p>The stroke team committee monthly meeting minutes were reviewed and included appropriate topics and actions. Performance improvement focused work groups included tPA treatment times. The stroke program is active with GWTG, with improving metrics. October 2018 showed all 10 performance metrics above the NYS goal of 85% for the first time.</p> <p>Several case studies were reviewed for patients who</p>

			<p>were administered tPA, with appropriate care provided. Medical staff records were reviewed. This included one ED physician, one neurologist, and one hospitalist. All met credentialing standards.</p>
<p>8. Conditions/Contingencies/Equivalencies noted in review</p> <ul style="list-style-type: none"> Review copy of staff report prior to onsite visit and attach to this validation tool. Note contingencies will require onsite verification. 	<p>Observe compliance of specific contingencies and conditions noted on the Staff Report for the SHRPC (State Hospital Review and Planning Council)</p>	<p>X</p>	<p>Address all contingencies/conditions/equivalencies in space below:</p> <p>Improvement suggestions:</p> <ul style="list-style-type: none"> The multistep decision process required to call an inpatient stroke - floor RN calls the <i>Rapid Response Team</i> that brings in the ICU charge RN, who then calls a <i>Code Fast</i> that brings in the hospitalist, who then determines whether to call a <i>Code Stroke</i> needs to be streamlined by allowing the RRT (ICU charge nurse) to call the <i>Code Stroke</i> directly without needing to involve the hospitalist to save valuable time. In similar fashion, to save time, the facility should immediately call a <i>Code Stroke</i> when EMS notifies them of a probable stroke as identified by use of a stroke scale, along with time of onset/last known well, being transported to the ED. <p>Commendable:</p> <ul style="list-style-type: none"> They have conducted multiple community and EMS outreach sessions, far more than required. The EMS feedback form they developed is one of the best we have seen, for data collection and EMS feedback. ED and inpatient process flow-charts are excellent visual algorithms, and clearly define the steps to be followed in caring for stroke patients. Their approach to obtaining first a CT, then CTP, then CTA on all acute stroke patients,

				<p>without delaying the CTA waiting for blood chemistries sets the bar all primary stroke centers should endeavor to achieve!</p> <p>Contingencies: - None</p> <p>The onsite review team's strong recommendation is to approve Glens Falls hospital as NYS designated primary stroke center.</p>
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Project # 182082-C
Menorah Home & Hospital for Aged & Infirm

Program: Residential Health Care Facility
Purpose: Construction

County: Kings
Acknowledged: August 24, 2018

Executive Summary

Description

Menorah Home & Hospital for Aged & Infirm (Menorah), a 420-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 1516 Oriental Boulevard, Brooklyn (Kings County), requests approval to convert a 16-bed Hospice Inpatient Unit to a 16-bed RHCF unit and certify 16 net new RHCF beds. Upon final approval by the Public Health and Health Planning Council (PHHPC), the RHCF will have a total bed count of 436 certified beds. The Hospice Inpatient Unit consists of 16 private patient rooms located on the fourth floor of a building that connects to the RHCF. The floor previously housed a 40-bed RHCF unit that was renovated in 2013-2014 to accommodate the Hospice Inpatient Unit (CON 101040). The Unit is operated by Metropolitan Jewish Health System Hospice and Palliative Care, Inc. (MJHS Hospice), which leases the space from Menorah. The operator is planning to discontinue the service as the Hospice Inpatient Unit has experienced consistently low utilization since it opened in July 2014. Menorah is well positioned to integrate the 16 beds into the RHCF as the nursing home has experienced an average occupancy rate of 98% over the past three years. Metropolitan Jewish Health System, Inc. is the sole member (parent) of both the hospice and RHCF corporations.

OPCHSM Recommendation

Contingent Approval

Need Summary

Although occupancy in Kings County has been slightly below Department planning thresholds, the applicant and most of the surrounding nursing homes have been experiencing higher than average utilization rates for the past three years. Additionally, the facility is a CMS 5-star rated facility. This proposed bed conversion is not expected to negatively impact access to Hospice beds in the county.

Program Summary

Upon approval, the facility will increase their certified capacity from 420 residential health care beds to 436 residential health care beds.

Financial Summary

The purchase price of \$6,426,713 will be met via an executed promissory note of \$6,426,713 at an interest rate of 0% for a ten-year term. There are no monthly amortization payments, the principal must be paid off at the end of the ten-year term. The projected budget is as follows:

Table with 2 columns: Category, Year Three. Rows: Revenues (\$69,478,384), Expenses (68,849,834), Gain/(Loss) (\$628,550)

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 and approval of an application by MJHS Hospice and Palliative Care, Inc. to decertify 16 hospice beds located within Menorah Home & Hospital for Aged facility. [PMU]
2. 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 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]
3. 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 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 Medicaid Access policy. [RNR]
4. 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 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]

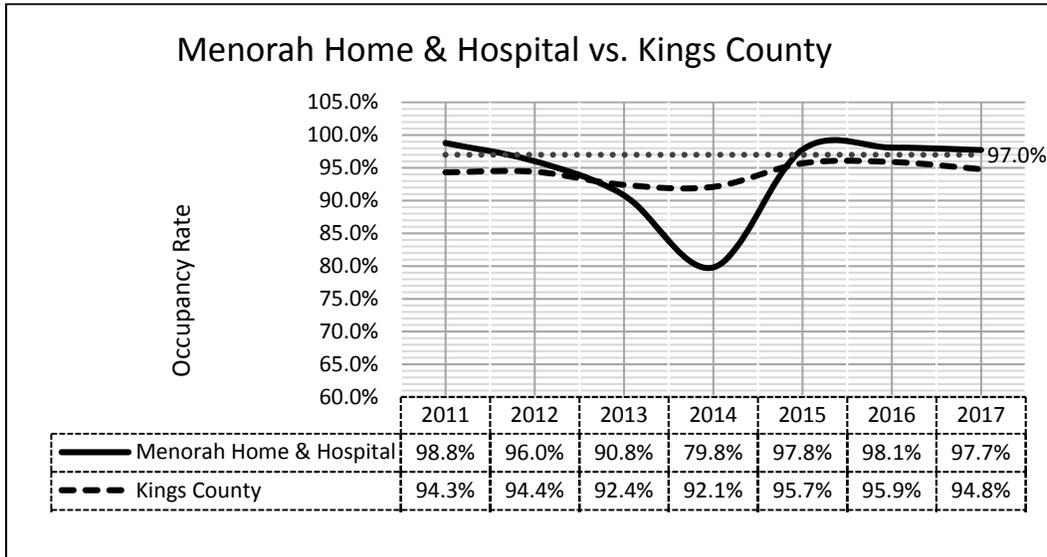
Approval conditional upon:

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 installation of a handwashing sink in the resident dining room 405 as required by 2014 FGI 2.3-2.3.3.4 (1). [LTC]

Council Action Date

December 13, 2018

Need Analysis



The overall occupancy for Kings County was 94.8% in 2017 and Menorah Home & Hospital has exceeded the Departments' 97 percent planning optimum for the past three years.

While there is a calculated need for additional beds in the New York City planning area, utilization in the planning year, while essentially stable for the past three years, was 94.5% in 2017, which requires the Department to evaluate local factors before approving additional beds. The facility provided the following evidence of need in their immediate area:

- Most of the facilities in the surrounding area have average utilization greater than 95%.
- The April 2018 closure of the 240-bed Lutheran Augustana nursing home isn't yet reflected in annual utilizations.
- Currently, the 16-hospice bed unit that is being converted is under-utilized (see Financial Analysis section).
- During 2018, the applicant's utilization rates precluded them from accepting new patients at times, forcing would be residents to choose a different option.
- Menorah has a 5-star CMS rating.

Kings County facilities Utilization Within 5 Miles of Applicant ZIP Code 11235			
Facility	2015	2016	2017
Bensonhurst Center for Rehabilitation and Healthcare	98.6%	97.9%	97.1%
Brooklyn Center for Rehabilitation and Residential Health Care	96.8%	96.3%	96.6%
Ditmas Park Care Center	97.6%	97.1%	97.7%
Haym Solomon Home for the Aged	94.5%	94.8%	94.7%
King David Center for Nursing & Rehabilitation	95.2%	93.4%	94.0%
Menorah Home & Hospital for Aged & Infirm	97.8%	98.1%	97.7%
Saints Joachim & Anne Nursing and Rehabilitation Center	93.4%	95.2%	96.0%
Sea Crest Nursing & Rehabilitation Center	93.4%	93.6%	93.2%
Seagate Rehabilitation & Nursing Center	95.5%	96.2%	96.0%
Sheepshead Nursing & Rehabilitation Center	94.9%	96.2%	95.9%
Shore View Nursing & Rehabilitation Center	91.6%	90.8%	90.4%
The Chateau at Brooklyn Rehab & Nursing Center	87.9%	94.8%	96.7%
The Heritage Rehabilitation and Health Care Center	93.7%	96.4%	95.2%
Kings County Total	95.7%	95.9%	94.8%

Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Menorah's Medicaid admissions rate was below the Kings County threshold in 2016 or 2017.

Percent of New RHCF Admissions that are Medicaid	2016	2017
Kings County 75% Threshold	29.5%	26.6%
Menorah Home & Hospital	6.6%	8.7%

Conclusion

Although occupancy in Kings County and the New York City Planning Area has been slightly below Department planning thresholds, the applicant and most of the surrounding nursing homes have been experiencing higher than average utilization rates for the past three years. Additionally, the facility is a CMS 5-star rated facility and the proposed bed conversion is not expected to negatively impact access to Hospice beds in the county.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Menorah Home & Hospital for Aged & Infirm	Same
Address	1516 Oriental Blvd Brooklyn, NY 11235	Same
RHCF Capacity	420	436
ADHC Program Capacity	N/A	N/A
Type of Operator	Not for Profit Corporation	Same
Class of Operator	Voluntary	Same
Operator	Menorah Home & Hospital for Aged & Infirm	Same

The hospice unit was constructed on the fourth floor at the top of one of the older buildings on the Menorah Long Term Care Campus in 2010. The floor was originally a 40 Bed RHCF unit that was entirely reconstructed into a hospice unit. The structure was reinforced, and every aspect of the interior fit-out was new. The unit is configured in a conventional linear layout with double-loaded corridors containing 16 private spacious suites, some with ocean views. Each suite features a bedroom area, living room, private bathroom with shower, and kitchenet. The kitchenets offer an in-room dining option with a microwave, sink, refrigerator, and table.

Residential communal space on the unit includes dining with enough seating for all 16 residents on the unit during meals, a private family dining room, garden room for activities, library, and spa bathing room with massage table. Support areas for resident care are centrally located on the unit with utility rooms and medication room adjacent to the nurse's station. The nurses station is in the center of the unit providing unobstructed view down residential corridors for observation and accessibility.

Menorah Home & Hospital for Aged & Infirm is in current compliance with all applicable codes, rules, and regulations.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
Menorah Home & Hospital for Aged & Infirm	09/1992	*****	*****	*****	**

Conclusion

The conversion of hospice beds into residential health care beds at Menorah Home & Hospital for Aged & Infirm will provide residents on the fourth floor with a natural home like environment that encourages resident privacy, independence, and choice. The project will result in minimal disturbance for current residents.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase and sale of the hospice, which is summarized below:

Date:	August 14, 2018
Seller:	MJHS Hospice and Palliative Care, Inc.
Purchaser:	Menorah Home & Hospital for the Aged & Infirm, Inc.
Purchased Assets:	The leasehold improvements made by Seller to the leased premises and all moveable equipment used for the operation of the Hospice Inpatient Unit located in the building known as Menorah Nursing Home.
Purchase Price:	\$6,426,713
Payment of Purchase Price	Promissory Note for \$6,426,713 executed 4/14/2018 with interest at 0% for a ten-year term. Principal due no later than Maturity Date (at the end of the ten-year term.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, during the current year and the first and third year after project completion, summarized below:

	Current (2017)		Year One		Year Three	
	Per Day	Total	Per Day	Total	Per Day	Total
<u>Revenues</u>						
Medicaid FFS	\$379.65	\$20,921,066	\$347.60	\$20,440,966	\$347.60	\$20,440,966
Medicaid MC	\$382.28	\$17,951,017	\$371.28	\$18,147,053	\$371.28	\$18,147,053
Medicare FFS	\$730.61	\$24,360,815	\$689.03	\$23,920,365	\$689.03	\$23,920,365
Medicare MC	\$282.34	\$1,240,871	\$421.91	\$1,928,129	\$421.91	\$1,929,129
Commercial FFS	\$382.28	\$1,799,774	\$373.58	\$1,829,421	\$373.58	\$1,829,421
Private Pay	\$334.57	\$1,776,877	\$450.00	\$2,484,450	\$450.00	\$2,484,450
Grant Income*		\$2,100,820		\$533,691		\$533,691
Rental Income		699,996		\$0		\$0
Other		<u>194,109</u>		<u>\$194,309</u>		<u>\$194,309</u>
Total Revenues		\$71,045,345		\$69,478,384		\$69,478,384
<u>Expenses</u>						
Operating	\$403.40	\$60,437,096	\$392.25	\$61,735,209	\$392.25	\$61,735,209
Capital	<u>54.80</u>	<u>8,210,529</u>	<u>45.16</u>	<u>7,422,895</u>	<u>\$45.20</u>	<u>7,114,625</u>
Total Expenses	\$458.20	\$68,647,625	\$437.41	\$69,158,104	\$437.45	\$68,849,834
Excess Revenues		<u>\$2,397,720</u>		<u>\$320,280</u>		<u>\$628,550</u>

	<u>Current (2017)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
Patient Days		149,821		157,387		157,387
Occupancy		97.73%		98.90%		98.90%
Breakeven				98.45%		98.02%

* CINERGY Collaborative Vital Access Provider (VAP) grant, other misc. grants (e.g., Alzheimer's grant).

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

- Rates for Medicaid and Commercial are based upon current reimbursement rates. Private and Medicare Managed Care rates are based on the facility's 2018 payment rates.
- Expense and utilization assumptions are based on the nursing home's historical experience and projected staffing needs to operate the new 16-bed unit. Due to consistently high occupancy and an extensive waiting list for admissions, the Menorah is confident that the additional 16 beds will be consistently occupied resulting in an overall 98% or higher occupancy rate.
- Rental Income is eliminated due to the termination of the Hospice lease upon closure of the APA.
- The decrease in grants income is due to the expiration of CINERGY VAP funding at the end of 2018.
- Utilization by payor source during the first and third years is as follows:

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	36.78%	37.36%	37.36%
Medicaid MC	31.34%	31.05%	31.05%
Medicare FFS	22.26%	22.05%	22.05%
Medicare MC	2.93%	2.90%	2.90%
Commercial FFS	3.14%	3.11%	3.11%
Private Pay	3.55%	3.53%	3.53%

Capability and Feasibility

The purchase price of \$6,426,713 will be met via the terms of an executed promissory note with interest at 0% for a ten-year term. There is no required monthly payment amount due; however, all principal amounts outstanding are due no later than the Maturity Date (August 14, 2028).

The submitted budget indicates an excess of revenues over expenses of \$320,280 and \$628,550 during the first and third years after the project completion. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment A is the 2016 and 2017 certified financial statements of Menorah Home & Hospital for Aged & Infirm. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average operating gain of \$2,732,902 in 2017.

BFA Attachment B is the June 30, 2018 internal financial statements of Menorah. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2018. Also, the entity achieved an operating income of \$201,744 through June 30, 2018.

Attachments

BFA Attachment A	Financial Summary – 2016 and 2017 Certified Financial Statements of Menorah Home & Hospital for the Aged & Infirm
BFA Attachment B	Financial Summary – June 30, 2018 Internal Financial Statements of Menorah Home & Hospital for the Aged & Infirm



Project # 181329-C
Albany Medical Center Hospital

Program: Hospital
Purpose: Construction

County: Schenectady
Acknowledged: May 31, 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 certify a hospital-based multispecialty Ambulatory Surgery Center (ASC) to be located at 1769 Union Street, Niskayuna (Schenectady County). The existing three-story building is comprised of non-Article 28 physician practices on the first two floors and a non-Article 28, AMCH-owned, physician office-based surgical (OBS) practice on the third floor. AMCH will convert the OBS to an Article 28 ASC for the provision of general and gastroenterology surgical services.

The site opened in June 2017. The recently constructed three-story building consists of 11,500 net square foot per floor and houses a non-AMCH affiliated cardiology group and a non-Article 28, AMCH-owned, physician practice operating an urgent care program on the first floor. The second floor is occupied by a non-Article 28 AMCH-owned, gastroenterology, surgery, obstetrics/gynecology and otolaryngology physician practices. The third-floor that will house the ambulatory surgery suite is separated from the other floors by a fire rated floor and independent structural assembly and requires no construction to convert the space from an OBS to an Article 28-compliant ASC. The ASC will contain five Pre-op bays, one Pre-op/Exam room, nine PACU/Phase II/Post-

Operative stretcher bays, four Procedure rooms, one General Surgery (Class C) room, and associated patient and staff support spaces.

OPCHSM Recommendation

Contingent Approval

Need Summary

The center will operate under the name "AMCH Ambulatory Surgery Center". The number of projected procedures is 3,638 in Year One and 3,686 in Year Three, with Medicaid at 19% and Charity Care at 2% each year.

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 incremental budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues (\$3,414,110), Expenses (2,862,462), Gain (\$551,648).

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 Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
2. 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. 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]
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

December 13, 2018

Need Analysis

Analysis

The service area consists of Schenectady County. The secondary service area is the Capital District, which consists of Albany, Rensselaer and Schenectady Counties. The table below shows the number of patient visits for free-standing as well as hospital affiliated ASC's in Albany and Schenectady Counties for years 2015 and 2016. There are no ASCs operating in Rensselaer County. Ellis Hospital, whose extension clinic is located just 1.1 miles and 4 minutes from the proposed site, has expressed opposition to this proposal.

Facility Name	County	Type	Patient Visits	
			2015	2016
Ellis Hospital McClellan St. Health Center	Schenectady	Multi	4,431	4,859
St. Peter's Surgery and Endoscopy Center	Albany	Multi	16,030	18,477
Capital Region Ambulatory Surgery Center	Albany	Single	9,196	8,884
New England Laser & Cosmetic Surgery Center	Albany	Multi	787	766
OrthoNY Ambulatory Surgery Center - Albany	Albany	Single	4,755	4,732
Albany Regional Eye Surgery Center	Albany	Single	10,558	11,663
Totals			45,757	49,381

Source: SPARCS-2018

From 2015 to 2016, these facilities experienced an 7.9% increase in ambulatory surgery service visits. The number of projected procedures at the ASC is 3,638 in Year One and 3,686 in Year Three. Approximately 75% of the procedures (2,700) have already (with the opening of the OBS), or are expected to, transition from Ellis Hospital. The projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Comm. Ins.	1,622	44.5%	1,654	44.8%
Medicare FFS	559	15.4%	564	15.3%
Medicare MC	683	18.8%	688	18.7%
Medicaid FFS	3	0.1%	3	0.1%
Medicaid MC	698	19.2%	703	19.1%
Charity Care	73	2.0%	74	2.0%
Total	3,638	100.0%	3,686	100.0%

Charity Care projections are based upon the current experience of AMCH providers. The Center will follow the same charity care policy standards as AMCH. A copy of the financial aid policy, including a sliding fee scale has been provided to DOH. The Center will participate in the following Medicaid managed care plans: Capital District Physicians' Health Plan (CDPHP), Fidelis and MVP. It is AMCH's intent to include the Center under its existing contracts including, but not limited to Medicaid lines of business. AMCH's Community Physician Outreach Coordinator has made outreach visits to community providers to inform them of the current Niskayuna site and its services. If this project is approved, the visits will continue with additional information provided regarding the financial assistance program for under-insured patients. The applicant has committed to serving all persons in need without regard to ability to pay or source of payment.

Prevention Agenda

AMCH 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, AMCH 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, AMCH is collaborating with local health departments, other hospitals, and community-based organizations on community health improvement planning.

AMCH reported that they are tracking Prevention Agenda progress using the following measures: number of visits to the cafeteria, healthy food offerings in the cafeteria, SBIRT trainings, and NARCAN training sessions hosted by or offered to local law enforcement.

AMCH described numerous community benefit initiatives but did not report any spending in Community Health Improvement Services in the 2016 Schedule H filing. They noted that this is because of concerns over appropriately tracking and capturing such spending, not due to lack of spending itself. While other investments are significant, AMCH did not describe any investments related to implementation of their Prevention Agenda priorities.

Conclusion

Approval of this project will increase the number of Article 28 licensed multi-specialty ambulatory surgery centers for the residents within Schenectady County and the Capital District.

Program Analysis

Project Proposal

Proposed Operator	Albany Medical Center Hospital
Extension Site Name	AMCH Ambulatory Surgery Center
Extension Site Address	1769 Union Street Schenectady, NY 12309 (Schenectady County)
Surgical Specialties	Multi-Specialty, including: General Surgery Colorectal Surgery Gastroenterology
Operating Rooms	1 (Class C)
Procedure Rooms	4
Hours of Operation	Monday through Friday from 8:30 AM to 5:00 PM
Staffing (1st Year / 3rd Year)	21.75 FTEs / 21.75 FTEs
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Albany Medical Center Hospital 16.8 miles / 28 minutes

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

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 Analysis

Lease Rental Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	August 2, 2016
Premises:	1769 Union Street, Town of Niskayuna, County of Schenectady, State of New York
Landlord:	Lecce Development Co., LLC
Tenant:	Albany Medical College
Term:	10 years
Rent:	Years 1-3: \$832,062 annually, \$69,338.50 monthly; Years 4-10: \$869,883 annually, \$72,490.25 monthly. Extension terms: two options of five years each (\$869,883 annually)
Provisions:	Responsible for utilities, taxes, insurance and maintenance of occupied premise.

There is no change to the Lease Agreement as the result of this application. The applicant indicated that the lease will be an arm's length lease arrangement between two unrelated parties.

Incremental Operating Budget

The applicant submitted an incremental operating budget, in 2018 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Commercial MC	\$2,563,874	\$2,718,249
Medicare FFS	212,916	217,842
Medicare MC	230,636	235,562
Medicaid FFS	3,213	3,213
Medicaid MC	515,876	525,857
Charity Care *	<u>(24,579)</u>	<u>(25,974)</u>
Total Revenues	\$3,414,110	\$3,582,585
<u>Expenses</u>		
Operating	\$2,176,846	\$2,184,069
Capital	<u>685,616</u>	<u>693,216</u>
Total Expenses	\$2,862,462	\$2,877,285
Excess Rev. over Exp.	<u>\$551,648</u>	<u>\$705,300</u>
Utilization (Procedures)	3,638	3,686
Cost Per Procedure	\$786.82	\$780.60

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	44.5%	44.8%
Medicare FFS	15.4%	15.3%
Medicare MC	18.8%	18.7%
Medicaid FFS	0.1%	0.1%
Medicaid MC	19.2%	19.1%
Charity Care *	2.0%	2.0%

* *Charity Care procedures are estimated at full net revenue value per visit. Sliding fee schedules based on income levels will likely result in more patients qualifying at partial reduction in co-insurance and co-pay obligations.*

The applicant states that the utilization estimates are conservative and based on existing patient populations who are cared for by employed AMCH physicians with clinical offices located throughout the greater Capital Region, as well as at the Niskayuna site. The staffing profile for the Niskayuna site was defined by hospital nursing leadership on a relational basis to on-campus experiences, adjusted for the site's more limited hours of operation, limited scope of services, lower case intensity, outpatient only service structure, non-emergent nature of the patient population, and the planned scheduling of procedures.

Capability and Feasibility

There are no project costs associated with this application. The submitted incremental budget projects excess revenues over expenses of \$551,648 and \$705,300 during the first and third years, respectively. Revenues reflect current reimbursement methodologies for the proposed ambulatory surgical services. The budget appears reasonable.

BFA Attachment A is the 2017 certified financial statements of Albany Medical Center and its Related Entities which includes the Hospital, the College, the Foundation, and recent affiliates including Saratoga Hospital, and Columbia Memorial Hospital. As shown, Albany Medical Center and its Related Entities maintained positive working capital and net asset position and generated an excess of revenues over expenses of \$45,048,000 on total revenues of \$1.8 billion (2.4% excess margin). It should be noted that Saratoga Hospital and Columbia Memorial Hospital collectively accounted for over \$34 million of this gain, while the Hospital and College collectively accounted for \$10.5 million of this gain

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

Supplemental Information

Opposition

Ellis Hospital Medical Center has expressed opposition to the CON project citing the negative impact the project will have on their ambulatory surgery volumes provided at both their main campus and McClellan Street campus, and the corresponding negative impact on the hospital's profitability and financial sustainability due to the proximity of the AMCH project site to the Ellis facilities.

In reviewing Ellis Hospital and Subsidiaries Audited Financial Statements, it is noted that while Ellis has experienced a decrease in its operating margin from approximately 1.8% (\$6.6 million) to 0.2% (\$871K) over the past four years, this appears to be due to an overall reduction in inpatient and outpatient volume, resulting in a lower rate of increase in its net patient revenues relative to that of its total operating expenses. Between 2016 and 2017, inpatient discharges decreased 4.2% and total outpatient visits decreased 5.3%, and Ellis' net patient service revenue increased 0.36% while its total operating expenses increased 1.6%. Through September 2018, Ellis reported an improved operating gain of \$2.6 million (0.8% margin). Ellis' overall financial condition is stable with positive earnings, and adequate liquidity levels including a Current Ratio of 2.2 (working capital over \$70 million).

The loss of procedures resulting from this CON project has largely already been absorbed by Ellis and is not expected to threaten Ellis' continued operations and its ability to provide services to the community. Both Ellis and AMCH agree that AMCH's OBS practice, which opened in June 2017, has already resulted in a shift of approximately 2,000 procedures from Ellis, with Ellis anticipating a loss of an additional 700 procedures by the time the ASC reaches the projected Year Three utilization of 3,686 procedures. The most significant shift has occurred with gastroenterology (GI) cases, as over 95% of AMCH's OBS cases are endoscopy (GI) procedures, and fewer than six non-endoscopy procedures are performed per month at this site. Ellis is projecting 3,206 endoscopy (GI) procedures in 2018 which cannot all be absorbed by the AMCH proposed site. According to Ellis's opposition paper, even if 100% of these endoscopy procedures shifted to the ASC, which is not possible given capacity issues at the proposed ASC site, this would equate to a loss of operating income of \$1.2 million to Ellis, and Ellis would still report a positive operating income based on its results through September 2018.

Conclusion

The opening of AMCH's OBS practice is not expected to threaten the continued financial sustainability and operation of services at Ellis Hospital. Ellis reported a positive Operating Income of \$2.6 million (0.8% margin) through September 2018 and has maintained positive and adequate liquidity and net asset position. Additionally, most of the migration of procedures from Ellis to the site has already occurred, with only an additional 700 procedures expected to transfer by the time the ASC is at full operating capacity. Ellis has overcapacity in its operating rooms in general and this is not specific to their ambulatory care service line. Over 95% of AMCH's OBS procedures today are endoscopy (GI), and with only one OR it is not expected that the impact from a further shift of endoscopy procedures or general surgery procedures will be significant.

Attachments

BFA Attachment A Albany Medical Center and Related Entities - 2017 Certified Financial Statements
BHFP Attachment Map



Project # 181277-E
The Surgery Center at Orthopedic Associates, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Dutchess
Acknowledged: April 19, 2018

Executive Summary

Description

The Surgery Center at Orthopedic Associates, LLC (the Center), a proprietary, Article 28 freestanding ambulatory surgery center (FASC) Center located at 1910 South Road, Poughkeepsie (Dutchess County), requests approval for indefinite life status. The FASC was approved by the Public Health and Health Planning Council (PHHPC) under CON #112379 as a multi-specialty FASC specializing in pain management and orthopedic services. PHHPC approval was for a five-year limited life and the Center began operations effective August 16, 2013. The applicant notified the Department before their limited life expiration date to request indefinite life status. The Center is not proposing to add or change any services, or expand or renovate the facility. The facility operates under the original lease, which has a ten-year term. Vlad Frenk, M.D. will continue to serve as Medical Director. The facility has transfer agreements with Vassar Brothers Medical Center and the Mid-Hudson Valley Division of Westchester Medical Center, which will remain unchanged on approval of this application.

OPCHSM Recommendation

Approval

Need Summary

Data submission by the applicant, a contingency of CON 112379, has been completed. Based on CON 112379, Medicaid procedures were projected at 15.46 % and Charity Care was projected at 2.18% for Year Three. Actual Charity Care in Year Three (2016) was 1.20 % and Medicaid was 12.45%.

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:

Table with 2 columns: Category, Year One. Rows: Revenues (\$8,609,159), Expenses (\$6,607,541), Net Income (\$2,001,618).

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

December 13, 2018

Need Analysis

Analysis

The primary service area is Dutchess County. The table below provides Year Three utilization, projections and actual, by payor, for CON 112379, and projections for Year One following approval.

Payor	CON 112379 Projected Year 3 (2016)	CON 112379 Actual Year 3 (2016)	CON 181277 Projections Year 1
Medicaid FFS	5.46%	0.08%	0.11%
Medicaid MC	10.00%	12.37%	12.05%
Medicare FFS	39.09%	23.92%	25.06%
Medicare MC	0.00%	6.06%	6.91%
Commercial FFS	20.00%	39.69%	39.00%
Commercial MC	20.00%	0.00%	0.00%
Self-Pay	3.27%	0.14%	0.00%
Charity Care	2.18%	0.16%	0.13%
Other	0.00%	17.58%	16.74%
Total	100.00%	100.00%	100.00%

The table below provides information on projections and utilization by procedures for Year One (2014-1st full year) and Year Three (2016) based on CON 112379.

CON 112379- Procedures	Year 1 (2014)		Year 3 (2016)	
	Projected	Actual	Projected	Actual
Total	5,528	2,929	6,080	5,084

At the request of DOH, the Center has supplied additional information on how the center classified their Uncompensated Care and their financial assistance offered. For those patients coming to the center with insurance plans carrying a high deductible, the center's policy was as follows: confirm with the insurance company the extent of the coverage provided; then, if appropriate, have the patient sign an affidavit attesting to their inability to meet this obligation for their portion of the bill (including the deductible); and then proceed with the surgery, not billing the patient for the services rendered. Since the decision to not bill the patient is made prior to the procedure, this can be considered charity care.

The table below shows the Charity Care and Medicaid based upon the information provided by the center and further analysis done by DOH staff. Based upon these adjusted numbers, the Center has performed well when compared to their original projections for Medicaid and Charity Care. The center over-estimated their amount of Medicaid utilization in the original project and have lowered the Medicaid projections to a more realistic level for Dutchess County going forward. Per Department of Health data, Dutchess County had 12.5% of its population enrolled in Medicaid in 2013 (latest year of data).

	Projections	Actual				Projections
	#112379	2014	2015	2016	2017	#181277
Medicaid	15.46%	7.07%	8.76%	12.45%	12.19%	12.16%
Charity Care	2.18%	1.81%	1.12%	1.20%	1.30%	0.13%
Totals	17.64%	8.88%	9.88%	13.65%	13.49%	12.29%

The Center currently has Medicaid Managed Care contracts with the following health plans: Blue Cross Blue shield (BCBS), Capital District Physicians' Health Plan (CDPHP), Fidelis, Hudson Health Plan, MVP, and MVP – Hudson Health Plan. The center is working to establish a collaborative relationship with Hudson River Health Care to provide service to the under-insured.

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 come close to meeting their original combined projections for service to the underserved populations in their service area of Dutchess County. The center's Medicaid utilization has risen to above 10% per year, and the center is projecting this to be at 12% going forward.

Conclusion

The center continues to show reasonable efforts to provide service to the underserved patients in Dutchess County.

Program Analysis

Program Description

The Center's membership consists of 15 physician members each owning 6.7% membership each, and the Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). The Center is not proposing to add any services. Staffing will remain at current levels (23.7 FTEs). Surgical services utilizing four operating rooms will be provided from Mondays through Friday, 7:00 am to 6:00 pm with extended hours as necessary, and Dr. Vlad Frenk 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.

Financial Analysis

Operating Budget

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

Revenues	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Comm. FFS	\$2,124.25	\$4,265,504	\$2,124.42	\$4,350,814	\$2,124.42	\$4,350,814
Medicare FFS	\$878.36	\$1,133,096	\$878.23	\$1,155,758	\$878.23	\$1,155,758
Medicare MC	\$988.06	\$351,750	\$988.38	\$358,785	\$988.38	\$358,785
Medicaid FFS	\$583.33	\$3,500	\$0.00	\$0	\$0.00	\$0
Medicaid MC	\$1,097.99	\$681,857	\$1,098.72	\$695,494	\$1,098.72	\$695,494
Other/Private	\$2,325.05	<u>\$2,004,190</u>	\$2,356.66	<u>\$2,044,808</u>	\$2,356.66	<u>\$2,044,808</u>
Total Revenues		\$8,439,897		\$8,609,159		\$8,609,159
<u>Expenses</u>						
Operating	\$1,116.70	\$5,749,898	\$1,122.41	\$5,865,462	\$1,129.44	\$5,902,417
Capital	<u>\$139.56</u>	<u>\$718,613</u>	<u>\$121.50</u>	<u>\$742,079</u>	<u>\$121.50</u>	<u>\$742,079</u>
Total Expenses:	\$1,256.26	\$6,468,511	\$1,243.91	\$6,607,541	\$1,250.94	\$6,644,496
Net Income		<u>\$1,971,386</u>		<u>\$2,001,618</u>		<u>\$1,964,663</u>
Procedures		5,149		5,251		5,251

The applicant based their Commercial and Medicaid rates upon current arrangements. Medicare and Private Pay reimbursement are based in historical and current experience. Depreciation and rent expense are based on the Center's 2017 actual expense.

Year One and Three utilization is based on the Center's 2017 experience increased by 2% to account for expected growth related to the Center's implementation of a Total Joint Replacement Program that began in July 2017.

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net income of \$2,100,618 and \$1,964,663 during the first and third year of operation after receiving indefinite life. Revenues and expenses are based on current reimbursement methodologies and the Center's historical experience. The submitted budgets are reasonable.

BFA Attachment A is the Center's internal financial statements as of June 30, 2018, which indicate the facility has a negative working capital of \$603,345, a positive members' equity, and generated a net income of \$670,632 as of June 30, 2018.

BFA Attachment B is the 2016 and 2017 certified financial statements of the Center. In 2016, the facility had a negative working capital position of \$67,875 due to payments on a short-term outstanding line of credit of \$450,000 due. The facility paid down \$100,000 and re-negotiated a line of credit with a maximum borrowing amount of \$1,500,000 as of December 31, 2016. As of December 31, 2017, the outstanding line of credit balance decreased to \$350,000 and the facility achieved a positive working capital position of \$36,587. In 2016 and 2017 the facility achieved an average positive members' equity and net income position.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Internal Financial Statements as of June 30, 2018
BFA Attachment B	2016 - 2017 Certified Financial Statements
BFA Attachment C	Current Membership of The Surgery Center at Orthopedic Associates, 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 13th day of December 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 #112379, 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:

181277 E

The Surgery Center at Orthopedic Associates, LLC

APPROVAL CONDITIONAL UPON:

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



Project # 181183-B
Visiting Services, LLC d/b/a Visiting Docs

Program: Diagnostic and Treatment Center County: Rockland
Purpose: Establishment and Construction Acknowledged: March 16, 2018

Executive Summary

Description

Visiting Services, LLC d/b/a Visiting Docs, a New York State limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC, the Center) to be located at 240 North Main Street, Spring Valley (Rockland County). The Center will be licensed for Medical Services - Primary Care, providing services on-site at the D&TC's physical location as well as to patients of the Center in their homes. The D&TC will be housed in 2,331 square feet of leased space and will be comprised of three exam rooms, a lab area, waiting room, nurse station and the requisite support space.

The members of Visiting Services, LLC are as follows:

Table with 2 columns: Name, Interest. Rows include Eric Newhouse (25%), Robert Snyder (25%), Raphael Weiss (25%), Naftali Zelman (25%), and Total (100%).

Visiting Docs intends to provide services to patients of the Center in their homes and anticipates that approximately 20% of their first-year visits will be for off-site home visits. It is noted that on November 28, 2016, Public Health Law (PHL) was amended to add §2803(11), effective March 28, 2017, authorizing outpatient

clinics of general hospitals and D&TCs to provide off-site primary care services in a patient's residence that are:

- primary care services ordinarily provided to patients on-site at the outpatient clinic/DTC, and are not home care services under PHL Article 36;
provided by a primary care practitioner to a patient with a pre-existing clinical relationship with the outpatient clinic/DTC, or with the health care professional providing the service; and
provided to a patient who is unable to leave their residence to receive services at the outpatient clinic/DTC without unreasonable difficulty due to circumstances, including but not limited to, clinical impairment.

OPCHSM Recommendation

Contingent Approval

Need Summary

Approval of this project will provide for additional access to primary care services for the residents of Rockland County.

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 \$452,717 will be met via members' equity of \$48,998 and landlord equity of \$403,719 for the leasehold improvements. Construction began in December 2017. Fit-out of the space is deemed near completion with minor modifications as necessary to assure code compliance as a D&TC facility.

The landlord is a related entity to the proposed operator via common membership. The projected budget is as follows:

Revenues	\$1,176,573
Expenses	<u>\$1,108,785</u>
Net Income	\$67,788

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's 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]
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]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
4. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
5. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]

Council Action Date

December 13, 2018

Need Analysis

Background

The primary service area is Rockland County, which had a population of 311,687 in 2010. Per the PAD projection data from the Cornell Program on Applied Demographics, the population of Rockland County is estimated to grow to 337,392 by 2025, an increase of 8.2%.

There are currently five Article 28 D&TCs located in Spring Valley (zip code 10977). It is the intent of the Center to also provide services to patients in their homes. The initial physical examination and in-take activities will be done on-site. If a determination is made that the patient would best be treated at home, then the center will work with the patient and care team to schedule and coordinate home visits. The applicant estimates that approximately 20% of visits in the first year will be provided in the patients' home. The hours of operation will be Monday through Friday from 8 am until 8 pm. In-home visits will also be provided during these hours.

The Department received approval from the Centers for Medicare and Medicaid Services of a State Plan Amendment (SPA) authorizing Medicaid reimbursement to outpatient clinics of general hospitals and D&TCs for primary care service visits provided off-site in the patient's home. SPA approval is effective January 1, 2018. The Department is currently developing reimbursement regulations to implement Medicaid payment. Per discussions with the Department's Office of Health Insurance Programs, the payment rate is expected to be model after the FQHC off-site physician payment and is estimated to be approximately \$63.13 per visit upstate and \$70.67 per visit downstate. Program regulations are also being developed for facility implementation of the off-site home visit service.

Monsey/New Square has been designated a Health Professional Shortage Area for Primary Care Services by HRSA.

The number of projected visits is 9,000 for Year One and 15,000 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 additional access to primary care services for the residents of Rockland County.

Program Analysis

Program Description

Proposed Operator	Visiting Services, LLC
To Be Known As	Visiting Docs
Site Address	240 North Main Street, Suite 2, Spring Valley, NY 10977 (Rockland County)
Certified Services	Medical Services - Primary Care
Hours of Operation	Sunday through Friday, 8 AM to 8 PM Home visits will be provided during these hours
Staffing (1st Year / 3rd Year)	6.76 FTEs / 9.30 FTEs
Medical Director(s)	Allan R. Santiago, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Good Samaritan Hospital 8.0 miles / 21 minutes away

Character and Competence

The members of Visiting Services, LLC are as follows:

<u>Name</u>	<u>Interest</u>
Eric Newhouse, <i>manager</i>	25%
Robert Snyder	25%
Raphael Weiss	25%
Naftali Zelman	25%
Total	100%

Mr. Newhouse is the founder and Chief Operating Officer of MedWiz Solutions, a long-term care pharmacy and technology company that provides electronic management of medical records and medication management to the long-term care community. He is also the founder and President of Marquis Home Care, as well as The Eliot Group which owns and operates Assisted Living Facilities in New York State.

Mr. Snyder is a licensed Adult Care Facility (ACF) Administrator and the Chief Operating Officer of Aljud Management. In that position, he provides oversight and management to various ACFs. Prior to that, he had over 20 years of experience at an assisted living community in the Bronx where he was responsible for the daily operations and oversight of a 200-bed adult care facility.

Mr. Weiss is a licensed Adult Care Facility Administrator and the Chief Financial Operator of Aljud Management. In that position, he provides oversight and management to various ACFs and certified home care agencies. Prior to that, Mr. Weiss was responsible for the daily operation and oversight of a 232 bed ACF in Westbury, New York for over a decade.

Mr. Zelman is the Chief Operating Officer of Adult Care Management, LLC, a large assisted living/adult care facility management company. He also has nearly 5 years of experience as an administrator of a 130 bed ACF.

Allan Santiago, M.D. attended the University of Santo Tomas (Manila, Philippines) where he earned a Bachelor of Science degree with honors in Pharmacy, and then his medical degree. His medical internship, residency and an infectious disease fellowship were all performed at the Harlem Hospital Center. He holds board certifications in internal medicine and infectious disease medicine. Dr. Santiago has over 20 years of experience and numerous hospital and nursing home affiliations. For past eight years, he has operated a private practice in Brooklyn.

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.

Messrs. Zelman and Newhouse disclosed ownership interest in The Elliot at Catskill and The Sentinel at Amsterdam. The Department has imposed recent enforcements actions on both entities, as follows:

The Elliot at Catskill:

- Fined \$5,700 pursuant to a Stipulation and Order (S&O) dated August 30, 2016 for surveillance findings set forth in the reports of inspection dated July 24, 2015, December 8, 2015 and April 8, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services and 487.11(f)(8) Environmental Standards.
- Fined \$2,500 pursuant to a S&O dated December 19, 2016 for surveillance findings set forth in the reports of inspection dated June 8, 2016 and July 29, 2016. Deficiencies were found under 18 NYCRR 487.4(f) Admission Standards, 487.8(c) Food Service, 487.8(e)(1) Food Service, 487.11(f)(8) Environmental Standards, 487.11(g) Environmental Standards, 487.11(h)(5)

Environmental Standards, 487.11(k)(1-3) Environmental Standards, 487.11(k)(5) Environmental Standards and 487.11(k)(16) Environmental Standards.

- Fined \$7,770 pursuant to a S&O dated October 16, 2017 for surveillance findings set forth in the reports of inspection dated October 25, 2016, May 11, 2017, and August 30, 2017. Deficiencies were found under 18 NYCRR Environmental Standards regulations.

The Sentinel at Amsterdam:

- Fined \$1,065 pursuant to a Stipulation and Order for a survey dated September 28, 2018 which cited violations of Food Service regulations at 18 NYCRR §487.8(d)(1-2).

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.

Financial Analysis

Lease Rental Agreement

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

Premises:	Unit # 240-suite 2 (approximately 2,331 sq. ft.) located at 240 N. Main Street Spring Valley, NY
Lessor:	Valley Square, LLC
Lessee:	Visiting Services, LLC
Term:	10 years
Rental:	Year 1 \$60,000 annually, Year 2 \$61,500 annually, Year 3 \$114,000 annually, Year 4 \$117,000 annually, Year 5 \$120,000 annually, Year 6 \$123,000 annually, Year 7 \$126,000 annually, Year 8 \$129,000 annually, Year 9 \$132,000 annually and Year 10 \$135,000 annually.
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The building in which the D&TC will be located is owned by Valley Square, LLC, whose members are Eric Newhouse (90%) and Naftali Zelman (10%). The applicant submitted an affidavit attesting to the relationship between 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 being of fair market value. The applicant indicated that the reason for the increased rent in Year Three is due to the landlord granting a reduction in the per sq. ft. rate of 50% for the first two years of operation to allow for typical start-up issues.

Total Project Cost and Financing

Total project cost is estimated at \$452,717, further broken down as follows:

Building Acquisition	\$403,719
Planning Consultant Fees	\$10,200
Other Fees (Consultant)	\$5,100
Moveable Equipment	\$29,233
CON Fee	\$2,000
Additional Processing Fee	<u>\$2,465</u>
Total Project Cost	\$452,717
Total Reimbursable Cost	\$0

Project costs were based on a construction start date of December 1, 2017, and a five-month construction period. The applicant advised that construction began in December 2017. Because construction commenced without approval, the costs are not reimbursable.

The applicant's financing plan appears as follows:

Equity	\$48,998
Landlord Funding/Contribution	<u>\$403,719</u>
Total	\$452,717

The landlord financed \$403,719 of the construction cost via equity and will not add the leasehold improvement costs to the base rent as the rental amount will cover the landlord's cost construction.

Operating Budget

The applicant submitted an operating budget, in 2018 dollars, during the first and third years, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$63.13	\$170,451	\$63.13	\$284,085
Medicare FFS	\$70.00	\$144,900	\$70.00	\$241,500
Commercial FFS	\$100.00	\$405,000	\$100.00	\$675,000
Bad Debt		<u>(\$14,407)</u>		<u>(\$24,012)</u>
Total Revenues		\$705,944		\$1,176,573
<u>Expenses</u>				
Operating	\$79.35	\$714,128	\$65.95	\$989,291
Capital	<u>\$7.28</u>	<u>\$65,494</u>	<u>\$7.97</u>	<u>\$119,494</u>
Total Expenses	\$86.63	\$779,622	\$73.92	\$1,108,785
Net Income/(Loss)		<u>(\$73,678)</u>		<u>\$67,788</u>
Visits		9,000		15,000

Utilization by payor source during the first and third years (identical expectations) is as follows:

Medicaid MC	30%
Medicare FFS	23%
Commercial FFS	45%
Charity Care	2%

Off-site home service visits are projected to account for 20% of the facility's total annual visits (1,800 visits in Year One) and are expected to be 50% Medicaid and 50% Medicare patients. Therefore, 900 of the projected 2,700 Medicaid Year One visits and 900 of the projected 2,070 Medicare Year One visits are expected to be off-site home service visits.

Revenue assumptions are based on current average per visit payment rates by payor for primary care D&TC services. The Medicaid payment rate for off-site home visits is expected to be model after the FQHC off-site physician payment and is estimated to be approximately \$63.13 per visit upstate and \$70.67 per visit downstate. For budget purposes, the applicant has conservatively estimated their overall Medicaid rate at the proposed payment rate for off-site primary care service home visits.

Utilization assumptions were based on current projected staffing and operating the facility 250 days a year for 8 hours per day, which is similar to the experience of other D&TC facilities in the area. The home service utilization is estimate based on the experience of the members in providing health care services

Expense assumptions for staffing were based on estimates of total hours worked by position and salary by FTE. All other non-staffing expenses were calculated as a percentage of revenue, where applicable, or estimated based on the experience of the members. The significant increase in capital expense in year three is due to the landlord reducing rent in years one and two by 50% to account for start-up.

The assumptions and budget are reasonable.

Capability and Feasibility

Total project cost of \$452,717 will be met via members' equity of \$48,998 landlord equity of \$403,719 for the leasehold improvements. Construction began in December 2017, and fit-out is deemed near completion.

Working capital requirements are estimated at \$184,798, which is equivalent to two months of third year expenses. The applicant will cover this amount from their personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Visiting Services, LLC, which indicates the availability of sufficient funds to meet project cost and working capital equity requirements. BFA Attachment B is the pro forma balance sheet of Visiting Services, LLC d/b/a Visiting Docs as of the first day of operation, which indicates a net asset position of \$637,515.

The submitted budget indicates a net loss of \$73,678 and a net income of \$67,788 during the first and third years, respectively. Revenues are reflective of current reimbursement rates for diagnostic and treatment centers. The Year One losses will be covered by the members' equity. As shown on BFA Attachment A, significant liquid resources are available to cover the Year One loss, the equity requirement and the working capital requirement.

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

Attachments

BFA Attachment A	Personal Net Worth Statement - Proposed Members of Visiting Services, LLC
BFA Attachment B	Pro Forma Balance Sheet of Visiting Services, LLC d/b/a Visiting Docs
BHFP	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 13th day of December 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 240 North Main Street, Spring Valley, 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:

181183 B

Visiting Services, LLC d/b/a Visiting Docs

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's 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]
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]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
4. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
5. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]

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



Project # 182073-B

**Union Square Eye Center, LLC d/b/a Union Square Eye Care
- Harlem**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** August 22, 2018

Executive Summary

Description

Union Square Eye Center LLC (USEC), an existing New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 1825 Madison Avenue, New York (New York County). The D&TC will be housed in leased space on the ground floor of an existing building in East Harlem. Upon approval by the Public Health and Health Planning Council (PHHPC), the Center will do business as Union Square Eye Care – Harlem, focusing solely on providing ophthalmology and optometry related services. Accordingly, USEC requests certification of the facility for Medical Services – Other Medical Specialties. The D&TC will include a total of six exam rooms, two diagnostic/exam rooms, two diagnostic rooms, a waiting/reception area, patient sub-waiting rooms in the clinical area, office space and the requisite clinical and staff support spaces.

USEC is currently owned by H. Jay Wisnicki, M.D., a board-certified ophthalmologist who operates a private practice, Union Square Eye Care, PLLC, in the Lower East Side of Manhattan. Upon completion of this project and final PHHPC approval, the members of USEC will be Dr. Wisnicki (80%) and his wife, Stephanie Wisnicki, Ed.D. (20%). Dr. H. Jay Wisnicki will serve as Medical Director. The Center will have a Transfer Agreement for backup and emergency services with Mount Sinai Hospital (MSH), which is located 1.2 miles and seven minutes travel time from the proposed D&TC.

Dr. Wisnicki's private practice currently provides over 33,000 patient visits annually, with over one-third covered by Medicaid. The applicant noted

that there is a shortage of ophthalmologists within the proposed Center's Primary Service Area (six per 100,000 population compared to 17.61 per 100,000 within New York County overall and 11.86 per 100,000 statewide). With the recent closure of a private ophthalmology practice in the proposed Center's ZIP code, the D&TC will help fill the immediate eye care needs of the community.

The services to be provided will be comprised of ophthalmologic care, including but not limited to: adult, pediatric and diabetic eye exams; cataract evaluation; glaucoma evaluation and monitoring; retinal disease; strabismus (eye muscle problems); eyelid conditions; eye injuries or trauma; contact lenses; and prescriptions for glasses. The proposed Center will be able to treat and diagnose both routine and complex eye conditions on-site, without the need to go to an urgent care center or emergency room. The applicant has a close working relationship with MSH, and true emergency cases will be sent to MSH's nearby main campus.

OPCHSM Recommendation

Contingent Approval

Need Summary

The Center proposes to provide Medical Services – Other Medical Specialties as the center will be offering ophthalmology and optometry services. The service area currently has fewer ophthalmologist than would be expected for the population. The number of projected visits is 17,397 in Year One and 31,149 in Year Three.

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 for this application. Prior to becoming certified as a D&TC, USEC is undertaking construction to fit-out and equip the space. Dr. Wisnicki will then operate his private ophthalmology practice at the proposed site (additional office location of Union Square Eye Care, PLLC) while this CON application is under review. The proposed budget is as follows:

Revenues	\$3,832,363
Expenses	<u>3,276,960</u>
Gain	\$555,403

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
5. Submission of evidence of applicant's site control, acceptable to the Department. [CSL]

Approval conditional upon:

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

December 13, 2018

Need and Program Analysis

Program Description

Proposed Operator	Union Square Eye Center LLC
To Be Known As	Union Square Eye Care – Harlem
Site Address	1825 Madison Avenue New York, NY (New York County)
Services	Medical Services – Other Medical Specialties
Hours of Operation	Monday & Friday 8:00 am – 5:00 pm Tuesday & Thursday 8:30 am – 6:00 pm Wednesday 8:30 am – 5:30 pm (Expanded as needed to address demand)
Staffing (1st Year / 3rd Year)	9.0 FTEs / 16.0 FTEs
Medical Director(s)	H. Jay Wisnicki, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Mount Sinai Hospital 1.2 miles / 7 minutes away

Analysis

The primary service area is comprised of the neighborhoods of East Harlem and Central Harlem in New York County, which includes the zip codes of 10026, 10027, 10029, 10030, 10035 and 10037. The applicant noted that there is a shortage of ophthalmologists within the proposed Center's Primary Service Area (six per 100,000 population as compared to 17.61 per 100,000 within New York County overall and 11.86 per 100,000 statewide). The Health Resources and Services Administration (HRSA) has designated East Harlem a Medically Underserved Area and a Health Professional Shortage Area for Primary Care. With the recent closure of a private ophthalmology practice in the proposed Center's service area, this D&TC will help fill the immediate eye care needs of the community. The center projects that approximately 40% of visits will be covered by Medicaid.

The center will offer the full range of ophthalmologic care, including but not limited to: adult, pediatric and diabetic eye exams, cataract evaluation, glaucoma evaluation and monitoring, retinal disease, strabismus (eye muscle problems), eyelid conditions, eye injuries or trauma, contact lenses and prescriptions for glasses. The proposed center will be able to treat and diagnose both routine and complex eye conditions onsite, without the need to go to an urgent care center or emergency room. The hours of operation for the center will be Monday and Friday from 8 am until 5 pm, Tuesday and Thursday from 8:30 am until 6 pm, and Wednesday from 8:30 am until 5:30 pm. The center may expand its hours of operation to accommodate additional volume/demand and access, as needed.

The applicant projects 17,397 visits for Year One and 31,149 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 members of Union Square Eye Center LLC are:

<u>Name</u>	<u>Interest</u>
H. Jay Wisnicki, M.D.	80%
Stephanie Wisnicki, EdD	20%
Total	100%

Dr. H. Jay Wisnicki is an ophthalmologist in Manhattan who was formerly the Director of Ophthalmology at Mount Sinai Beth Israel for over two decades. Dr. Wisnicki currently operates a private ophthalmology practice with ten eye care providers (Union Square Eye Care, PLLC) that provides over 33,000 annual patient visits at 235 Park Ave South (at 19th Street), in the Lower East Side of Manhattan.

Dr. Stephanie Wisnicki served as the Practice Administrator of Union Square Eye Care, PLLC between 2010 and 2017. In that role, she was responsible for marketing and operational efficiencies, overseeing

financial operations, billing, and personnel management. Since 2017, she has been the Chief Operating Officer with a myriad of responsibilities, to include designing and implementing business strategies, plans and procedures and overseeing the daily operations of the company. Prior to her employment with Union Square Eye Care, Dr. Wisnicki was employed by the Clark Mills School District (Manalapan, NJ), culminating in assignment as Principal of Clark Mills School, a position she held for over eight years.

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. H. Jay Wisnicki disclosed that, in 2017, he was named (as employer) in a malpractice case against a previously employed physician. The complaint alleged negligence in surgical technique during a cataract surgery performed by an employed ophthalmologist in August 2015. The plaintiff claimed the surgery lasted longer than usual and resulted in (known) complications, poor healing and reduced vision (20/40 as opposed to 20/20). The case is in the discovery phase.

Conclusion

Approval of this project will provide for the increased access to ophthalmology and optometry services to the residents of East and Central Harlem neighborhoods and the surrounding communities within New York 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.

Financial Analysis

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date:	March 12, 2018
Premises:	4,780 square feet located at 1825 Madison Avenue, New York, New York 10035
Landlord:	1825 Madison Retail, LLC
Tenant:	Union Square Eye Center LLC
Rental:	Base rent of \$175,000 per year (\$14,583.33 per month) for the first year with a 2.5% increase thereafter. Additional rent of \$13,500 will be paid annually for common area spaces.
Term:	20 years
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting that there is no relationship between landlord and tenant. Letters from two New York real estate brokers were submitted attesting to the reasonableness of the rent.

Operating Budget

The applicant has submitted their first and third year operating budget, in 2018 dollars, as shown below:

Revenue	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Medicare	\$130.52	\$641,900	\$130.60	\$1,064,361
Medicaid	\$121.64	873,375	\$121.38	1,574,216
Commercial	\$130.36	609,175	\$130.34	1,159,356
Private Pay	\$110.00	<u>19,250</u>	\$110.00	<u>34,430</u>
Total Revenue		\$2,143,700		\$3,832,363
Expenses				
Operating	\$86.30	\$1,501,415	\$85.41	\$2,660,549
Interest	\$6.87	119,445	\$2.65	82,689
Rent	<u>\$28.73</u>	<u>499,833</u>	<u>\$17.13</u>	<u>533,722</u>
Total Expenses	\$121.90	\$2,120,693	\$105.20	\$3,276,960
Net Income		<u>\$23,007</u>		<u>\$555,403</u>
Visits		17,397		31,149
Cost/Visit		\$121.90		\$105.20

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

Payor	Year One		Year Three	
	Visits	%	Visits	%
Medicare	4,918	28.3%	8,150	26.2%
Medicaid	7,180	41.3%	12,969	41.6%
Commercial	4,673	26.8%	8,895	28.6%
Private Pay	175	1.0%	313	1.0%
Charity Care	101	0.6%	197	0.6%
Other	<u>350</u>	<u>2.0%</u>	<u>625</u>	<u>2.0%</u>
Total	17,397	100%	31,149	100%

The following is noted with respect to the submitted budget:

- Revenues by payor are based upon the average per visit reimbursement experience of Dr. Wisnicki's private practice, with assumptions given for Article 28 status. Private Pay includes patients covered under a sliding fee scale per USEC's policy to provide reduced cost care. Other visits represent actual and expected uncollectible care (bad debt).
- Expense and utilization assumptions are based on the historical experience of Dr. Wisnicki's private practice and similar D&TCs in the geographical area.

Capability and Feasibility

There are no project costs associated with this application. Prior to becoming certified as a D&TC, USEC will undertake construction to fit-out and equip the space. Dr. Wisnicki will then operate his private ophthalmology practice at the proposed site (additional office location of Union Square Eye Care, PLLC) while this CON application is under review.

Working capital requirements are estimated at \$546,160 based on two months of third year expenses to be satisfied via members' equity of \$292,998 and a \$253,162 loan for a three-year term at 3% interest. Banyan Tree Financial has provided a letter of interest at the stated terms. BFA Attachment A is the net worth of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$582,596.

The submitted budget indicates the facility will generate net income of \$23,007 and \$555,403 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for D&TC ophthalmology services.

Attachments

BFA-Attachment A	Net Worth of Proposed Members
BFA-Attachment B	Pro Forma Balance Sheet, Union Square Eye Center 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 13th day of December 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 diagnostic and treatment center at 1825 Madison Avenue, NY, 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:

182073 B

FACILITY/APPLICANT:

Union Square Eye Center, LLC d/b/a Union
Square Eye Care - Harlem

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
5. Submission of evidence of applicant's site control, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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 # 181268-E

Oswego Health Home Care, LLC

Program: Certified Home Health Agency
Purpose: Establishment

County: Oswego
Acknowledged: June 20, 2018

Executive Summary

Description

Oswego Health Home Care, LLC (OHHC), a proprietary, Article 36 certified home health agency (CHHA) located at 113 Schuyler Street, Fulton (Oswego County), requests approval to establish St. Joseph's Health, Inc. (SJHI) as the parent and Trinity Health Corporation (Trinity Health) as controlling persons of the CHHA. The members of OHHC are Embracing Age, Inc. (Embracing Age) and Oswego Health, Inc. (Oswego Health), both New York not-for-profit corporations. Embracing Age holds a 40% membership interest and Oswego Health holds a 60% membership interest in OHHC.

On July 1, 2016, SJHI become the sole member of Embracing Age. SJHI, a New York not-for-profit corporation formed on October 6, 2014, is the parent corporation of a health care system that includes St. Joseph's Hospital Health Center (Hospital), an Article 28 acute care hospital located in Syracuse. The Hospital is also licensed to operate an Article 36 CHHA. SJHI's sole member is Trinity Health, an Indiana non-profit organization with a corporate office in Livonia, Michigan. Trinity Health is the parent of a national health care system with operations across 21 states other than New York. The organization was formed via the affiliation of Trinity Health, Inc. with Catholic Health East (CHE), which joined together in May 2013 forming a new corporation, CHE Trinity, Inc. (sole member of the two entities).

On July 1, 2014, Trinity Health, Inc., CHE and CHE Trinity, Inc. officially merged, and the surviving entity's name became Trinity Health Corporation.

Embracing Age's certificate of incorporation reserves certain governance authorities to SJHI and Trinity Health. As a result, both SJHI and Trinity Health are considered "controlling persons" of the CHHA Program.

BFA Attachment A presents the corporate organizational chart post-closing.

OHHC is also proposing to enter into a management agreement with St. Joseph's Hospital Health Center, which is currently under review by the Department.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to 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

There are no project costs or budgets associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed management services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a copy of the certificate of incorporation and bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a copy of the certificate of incorporation and bylaws of St. Joseph's Health, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of the transfer agreement from the applicant, acceptable to the Department. [CSL]
5. Submission of a copy of the management agreement of 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

December 13, 2018

Need and Program Analysis

Background

Oswego Health Home Care, LLC, a limited liability company, seeks approval to establish St. Joseph's Health, Inc., a not-for-profit corporation, and Trinity Health Corporation, an Indiana not-for-profit corporation, as controlling persons of the Certified Home Health Agency under Article 36 of the Public Health Law.

Oswego Health Home Care, LLC serves the residents of Oswego county from an office located at 113 Schuyler Street, Suite 3, Fulton, New York 13069 and provides the following services:

Nursing	Home Health Aide	Nutrition
Speech/Language Pathology	Medical Social Services	Physical Therapy
Occupational Therapy	Medical Supply Equipment & Appliances	

The membership of Oswego Health Home Care, LLC is as follows:

Oswego Health, Inc. 60%
Embracing Age, Inc. 40%

On July 1, 2016, St. Joseph's Health, Inc. became the sole member of Embracing Age, Inc. The sole parent of St. Joseph's Health, Inc. is Trinity Health Corporation.

Oswego Health Home Care, LLC has proposed to enter into a management agreement with St. Joseph's Hospital Health Center which is currently under review by the Department of Health.

The corporate organizational structure of St. Joseph's Health, Inc. includes the following providers:

- St. Joseph's Hospital Health Center (Hospital)
- St. Joseph's Hospital Health Center CHHA (CHHA)
- Iroquois Nursing Home, Inc. (RHCF)
- Oswego Health Home Care, LLC (CHHA)
- Franciscan Health Support, Inc. (LHCSA)

The corporate organizational structure of Trinity Health Corporation includes additional health care providers located in New York State, over which Trinity Health Corporation has control. (See Programmatic Attachment A – Trinity Health Facilities in NYS) The following providers are therefore affiliated with each board member of Trinity Health Corporation named below:

St. Peter's Health Partners (Capital Region)

- St. Peter's Hospital (Hospital)
- Albany Memorial Hospital (Hospital)
- Samaritan Hospital (Hospital)
- Seton Health System, Inc., d/b/a St. Mary's Hospital, Troy (Hospital)
- Sunnyview Hospital and Rehabilitation Center (Hospital)
- St. Peter's Ambulatory Surgery Center, LLC (ASC)
- Villa Mary Immaculate, d/b/a St. Peter's Nursing and Rehabilitation Center (RHCF)
- Our Lady of Mercy Life Center (RHCF)
- Seton Health at Schuyler Ridge Residential Health Care (RHCF)
- The James A. Eddy Memorial Geriatric Center, Inc. (RHCF and ACF/EH)
- The Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green (RHCF)
- Beverwyck, Inc., d/b/a Eddy Village Green at Beverwyck (RHCF and ACF/EH)
- Heritage House Nursing Center, Inc., d/b/a Eddy Heritage House Nursing and Rehab Center (RHCF)
- The Community Hospice, Inc. (Hospice)
- Home Aide Service of Eastern New York, Inc., d/b/a Eddy Visiting Nurse and Rehab Association (CHHA)

- Eddy Licensed Home Care Agency, Inc. (LHCSA)
- Senior Care Connection, Inc., d/b/a Eddy SeniorCare (PACE)
- Glen at Highland Meadows, Inc., d/b/a The Terrace at the Glen (ACF/EH)
- The Marjorie Doyle Rockwell Center, Inc. (ACF)
- Glen Eddy, Inc. (ACF/EH)
- Hawthorne Ridge, Inc. (ACF)

Catholic Health System, Inc. (Western New York)

- Sisters of Charity Hospital (Hospital)
- Kenmore Mercy Hospital (Hospital)
- Mount St. Mary’s Hospital (Hospital)
- Mercy Hospital of Buffalo (Hospital)
- Mercy Hospital Skilled Nursing Facility (RHCF)
- Father Baker Manor (RHCF)
- McAuley Residence (RHCF)
- McAuley – Seton Home Care Corporation (CHHA)
- Niagara Homemaker Services, Inc. d/b/a Mercy Home Care of Western New York (LHCSA)
- Catholic Health System Program of All-inclusive Care for the Elderly, Inc. (PACE)
- CHS LIFE (PACE)

In addition, the corporate organizational structure of Trinity Health Corporation also includes over 93 hospitals and 120 community care health care facilities and providers located in 21 additional states. For a complete listing of these out-of-state facilities, please see Programmatic Attachment B – Trinity Health Out-of-State Facilities.

Character and Competence Review

The Board of Directors of St. Joseph’s Health, Inc. is as follows:

Craig M. Boise , Esq. – Board Member Dean, Professor of Law, Syracuse University College of Law	Sr. Helen Marie Burns – Board Member Retired
James P. Cotelingam – Board Member Vice President, Senior Vice President, Strategy, Trinity Health	Santo M. Di Fino , MD – Board Member, Treasurer Oncologist, Hematologist, Hematology-Oncology Associates of CNY
Leslie Paul Luke – Board Member/President/CEO President, CEO, St. Joseph’s Health	John D. Marshall , CPA – Board Member Senior Counsel, Bonadino & Co, LLP
Michael F. Meath – Board Member Visiting Assistant Professor, Syracuse University	Gina Myers , Ph.D., RN – Board Member Adjunct Professor, Le Moyne College <u>Affiliations</u> St. Joseph’s College of Nursing St. Joseph’s Hospital
Sr. Kathleen Osblet – Board Member Founder, Executive Director, Director of Mission Outreach, Francis House, Inc.	Merriette Chance Pollard – Board Member Retired
Pawan Rao , MD – Board Member, Vice Chair Nephrologist, Nephrology Hypertension Associates of CNY, PC Medical Director, St. Joseph’s Dialysis Program <u>Affiliation</u> St. Joseph’s Dialysis Program	William Roberts – Board Member Retired
Vincent P. Sweeney – Board Member, Chair President, Syracuse Office Environments	Paul G. Tremont – Board Member President, CEO, SRC Inc.

<p>Lowell A. Seifter, Esq. – Board Officer, Secretary General Counsel, St. Joseph’s Hospital Health Center <u>Affiliation</u> St. Joseph’s Hospital Health Center</p>	
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The Board of Directors of Trinity Health Corporation is as follows:

<p>Kevin P. Barnett – Board Member Senior Investigator, Public Health Institute <u>Affiliation</u> Trinity Health (MI)</p>	<p>James Bentley, Ph.D. – Board Member, Chair Retired <u>Affiliations</u> Catholic Health East (PA) CHE Trinity Health (MI) Trinity Health (MI)</p>
<p>Joseph Betancourt, MD (MA) – Board Member Physician, Director of Disparities Solutions Center, Massachusetts General Hospital President, Co-Founder, Owner, Quality Interactions <u>Affiliations</u> Neighborhood Health Plan Trinity Health</p>	<p>Melanie C. Dreher, Ph.D, RN (IL) – Board Member Retired <u>Affiliations</u> Wellmark Trinity Health</p>
<p>Mary M. Fanning, RSM – Board Member Retired <u>Affiliations</u> Trinity Health (MI) Mercy Health Services (MD) Catholic Health East (PA)</p>	<p>Richard J. Gilfillan – President, CEO President, CEO, Trinity Health <u>Affiliation</u> Trinity Health (MI)</p>
<p>Mary Catherine Karl – Vice-Chair Retired <u>Affiliations</u> BayCare Health System (FL) St. Anthony’s Hospital (FL) BayCare Health System Insurance (FL) Catholic Health East (PA) Surgical Safety Institute (FL) Trinity Health (MI)</p>	<p>George M. Philip, Esq. – Board Member Retired <u>Affiliations</u> St. Peter’s Hospital Catholic Health East (PA) Trinity Health (MI)</p>
<p>Sr. Kathleen M. Popko, SP – Board Member President, Sisters of Providence <u>Affiliations</u> Trinity Health Corporation (MI) Catholic Health East (PA) Sisters of Providence Health System (MA) Saint Joseph of the Pines, Inc. (NC) Mary’s Meadow at Providence Place (MA)</p>	<p>David Southwell – Board Member Retired <u>Affiliations</u> Trinity Health (MI)</p>
<p>Sr. Joan Marie Steadman, CSC – Board Member Full Time Ministry <u>Affiliations</u> Loyola University Medical Center (IL) Gottlieb Memorial Hospital, (IL) O’Connor Hospital (CA) Saint Louise Regional Hospital (CA) Seton Medical Center (CA) Saint Agnes Medical Center (CA) Hospice of the Valley (CA)</p>	<p>Roberta Waite, Ed.D., RN (PA) – Board Member Assistant Dean, Professor, Drexel University <u>Affiliations</u> Catholic Health East Trinity Health</p>

<p>Larry Warren – Board Member Retired <u>Affiliation</u> Trinity Health (MI)</p>	<p>Linda J. Werthman, LMSW (MI) – Board Member Retired Adjunct Associate Professor of Social Work and Field Liaison, University of Detroit Mercy <u>Affiliations</u> CHE Trinity Health Trinity Health</p>
<p>Cynthia Clemence, CPA (MI) – Board Officer, Treasurer Interim CFO/Treasurer</p>	<p>Paul G. Neumann, Esq. (MI, CO, CA) – Board Officer, Secretary Executive Vice President, General Counsel, Trinity Health Corporation</p>

The Board Members of St. Joseph’s Health, Inc. disclosed an investigation on issues related to Medicare and/or Medicaid fraud. On June 4, 2016, the United States Attorney’s office for the Northern District of New York filed a Civil Investigation Demand as a result of the complaint of a qui tam relator. As a result of this investigation, the hospital entered into a settlement agreement with the Federal and State governments on August 1, 2016. The hospital accepted responsibility for submitting claims to Medicaid as if one member of the CPEP Professional Staff was present for all Mobil Crisis Outreach visits when in actuality that was not the case. Since the regulations require one member of the CPEP Professional staff to be present for all Mobil Crisis Outreach visits, the hospital’s bills to Medicaid were not in compliance with the law. The hospital paid \$3,200,000 in full settlement of this claim.

Craig M. Boise is currently a defendant in a lawsuit filed by a terminated employee of a law school where Mr. Boise previously served as dean. The suit was dismissed on summary judgement at the U.S. District Court, Northern District of Ohio. This case is now on appeal with the U.S. Court of Appeals 6th Circuit.

William Roberts disclosed that during his time practicing urology he was named as a defendant/co-defendant in three malpractice suits. Only one of these suits occurred within the past ten years. The final closing of this case occurred on June 3, 2015 and resulted in a total settlement of \$875,000, of which Dr. Roberts portion was \$437,500.

The Pennsylvania Department of State, Bureau of Professional and Occupational Affairs and the Massachusetts Board of Registration in Medicine, indicate no issues with the licensure of the health professionals associated with this application.

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

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

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

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

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Ambulatory Surgery Centers for the time-period 2011 through 2018, and reports as follows:

- An enforcement action was taken against St. Joseph’s Hospital Health Center in September 2012, based on a survey completed in August 2010, for an incident relating to a patient’s fall. A civil penalty in the amount of \$22,000 was imposed and paid.
- An enforcement action was taken against St. Peter’s Hospital in August 2016, based on a survey completed in January 2016, for an Immediate Jeopardy situation in Food and Dietetic Services. A civil penalty in the amount of \$2000 was imposed and paid.

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers reported that during the time-period 2011 to 2018, the remaining affiliated Hospitals and Ambulatory Surgery Centers have no histories of enforcement action taken.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID has reviewed the compliance histories of the affiliated Nursing Homes for the time-period 2011 to 2018, and reports as follows:

- An enforcement action was taken against Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green (RHCF) in March 2017, based on a survey completed on August 17, 2016, citing a violation in 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential. A state civil penalty in the amount of \$2000 was imposed and paid. In addition, a federal Civil Monetary Penalty of \$3963 was imposed and paid.
- An enforcement action was taken against Iroquois Nursing Home, Inc. (RHCF) in January 2017, based on a survey completed on April 13, 2016, citing Immediate Jeopardy and violations in 10 NYCRR 415.4(b) Staff Treatment of Residents: Free from Mistreatment, Neglect, and Misappropriation of Property; 415.4(b) Staff Treatment of Residents: Policy and Procedure Manual Development Regarding Staff Treatment of Residents; 415.4(b)(1)(i) Abuse: Verbal, Sexual, Physical, Mental, Corporal Punishment, and Involuntary Seclusion; and 415.26 Administration. A state civil penalty in the amount of \$16,000 was imposed and paid. No federal Civil Monetary Penalty was imposed.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reported that during the time-period 2011 to 2018, the remaining affiliated Nursing Homes have no histories of enforcement action taken.

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agencies, Licensed Home Care Services Agencies, and Hospice, for the time-period 2011 to 2018, and reports as follows:

- An enforcement action was taken against McAuley – Seton Home Care Corporation (CHHA) in June 2013, based on a survey completed on September 15, 2011, citing violations in 10 NYCRR 763.11(b) Governing Authority; 763.5(a) Patient Referral, Admission, and Discharge; 763.6(b) Patient Assessment and Plan of Care; 763.6(c) Patient Assessment and Plan of Care; and 763.7(a) Clinical Records. A civil penalty in the amount of \$5500 was imposed and paid.

The NYS Department of Health Division of Home and Community Based Services reported that during the time-period 2011 to 2018, the remaining affiliated Certified Home Health Agencies, Licensed Home Care Services Agencies, and Hospice have no histories of enforcement action taken.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Programs reviewed the compliance histories of the affiliated Adult Care Facilities/Assisted Living Programs and Enriched Housing Programs, for the time-period 2011 to 2018, and reports as follows:

- An enforcement action was taken against Hawthorne Ridge, Inc. (ACF) in March 2012, based on an inspection completed on September 14, 2010, citing a violation in 18 NYCRR 486.5(a)(4)(iii) Systemic Endangerment. A civil penalty in the amount of \$1000 was imposed and paid.
- Hawthorne Ridge was fined nine hundred twenty-four dollars pursuant to a stipulation and order dated August 15, 2018 for inspection findings on November 23, 2016 and March 8, 2018. Upon inspection, violations of Article 7 of the Social Services Law, Article 46-B of the Public Health Law and 10 NYCRR 1001.7(k)(5).

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Programs reported that during the time-period 2011 to 2018, the remaining affiliated Adult Care Facilities/Assisted Living Programs and Enriched Housing Programs have no histories of enforcement action taken.

The NYS Department of Health Office of Health Insurance Programs, Bureau of Managed Long-Term Care, reviewed the compliance histories of the affiliated PACE / LIFE Programs for the time-period 2011 to 2018, and reported that during that time-period, the affiliated PACE / LIFE Programs have all remained in compliance with no histories of enforcement action taken.

Out-of-state compliance requests were sent to all the states identified in Programmatic Attachment B – Trinity Health Out-of-State Facilities. The out-of-state compliance information used for this review was taken from Project 172230, which received contingent approval from the Public Health and Health Planning Council on April 16, 2018. The applicant has submitted a signed affidavit attesting to out-of-state findings from April 2018 – Present. Please see Programmatic Attachment C: Affidavit of Out-of-State Enforcement Actions.

- The State of Maryland reports that, during the time-period 2011 – 2018, an enforcement action was taken against Holy Cross Rehabilitation and Nursing (Sanctuary at Holy Cross), a nursing home located in Maryland, in September 2016, based on a February 2016 standard survey, citing violations in Quality of Care: Accidents/Hazards/Environment/Supervision. A federal Civil Monetary Penalty of \$74,700 was imposed and paid. The remaining Maryland providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.
- The State of Indiana reports that, during the time-period 2011 – 2018, an enforcement action was taken against Sanctuary at Holy Cross, a nursing home located in Indiana, in January 2017, based on a September 2016 standard recertification survey, citing violations in Quality of Care: Necessary Care and Services/Highest Practicable Well-Being. A state civil penalty of \$3000 was imposed and paid. The remaining Indiana providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.
- The State of Iowa reports no enforcements, but does report the following three issues for the time-period 2011 - 2018:
 - An Immediate Jeopardy situation was identified at Mercy Medical Center (Hospital) in January 2017, citing violations in the federal Conditions of Participation for 42 CFR 482.12 Governing Body; 42 CFR 482.21 Quality Assessment and Performance Improvement Program; 42 CFR 482.23 Nursing Services; and 42 CFR 482.27 Laboratory Services. However, the Immediate Jeopardy and citations were ultimately not enforced.
 - Condition level non-compliance was identified at Mercy Home Care (CHHA), a deemed Home Health Agency surveyed by an accreditation agency, in June 2016. Per federal requirements, the agency was ultimately prohibited from providing home health aide training and testing for the two-year period from 6/29/2016 through 06/29/2018. No state enforcement was imposed.
 - Ellen Kennedy Assisted Living Center (ALP) had violations cited in September 2016, in Sufficient Staffing and Nursing Reviews. The matter was resolved in November 2016, with no civil penalty enforcement action taken.
- The State of California reports that, during the time-period 2011 – 2018, three separate enforcement actions were taken against Saint Agnes Medical Center, a hospital located in Fresno, California, as follows:
 - Violations based on a survey conducted on January 13, 2012, resulted in a civil penalty of \$50,000 imposed on September 26, 2012. Violations based on a survey conducted on November 17, 2015, resulted in a civil penalty of \$4750 imposed on March 24, 2016. Violations based on a survey conducted on January 11, 2017, resulted in a civil penalty of \$11,250 imposed on February 2, 2017. The State of California reports that none of these enforcement actions involved repetitive violations, and all were resolved as noted above.
- The State of Florida reports that, during the time-period 2011 – 2018, the following enforcement actions were taken:
 - Winter Haven Hospital was assessed an administrative penalty of \$1000 in January 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in January 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in March 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in August 2012 for violations in the area of Emergency Department Services; and an administrative penalty of \$1000 in October 2013 for violations in the area of Inappropriate Restraints.

- Mease Dunedin Hospital was assessed an administrative penalty of \$6000 in June 2012 for violations in the areas of Patient Assessment and Emergency Department Services; and an administrative penalty of \$320 in August 2013 for nonpayment of Life Safety Code survey fee.
- Morton Plant Hospital was assessed an administrative penalty of \$800 in March 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in December 2011 for violations in the area of Nursing Department Policies and Procedures; an administrative penalty of \$1000 in July 2012 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in April 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; and an administrative penalty of \$1000 in July 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.
- Morton Plant North Bay Hospital was assessed an administrative penalty of \$2000 in October 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.
- St. Anthony's Hospital was assessed an administrative penalty of \$5000 in July 2011 for violations in the areas of MRI Alterations, Renovations, and Installation; an administrative penalty of \$600 in January 2014 for nonpayment of Life Safety Code survey fee; an administrative penalty of \$1000 in March 2015 for violations in the area of Nursing Management Functions; an administrative penalty of \$5500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Change in 2014; and an administrative fee of \$471.36, and a reimbursement to the State of \$5553.31, for a total payment of \$6024.67, in September 2017 for recoupment of Medicaid overpayments.
- St. Joseph's Hospital was assessed an administrative penalty of \$1000 in October 2012 for violations in the area of Discharge Planning; and an administrative penalty of \$21,500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Changes in 2014 at St. Joseph's Hospital, St. Joseph's Hospital North, St. Joseph's Hospital South, and St. Joseph's Hospital Behavioral Health Center.
- Bartow Regional Medical Center was assessed an administrative penalty of \$480 in May 2014 for nonpayment of Life Safety Code survey fee.
- Holy Cross Hospital was assessed an administrative fee of \$572.59, and a reimbursement to the State of \$11,364.51, for a total payment of \$11,937.10, in April 2013 for recoupment of Medicaid overpayments; was assessed an administrative fee of \$73.84, and a reimbursement to the State of \$86,982.65, for a total payment of \$87,056.49, in October 2015 for recoupment of Medicaid overpayments; and was assessed a reimbursement payment to the State of a total payment of \$97,620.48, in September 2017 for recoupment of Medicaid overpayments.

CHHA Quality of Patient Care Star Ratings as of November 13, 2018 New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
St. Joseph's Hospital Health Center CHHA	3 out of 5 stars
Oswego Health Home Care, LLC	3.5 out of 5 stars
Eddy Visiting Nurse and Rehab Association	4 out of 5 stars
McAuley – Seton Home Care Corporation	4.5 out of 5 stars

Conclusion

There will be no change in services as a result of this application. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Management Agreement

The applicant has submitted a draft management agreement, the terms of which are summarized below:

Date:	To Be Determined
Facility:	Oswego Health Home Care, LLC (OHHC)
Consultant:	St. Joseph's Hospital Health Center (SJHHC)
Services Provided:	Management Services, Clinical Oversight Services, Administrative Services, Financial Services and Review of Services.
Term:	3-year term
Fee:	Annual Fee of \$76,584 (\$6,383 per month)

While SJHHC will provide all the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Capability and Feasibility

There are no project costs or budgets associated with this application. BFA Attachment B is the consolidated certified financial statements of Trinity Health for the years ended June 30, 2018, 2017 and 2016. As shown, the entity maintained positive working capital and net asset positions from 2016 through 2018. Trinity Health had an operating income of \$46,379,000 in 2016 and \$136,926,000 in 2018, but experienced an operating loss of \$18,115,000 in 2017 due to the following two charges to operations:

- \$248,070,000 of non-cash fixed asset impairment charges that are helping the System right-size inpatient physical plant utilization and reposition in some markets; and
- \$36,184,000 of restructuring charges primarily related to severance and benefits under cost reduction and staffing initiatives currently positioning Trinity Health for lower labor costs in fiscal year 2018.

Trinity Health offset these net operating losses with several nonoperating items, including investment income and equity in earnings of unconsolidated affiliates. Trinity's excess of revenue over expenses, including nonoperating items, was \$1,336,823,000 for 2017 and \$949,130,000 for 2018.

BFA Attachment C is the consolidated certified financial statements of St. Joseph's Health, Inc. and Subsidiaries for the years ending June 30, 2018 and 2017, which shows the entity maintained positive working capital and net asset positions, had operating income of \$3,296,000 in 2017, but experienced an operating loss of \$2,860,000 in 2018. The 2018 loss was due to a continuation of the comprehensive performance improvement plan, including workforce reductions, that were implemented in 2017 to realign the System's cost structure. Excluding the restructuring cost loss of \$3,856,000 (Unusual Item), the facility would have had a net income of \$996,000 in 2018.

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

Attachments

Program Attachment A	Trinity Health Facilities in NYS
Program Attachment B	Trinity Health Out-of-State Facilities
Program Attachment C	Affidavit of Out-of-State Enforcement Actions
BFA Attachment A	St. Joseph's Health – Proposed corporate organizational chart
BFA Attachment B	Trinity Health – June 30, 2018, 2017 and 2016 certified financial statements
BFA Attachment C	St. Joseph's Health, Inc. & Subsidiaries–June 30, 2018 and 2017 certified financial statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 13th day of December 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish establish St. Joseph's Health, Inc., as the parent and Trinity Health as the grandparent of the certified home health agency, 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

181268 E

Oswego Health Home Care, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed management services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a copy of the certificate of incorporation and bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a copy of the certificate of incorporation and bylaws of St. Joseph's Health, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of the transfer agreement from the applicant, acceptable to the Department. [CSL]
5. Submission of a copy of the management agreement of 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 # 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 co-operator/active parent. 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/active parent of many Article 28 facilities in the Capital Region (collectively, the Licensed Entities).

As active parent/co-operator, Trinity will have the operator rights, powers and authorities over the SPHP Licensed Entities under 10 NYCRR §405.1(c) and §600.9(c), specifically:

- 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;

- 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; and
- Approval to participate in the total gross income or net revenue of a medical facility.

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 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 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

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 contingent upon:

1. Submission of a photocopy of an amended Restated Certificate of Incorporations of St. Peter's Health Partners, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of St. Peter's Health Partners, acceptable to the Department. [CSL]
4. 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

December 13, 2018

Need and Program Analysis

Program Description

St. Peter's Health Partners (SPHP) seeks approval for Trinity Health Corporation (Trinity), an Indiana nonprofit organization, to be co-established 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.

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

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 & 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.

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 BRFSS 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 changes to beds or services as a result of this application. 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 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 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 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.

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 13th day of December 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 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 a photocopy of an amended Restated Certificate of Incorporations of St. Peter's Health Partners, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of St. Peter's Health Partners, acceptable to the Department. [CSL]
4. 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 # 182052-E

HQ-WCHN Health System, Inc.

Program: Hospital
Purpose: Establishment

County: Dutchess
Acknowledged: August 20, 2018

Executive Summary

Description

Health Quest Systems, Inc. (Health Quest), a New York not-for-profit corporation, requests approval to affiliate with Western Connecticut Health Network, Inc. (WCHN), a Connecticut non-stock corporation, and transfer control of Health Quest and WCHN to HQ-WCHN Health System, Inc. (HQ-WCHN), a to-be-formed New York not-for-profit corporation. HQ-WCHN will become the sole member and active parent of Health Quest and WCHN, and the active grand-parent and co-operator of the Health Quest not-for-profit Article 28 and Article 36 licensed entities located in New York.

Health Quest's New York licensed entities are as follows:

- Northern Dutchess Hospital, an 84-bed acute care hospital located at 6511 Springbrook Avenue, Rhinebeck (Dutchess County);
- Putnam Hospital Center, a 164-bed acute care hospital located at 670 Stoneleigh Avenue, Carmel (Putnam County);
- Vassar Brothers Medical Center, a 365-bed acute care hospital located at 45 Reade Place, Poughkeepsie (Dutchess County);
- Northern Dutchess Residential Care Facility, a 100-bed RHCF located at 6525 Springbrook Avenue, Rhinebeck (Dutchess County); and
- Health Quest Home Care, a CHHA serving Dutchess County and licensed LHCSA located at 2649 South Road, Poughkeepsie (Dutchess County).

Health Quest will continue to be the sole member of the following Connecticut hospital, an affiliation that began in August 2017:

- Vassar Health Connecticut, Inc. d/b/a Sharon Hospital, a 78-bed acute care community hospital located at 50 Hospital Hill Road, Sharon, Connecticut.

WCHN will continue to be the sole member of its two Connecticut hospitals listed below:

- The Danbury Hospital, a 456-bed (including 26 bassinets) teaching hospital located at 24 Hospital Avenue in Danbury, and its New Milford Hospital campus located at 21 Elm Street in New Milford. In 2014, The Danbury Hospital and The New Milford Hospital transitioned to a single license, combining medical staffs, licensed beds and clinical systems.
- The Norwalk Hospital Association, a 366-bed (including 38 bassinets) Level II Trauma Center hospital located at 34 Maple Street, Norwalk.

The affiliation brings together the Health Quest and WCHN hospitals and their affiliated entities along the New York-Connecticut border, to create a community-based healthcare network in the region of New York's Hudson Valley and Western Connecticut. The proposed system will offer comprehensive primary, secondary, and tertiary care in the service areas currently served by Health Quest and WCHN.

In May 2000, Health Quest became the active parent of Northern Dutchess Hospital and Vassar Brothers Medical Center, along with both of their affiliate entities (CON 992466). In April 2003, Health Quest became the active parent of Putnam Hospital Center (CON 011196).

Approval of this application will give HQ-WCHN Health System, Inc. the ability to exercise certain Article 28 rights, powers and authorities over Health Quest and its New York System Hospitals. The active parent powers under 10 NYCRR 405.1(c) include:

- Appointment and dismissal of management-level employees of New York System Hospitals;
- Approval of the annual capital and operating budgets of New York System Hospitals;
- Approval of the operating policies and procedures of New York System Hospitals;
- Approving and initiating the filing of certificate of need applications by the New York System Hospitals;
- Approval of contracts for management or for clinical services of New York System Hospitals; and
- Approval of any indebtedness and/or settlements litigations of which New York System Hospital is a party to.

The affiliation of Health Quest and WCHN aims to create a health system that will provide residents of New York's Hudson Valley and Western Connecticut with high-quality, compassionate, accessible, and affordable care close to home. There are no costs associated with this project. The Health Systems expects to allocate more resources to patient care by leveraging savings from administrative and technological efficiencies. There are no projected major changes in the staffing, utilization, revenues or expenses for the Health Quest and WCHN affiliates as a direct result of this project. There will be no change in either authorized services or the number or type of

beds as a result of this project, except for removing respiratory therapy from the CHHA's operating certificate to reflect the current services being provided. Upon completion, Health Quest and WCHN hospitals and affiliates will remain separate entities, maintaining separate operating certificates and licenses.

HQ-WCHN Health Systems Inc. will be governed by a Board of Trustees comprised of eight representatives of Health Quest, eight representatives of WCHN, the Chief Executive Officer and President of HQ-WCHN. The Board of Trustees of Health Quest and WCHN will mirror the Board of HQ-WCHN.

BFA Attachment A is the current organizational charts for Health Quest Systems, Inc. and Western Connecticut Health Network, Inc. BFA Attachment B is the proposed organizational chart for the newly formed HQ-WCHN Health System, Inc.

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

There are no project costs or changes in staffing, utilization, operating expense or operating revenue associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a copy of the amended and restated certificate of incorporation of Health Quest Systems, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

December 13, 2018

Need and Program Analysis

Proposal

HQ-WCHN will become the sole member and active parent of Health Quest and WCHN, and the active grand-parent and co-operator of the Health Quest Not-for-profit Article 28 and Article 36 licensed entities located in New York.

The sole proposed change in services is the removal of Respiratory Therapy from the CHHA's operating certificate to reflect the services currently being offered. Other than that, there will be no change in authorized services or the number and type of beds. Upon completion, Health Quest and WCHN hospitals and affiliates will remain separate entities, maintaining separate operating certificates and licenses.

Character and Competence

The HQ-WCHN Health System Board of Trustees, comprised of eight representatives of WCHN, eight representatives of Health Quest, and the Chief Executive Officer and President of HQ-WCHN Health System, is as follows:

David Cyganowski	Joseph DiVestea
Robert Dyson	Carla Gude
Mark Gudis	Richard Jabara
Steven Lant	Mary Madden
Daniel McCarthy	John McGuinness
Michael Nesheiwat, MD	Gregory Rakow
Anne Roby, PhD	Syed Shahid, MD
Ervin Shames	Andrew Whittingham
Robert Friedburg	John Murphy, MD

The Board of Trustees of Health Quest and WCHN will mirror the Board of HQ-WCHN.

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. Shahid, a practicing neurosurgeon, disclosed his malpractice history, with one case falling within the 10-year look-back period. In February 2015, 52-year old patient underwent a cervical discectomy with fusion. The complaint alleged improper performance of surgery which resulted in arterial injury and subsequent stroke. On October 30, 2017, the case was settled globally for \$3M, split equally on behalf of three defendants.

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.

Nine individuals – **DiVestea, Dyson, Friedberg, Gude, Lant, Madden, McGuinness, Nesheiwat, and Rakow**—disclosed an affiliation with Health Quest Systems, Inc.

In June 2018, Health Quest and its subsidiary hospital, Putnam Health Center (PHC), agreed to a settlement of \$15.6 million (\$14.7 million to the federal government and nearly \$900,000 to the state of New York), and entered into a Corporate Integrity Agreement with the Department of Health and Human Services Office of Inspector General, to resolve three lawsuits brought by former employees under the qui tam (whistleblower) provisions of the False Claims Act relating to the submission of inflated and ineligible claims for payment. Specifically:

- From April 2009 through June 2015, Health Quest did not sufficiently document claims for evaluation and management services which were billed two levels higher than justified by medical records.
- From April 2011 through August 2014, Health Quest submitted claims for home health services that lacked sufficient medical records to support the claims.
- From March 2014 through December 2014, PHC submitted false claims for in- and outpatient services referred to PHC by two orthopedic surgeons, in violation of the Physician Self-Referral Law (the Stark Law). Additionally, the physicians received above-fair-market-value compensation for administrative services they provided to the hospital to induce referrals resulting in a violation of the Anti-Kickback Statute.

Prevention Agenda

Health Quest identified the following health issues in their latest community service plan:

- Reduce chronic disease and obesity in children and adults
- Reduce falls and associated hospital admissions among vulnerable populations
- Reduce chronic disease and obesity in children and adults
- Promote mental, emotional and behavioral (MEB) well-being in the community and prevent substance abuse and other MEB disorders
- Reduce falls and associated hospital admissions among seniors age 65+

Health Quest is implementing the following interventions to address identified health issues:

- Provides expert resources for Dutchess County Office of the Aging's Matter of Balance Clinic
- Offers chronic disease self-management and diabetes self-management classes to individuals who suffer from ailments that need consistent attention
- Offers the National Diabetes Prevention Program
- Offers suicide prevention trainings at Putnam Hospital Center such as SAFETALK (Suicide Alertness for Everyone) and ASIST (Applied Suicide Intervention Skills Training) in conjunction with Mental Health America - Putnam County and the Putnam County Department of Health

Health Quest collaborates with the following organizations on Prevention Agenda efforts:

- The Dutchess County and Putnam County departments of health
- The Dutchess County Chronic Disease Prevention Workgroup
- Putnam Falls Prevention Task Force

Health Quest reports that they track their Prevention Agenda progress using metrics from:

- National Diabetes Prevention Program participants
- Matter of Balance Program participants

On Schedule H of IRS Form 990s filed by Northern Dutchess Hospital, Vassar Brothers Medical Center, and Putnam Hospital Center for tax year 2016, Health Quest collectively reported \$278,912 of spending on community health improvement services (0.03% of total operating expenses). Health Quest is encouraged to increase investments in the Prevention Agenda initiatives they have committed to implement, and reflect them in the community health improvement services category of Schedule H.

Conclusion

Other than a correction to the CHHA operating certificate to remove Respiratory Therapy, there will be no changes to beds or services provided as a result of this application. 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 Analysis

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 2016-2017 consolidated financial statements of Health Quest and their internal financial statements as of June 30, 2018. As shown, Health Quest had a positive working capital position, positive net assets of \$664,603,000 in 2017 and \$702,971,000 as of June 30, 2018. Operating income was \$68,261,000 for 2017 and \$36,495,000 for the first half of 2018.

BFA Attachment D is the 2017 consolidated financial statements of WCHN and their (eight-month YTD) internal financial statements ending May 31, 2018. As shown, WCHN had a positive working capital position, positive net assets of \$883,240,000 in 2017 and \$880,002,000 as of May 31, 2018. Operating income was \$3,002,000 for 2017 with a \$18,032,000 loss as of May 31, 2018. The applicant states the May 31, 2018 loss was directly impacted by the costs associated with the implementation of Cerner, WCHN's new electronic health record system, which went live on March 3, 2018. Many ambulatory departments reduced elective schedules for the month of March to allow time for staff to adapt to the new system, which unfavorably impacted patient revenues. Post go-live, the network focused on system stabilization, which required incremental resources, added FTEs and external consulting expertise. WCHN has implemented several cost-cutting measures for the remainder of the year to help offset some of the negative variances. Examples of the initiatives include: a temporary hold on hiring non-essential positions, reductions in overtime and agency usage, elimination of non-critical travel, and non-salary costs reductions in area of purchasing and marketing.

Attachments

BFA Attachment A	Current Organizational Chart
BFA Attachment B	Proposed Organizational Chart
BFA Attachment C	Financial Summary 2016 - 2017 consolidate financial statement and the June 30, 2018 internal financial statements of Health Quest Systems, Inc and Subsidiaries.
BFA Attachment D	Financial Summary 2016 – 2017 consolidated certified financial statement and the May 31, 2018 internal financial statements of Western Connecticut Health Network, Inc and Subsidiaries.

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 13th day of December 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 HQ-WCHN Health System, Inc. as co-operator of licensed entities owned by Health Quest Systems, Inc., including Northern Dutchess, Putnam, and Vassar Bros. (Hospitals), Northern Dutchess (RHCF), and Health Quest Home Care, Inc. (CHHA & LHCSA), 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:

182052 E

HQ-WCHN Health Systems, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the amended and restated certificate of incorporation of Health Quest Systems, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 172406-B

Queens Boulevard Extended Care Dialysis Center II

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** April 20, 2018

Executive Summary

Description

Queens Boulevard Extended Care Dialysis Center II LLC (QBECDC), an existing New York limited liability company, requests approval to establish and construct a 15-station, Article 28 chronic renal dialysis center. The proposed Center will be in separately designated space at Queens Boulevard Extended Care Facility, a 280-bed, proprietary, Article 28 residential health care facility (RHCF) located at 61-11 Queens Boulevard, Woodside (Queens County). The Center will occupy approximately 4,500 square feet on the ground floor of the RHCF, and will offer dialysis services to the RHCF's patients and to community residents, with its primary service area being Queens County.

The proposed members of QBECDC are Anthony Clemenza, Jr. (50%) and James Clemenza (50%). There is a relationship between QBECDC and Queens Boulevard Extended Care Facility Management LLC, the operator of the RHCF, in that the entities have identical membership.

Queens Boulevard Extended Care Dialysis Center LLC, whose members are identical to the applicant members of QBECDC, was previously approved to establish and construct a 15-station, Article 28 chronic renal dialysis center to be located in the RHCF (CON 152313). This facility is currently under construction. Though both dialysis centers will be located in the same RHCF, they will be operated as distinct facilities with separate physical plant space, entrances, and signage. The applicant indicated that this application seeks to address the growing need for dialysis

services within the resident population of the RHCF and the community, but that the space approved under CON 152313 cannot be expanded to accommodate the additional stations.

The fit-out and equipping of the Center will be the responsibility of the applicant. The space is currently occupied by a 30-slot adult day health care program (ADHCP) operated by the RHCF. CON 181286 is concurrently under review to relocate the ADHCP, an off-site location directly across the street from the RHCF. The applicant will lease the space from Queens Boulevard Extended Care Facility Management LLC.

OPCHSM Recommendation

Contingent Approval

Need Summary

Queens County has a current need for additional stations. Locating the center within the nursing home 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 cost of \$2,015,340 will be financed with equity of \$201,534 from the proposed members' personal resources and a \$1,813,806 loan for seven years with interest based on the 7-year U.S. Treasury rate plus 250 basis points, or an indicative rate of 5.64% as of October 4, 2018. Investors Bank has provided a letter of interest. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,775,328	\$2,488,334
Expenses	<u>1,767,049</u>	<u>2,387,158</u>
Net Income	\$8,279	\$101,176

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 for project costs, 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 an amended Operating Agreement of Queens Boulevard Extended Care Dialysis Center II LLC, which is acceptable to the department. [CSL]
6. Submission of a photocopy of the proposed Certificate of Amendment to the Articles of Organization of Queens Boulevard Extended Care Dialysis Center II LLC, which is 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-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 July 1, 2019 and construction must be completed by June, 30, 2020, 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

December 13, 2018

Need Analysis

Analysis

The primary service area for the facility will be Queens County which had a population estimate of 2,358,582 for 2016. The percentage of the population aged 65 and over was 14.2%. The nonwhite population percentage was 51.8%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are shown below.

	Queens County	New York State
Ages 65 and Over	14.2%	15.4%
Nonwhite	51.8%	30.1%

Source: U.S. Census 2017

Capacity

The Department's guidelines to estimate capacity for chronic dialysis stations are as follows:

- 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

Queens County Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021							
County	Existing Stations	Pending Stations	Total Current Stations	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)
Queens	651	341	992	1059	67	15	52
As of November 6, 2018							
Column (b): Pending Stations: 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							

Queens Boulevard Extended Care Facility currently has 20 RHCf residents who require dialysis treatment, and must be transported to an off-site facility three days per week. The second proposed dialysis center on-site will enable more residents to receive dialysis on site.

Conclusion

These 15 stations are needed in Queens.

Program Analysis

Program Description

Queens Boulevard Extended Care Dialysis Center II LLC (QBECDC) seeks approval for the establishment and construction of a freestanding 15-station chronic renal dialysis center to be located at Queens Boulevard Extended Care Facility, a 280-bed residential health care facility (RHCF) located at 61-11 Queens Boulevard in Woodside (Queens County).

This project is companion to CON #181286 which proposes to relocate the Adult Day Health Care Program.

Proposed Operator	Queens Boulevard Extended Care Dialysis Center II LLC
Site Address	61-11 Queens Boulevard Woodside, NY 11377 (Queens County)
Approved Services	Chronic Renal Dialysis (15 Stations)
Shifts/Hours/Schedule	Will operate two shifts per day, six days a week. Anticipate going to three shifts per day in the fourth year of operation.
Staffing (1st Year/3rd Year)	11.50 FTEs / 15.20 FTEs
Medical Director(s)	Nimesh A. Patel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Long Island Jewish Forest Hills Hospital 3.5 miles / 15 minutes

Character and Competence

The members and managers of Queens Boulevard Extended Care Dialysis Center II, LLC are:

Name	%
Anthony Clemenza, Jr.	50%
James Clemenza	50%

The proposed members have extensive experience operating health related facilities and associated programs. Messrs. Clemenza are also owners/members of Queens Boulevard Extended Care Facility Management, LLC, the operator of Queens Boulevard Extended Care Facility, and as such, handle day-to-day operations to include: purchasing, maintenance, housekeeping, dietary, finance, and administration. Additionally, Mr. Anthony Clemenza also serves as In-house Counsel, coordinating the legal affairs of the facility.

Curriculum vitae (C.V.) and disclosure information was submitted and reviewed for the proposed Medical Director, Nimesh A. Patel, MD. Dr. Patel is board-certified in Internal Medicine with sub-certification in Nephrology. He earned his medical degree in India and completed a nephrology fellowship at Metropolitan Hospital and Our Lady of Mercy Medical Center. Currently, he serves as Chief of Nephrology at Mount Sinai Queens Hospital and has over 15 years of experience in the care and treatment of dialysis patients.

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.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft sublease agreement for the site to be occupied, as summarized below:

Premises:	4,500 square feet located at 61-11 Queens Boulevard, Woodside, New York
Lessor:	Queens Boulevard Extended Care Facility Management, LLC
Lessee:	Queens Boulevard Extended Care Dialysis Center II LLC
Term:	5-year term with a 5-year renewal period
Rental:	\$103,500 annually (\$23.00 per sq. ft.)
Provisions:	Lessee shall be responsible for maintenance, utilities, insurance and real estate taxes.

Queens Boulevard Extended Care Facility Management LLC controls the RHCf site through a lease with the property owner, Queens Boulevard Extended Care Facility Corp. These two companies have common ownership.

The proposed sublease is a non-arm's length agreement. The applicant has submitted an affidavit indicating there is common ownership between the lessor and lessee. Two NYS licensed realtors submitted letters attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$2,015,340 broken down as follows:

Renovation and Demolition	\$1,007,780
Design Contingency	100,778
Construction Contingency	100,778
Architect/Engineering Fees	110,856
Other Fees (Consultant)	25,500
Moveable Equipment	577,980
Interim Interest Expense	78,655
CON Fee	2,000
Additional Processing Fee	<u>11,013</u>
Total Project Cost	\$2,015,340

Project costs are based on a construction start date of July 1, 2019 and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	\$201,534
Bank Loan (5.64% interest #, 7-year term)	1,813,806

Interest to be based on the 7-year U.S. Treasury rate plus 250 basis points. Indicative rate is 5.64% as of October 4, 2018.

Investors Bank has provided a letter of interest for the financing at the stated terms. BFA Attachment A is the net worth statements for the proposed members of QBECDC, which indicated sufficient equity for the transaction.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial	\$303.90	\$331,863	\$303.90	\$474,091
Medicare FFS	\$285.00	\$1,378,260	\$285.00	\$1,956,240
Medicaid MC + FFS	\$266.47	<u>\$83,138</u>	\$266.47	<u>\$83,138</u>
Total Revenues		\$1,793,261		\$2,513,469
Less: Bad Debt		<u>\$17,933</u>		<u>\$25,135</u>
Net Revenues	\$284.51	\$1,775,328	\$284.84	\$2,488,334
<u>Expenses</u>				
Operating	\$226.47	\$1,413,144	\$235.66	\$2,058,684
Capital	<u>\$56.72</u>	<u>\$353,905</u>	<u>\$37.60</u>	<u>\$328,474</u>
Total Expenses	\$283.19	\$1,767,049	\$273.26	\$2,387,158
Net Income		\$8,279		\$101,176
Utilization (Treatments)		6,240		8,736

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

	<u>Year One</u>	<u>Year Three</u>
Commercial	17.5%	17.9%
Medicare FFS	77.5%	78.6%
Medicaid FFS MC	5.0%	3.6%

Volume assumptions are based on current demand for services within the Queens Boulevard Extended Care Facility resident population and growth driven by demographic trends in Queens County. Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services. Expense and utilization assumptions are based on historical trends for other facilities that provide chronic renal dialysis services in Queens County.

Capability and Feasibility

Project costs of \$2,015,340 will be met via equity of \$201,534 from the proposed members and a bank loan of \$1,813,806 at 4.75% interest for a seven-year term. A bank letter of interest has been provided.

Working capital requirements are estimated at \$397,860 based on two months of third year expenses. The applicant will finance \$198,930 for a three-year term with interest at Prime plus 50 basis points, or an indicative rate of 5.75% as of October 9, 2018. The remaining \$198,930 will be provided from equity. Investors Bank has provided a letter of interest for the proposed financing. BFA Attachment A is the personal net worth statements for the proposed members of QBECDC, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and working capital requirement.

BFA Attachment B is the pro forma balance sheet of Queens Boulevard Extended Care Dialysis Center II LLC as of the first day of operation, which indicates a positive net asset position of \$400,484.

The submitted budget indicates a net income of \$8,279 and \$101,176 during the first and third years, respectively. Revenues are based on current reimbursement rates for dialysis services.

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

Attachments

BFA Attachment A	Personal net worth statements for the proposed members
BFA Attachment B	Organization chart
BFA Attachment C	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 13th day of December 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 fifteen (15)-station chronic renal dialysis center at Queens Boulevard Extended Care Facility, a residential health care facility located at 61-11 Queens Boulevard, Woodside, companion to CON #181286, 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:

172406 B

FACILITY/APPLICANT:

Queens Boulevard Extended Care Dialysis
Center II

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 for project costs, 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 an amended Operating Agreement of Queens Boulevard Extended Care Dialysis Center II LLC, which is acceptable to the department. [CSL]
6. Submission of a photocopy of the proposed Certificate of Amendment to the Articles of Organization of Queens Boulevard Extended Care Dialysis Center II LLC, which is 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-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 July 1, 2019 and construction must be completed by June, 30, 2020, 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 # 181405-E
Visiting Nurse Hospice and Palliative Care

Program: Hospice
Purpose: Establishment

County: Monroe
Acknowledged: July 11, 2018

Executive Summary

Description

Visiting Nurse Hospice and Palliative Care (VNH), a voluntary not-for-profit, Article 40 Hospice operated by Visiting Nurse Service of Rochester and Monroe County Inc. (VNSR), requests approval to merge Ontario-Yates Hospice (OYH), a voluntary not-for-profit, Article 40 Hospice operated by Finger Lakes Visiting Nurse Service Inc. (FLVNS), into its operation. VNH is located at 2180 Empire Boulevard, Webster (Monroe County), and is authorized to provide hospice services in Monroe County. OYH is located at 756 Pre-Emption Road, Geneva (Ontario) and is authorized to provide hospice services in Ontario and Yates counties. Upon approval by the Public Health and Health Planning Council (PHHPC), VNH will be the surviving entity, adding Ontario and Yates counties to its authorized geographic service area. There will be no change in services provided.

Strong Home Care Group (SHCG), whose sole member is the University of Rochester, is the corporate parent of VNSR and FLVNS. The corporate restructuring is designed to streamline the governance and operations, reduce duplication, and increase efficiencies. The goals of the merger include reducing administrative overhead related to bank accounts, payrolls, benefits contracts, vendor contracts and payor contracts, and reducing duplication of effort related to cost and statistical reports, financial statements, audits and IRS filings. VNSR and FLVNS each also operate an Article 36 certified home health agency (CHHA). The merger of the CHHA operations to be licensed under VSNR is concurrently under review (CON 181403)

As part of the corporate reorganization, the entities will be rebranded to highlight their relationship to the University of Rochester's health care system, UR Medicine. As such, SHCG is requesting approval to change its corporate name to name to UR Medicine Home Care, Inc. and VNSR is requesting to change its corporate name to UR Medicine Home Care, Certified Services, Inc. d/b/a UR Medicine Hospice. BFA Attachment A presents the organizational chart for the System before and after the merger.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in 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

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

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$10,971,172 vs \$11,761,312), Expenses (\$10,910,186 vs \$11,427,110), Gain/(Loss) (\$60,986 vs \$334,202)

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 Board Resolution authorizing the Visiting Nurse Service of Rochester to merge with the Ontario-Yates Hospice Program of the Finger Lakes, acceptable to the Department. [CSL]
2. Submission of a Board Resolution authorizing the Ontario-Yates Hospice Program of Finger Lakes Visiting Nurse Service to merge with the Hospice Program of Visiting Nurse Service of Rochester and Monroe County, Inc, acceptable to the Department. [CSL]
3. Submission of the applicant's Plan of Merger, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's proposed Certificate of Merger, acceptable to the Department. [CSL]
5. Submission of a copy of the amendment to the certificate of incorporation of the applicant, acceptable to the Department. [CSL]
6. Submission of a copy of the certificate of assumed name of the applicant, acceptable to the Department. [CSL]
7. Submission of a copy of the amendment to the certificate of incorporation of Strong Home Care Group, 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

December 13, 2018

Need and Program Analysis

Description of Project

Visiting Nurse Service of Rochester and Monroe County, Inc, d/b/a Visiting Nurse Hospice and Palliative Care, a not-for-profit business corporation, seeks approval to acquire and merge the assets of Ontario Yates Hospice under Article 40 of the Public Health Law.

At the close of this transaction, Ontario Yates Hospice will ultimately close and Visiting Nurse Hospice and Palliative Care will be the surviving hospice. Additionally, the name of the surviving hospice will be changed to UR Medicine Hospice.

Currently, the operator of Ontario Yates Hospice is Finger Lakes Visiting Nurse Service, Inc. which is controlled by Visiting Nurse Service of Rochester and Monroe County, Inc. The parent corporation of Visiting Nurse Service of Rochester and Monroe County, Inc. is Strong Home Care Group d/b/a UR Medicine Home Care. The sole member of Strong Home Care Group is the University of Rochester. This structure was approved by the Public Health Council in 1999.

Visiting Nurse Hospice and Palliative Care currently serves Monroe county from an office located at located at 2180 Empire Boulevard, Webster, New York 14580. As a result of this merger, Visiting Nurse Hospice and Palliative Care, to be known as UR Medicine Hospice, will add the counties of Ontario and Yates to their service area.

Character and Competence Review

The Board of Directors of Visiting Nurse Service of Rochester and Monroe County, Inc., d/b/a Visiting Nurse Hospice and Palliative Care, to be known as UR Medicine Hospice, is comprised of the following individuals:

<p>Gloria G. Harrington – Board Member Executive Director, Quail Summit, Inc. <u>Affiliations</u> Danforth Tower (ACF) (2011–2016) Jonathan Child (ACF) (2011– 016) Hudson-Ridge (ACF) (2011–2016) The Northfield (ACF) (2011– 016) Long Pond Senior Apartments (ACF) (2011–2016)</p>	<p>Daniel A. Mendelson, MD – Board Member Professor, Attending Physician, University of Rochester <u>Affiliations</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) Strong Partners Health System Monroe Community Hospital (2011-2014) The Highlands at Brighton (SNF) (2011- 2014)</p>
<p>Hazel P. Robertshaw, RN (NY, UK) – Board Member VP of Patient Care Services/CNO, UR Thompson Health <u>Affiliation</u> F.F. Thompson Hospital (2007 – February 2018)</p>	<p>Mark S. Cronin – Chair Chief Operating Officer, Accountable Health Partners, University of Rochester <u>Affiliation</u> St. Ann’s Community (SNF) (June 2013 – Present)</p>
<p>Mark F. Prunoske – Board Member Senior Vice President, CFO, F.F. Thompson Hospital <u>Affiliation</u> F.F. Thompson Hospital</p>	<p>Kathleen R. Whelehan – Board Member President, CEO, The Upstate National Bank</p>
<p>Mary Savastano Cutting, LMSW – Board Member Director of Case Management/Social Work, Thompson Health</p>	<p>James E. Dickson II, MD – Board Member Retired</p>

<p>Ann M. Harrington, RN – Director Executive Director, New York Organization of Nurse Executives <u>Affiliation</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) (June 2017 – Present)</p>	<p>Martha T. Davis – Board Member Retired</p>
<p>Portia Y. James – Board Member Director, Human Resources, Paychex, Inc. <u>Affiliations</u> St. John’s Health Care Corporation (2010 – 2014)</p>	<p>Alan H. Resnick – Board Member Retired <u>Affiliations</u> ACM Medical Laboratories Planned Parenthood of Central and Western New York</p>
<p>Diana R. Kurty, CPA – Board Member Partner, Lumina Partners <u>Affiliations</u> Strong Memorial Hospital Eastman Dental Center</p>	<p>John R. Horvath, CPA – Board Member Retired</p>
<p>Ann Marie P. Cook – Board Member President/CEO, Lifespan <u>Affiliations</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) Highland Hospital</p>	<p>Jane M. Shukitis, RN – Ex-Officio Director President, CEO, University of Rochester Medical Center <u>Affiliations</u> Unity Living Center (SNF) (April 2012 – December 2014) Park Ridge Nursing Home (April 2012 – December 2014) Edna Tina Wilson Nursing Home (April 2012 – December 2014) Unity at Home (LHCSA) (2002 – December 2014) Park Ridge at Home (LTHHCP) (1992 – December 2014) Rochester Regional Health System Home Care (CHHA) (2011 – 2014)</p>
<p>Steven I. Goldstein – Board Member President/CEO – University of Rochester Strong Memorial Hospital</p>	<p>David J. Lipari – Board Member Principal, Lipari Insurance Agency LLC</p>
<p>Michael E. McRae, NHA – Board Member President/CEO, St. Ann’s Community <u>Affiliation</u> St. Ann’s Community (April 2014 – Present)</p>	<p>Elisa DeJesus – Board Member Director, Family Services Division, Ibero-American Action League, Inc.</p>
<p>Jason S. Feinberg, MD – Board Member Vice President of Medical Affairs, Chief Medical Officer- Finger Lakes Health <u>Affiliation</u> FLH Medical PC</p>	<p>Jeffrey F. Paille, CPA – Board Member Partner, Bonadio & Co., LLP</p>
<p>Irene Burke – Board Member Manager of Actuarial Department, Burke Group</p>	

Gloria G. Harrington disclosed that during her period of affiliation with The Northfield an enforcement action was taken against the facilities regarding elopement.

James E. Dickson II disclosed one settled malpractice claim within the past seven years.

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

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

The Bureau of Professional Credentialing has indicated that Michael E. McRae, NHA license 04562, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Nursing and Midwifery Council of the United Kingdom indicated no issue with the licensure of the health care professionals associated with this application.

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

The Office of the Professions indicates no issue with the licensure of the Certified Public Accountants associated with this application.

A seven-year review, unless otherwise indicated, of the operations of all facilities in the Strong Home Care Group, as well as all facilities affiliated with members of the board was performed as a part of this review.

The Bureau of Quality and Surveillance reviewed the compliance history of the affiliated Nursing Homes and Skilled Nursing Facilities and reports as follows:

- St. John's Health Care Corporation was fined \$10,000 pursuant to a stipulation and order dated June 20, 2011 for inspection findings on September 27, 2010 for violations of 10 NYCRR Part 415.
- St. John's Health Care Corporation was fined \$10,000 pursuant to a stipulation and order dated March 10, 2016 for inspection findings on August 2, 2012 for violations of 10 NYCRR Part 415.
- Edna Tina Wilson Living Center was fined \$10,000 pursuant to a stipulation and order dated September 22, 2015 for inspection findings on October 25, 2013 for violations of 10 NYCRR Part 415.

The Bureau of Quality and Surveillance reported that the remaining affiliated Nursing Homes and Skilled Nursing Facilities have no histories of enforcement action taken.

Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the affiliated Adult Care Facilities and reports as follows:

- The Northfield was fined \$3,000.00 pursuant to a stipulation and order dated March 11, 2011 for inspection findings on November 3, 2010 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

The Division of Adult Care Facilities and Assisted Living Surveillance reported that the remaining affiliated Adult Care facilities have no histories of enforcement action taken.

The Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic & Treatment Centers and reports as follows:

- Strong Memorial Hospital was fined \$10,000.00 pursuant to a stipulation and order dated October 30, 2018 for inspection findings on April 30, 2018 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 405.7(b)(5).

The Division of Hospitals and Diagnostic & Treatment Centers reported that the remaining affiliated Hospitals and Diagnostic & Treatment Centers have no histories of enforcement action taken.

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated CHHAs, LHCSAs, and Hospice providers and reports as follows:

- Finger Lakes Visiting Nurse Service, Inc. was fined \$7,500.00 pursuant to a stipulation and order dated March 20, 2013 for inspection findings on November 18, 2010. The agency was found to be in violation of 10 NYCRR Section 763.11(a), 763.11(b) – Governing Authority; 763.4(h) – Policy and Procedure of Service Delivery; 763.6(b), 763.6(c), 763.6(e) – Patient Assessment and Plan of Care.

The Division of Home and Community Based Services reported that the remaining affiliated LHCSAs, CHHAs, and LTHHCPs have no histories of enforcement action taken.

The information provided by the Clinical Laboratory Evaluation Program has indicated the clinical laboratory associated with this application has met the requirements and regulations of the Public Health Law.

Conclusion

There is no change in services as a result of this application. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a hospice.

Financial Analysis

Agreement and Plan of Merger

An executed Plan of Merger Agreement between VNSR and FLVNS has been submitted, to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	October 5, 2017 (Governing Boards' adoption date)
Merging Entities:	Visiting Nurse Service of Rochester and Monroe County, Inc. and Finger Lakes Visiting Nurse Service, Inc.
Surviving Entity:	Visiting Nurse Service of Rochester and Monroe County, Inc. to be renamed UR Medicine Home Care, Certified Services, Inc.
Asset Acquired:	All remaining assets
Liabilities Acquired:	All remaining liabilities
Purchase Price:	\$-0-

In October 5, 2017, the Governing Boards of SHCG, a New York not-for-profit 501(c)(3) corporation and parent of VNSR and FLVNS, passed a resolution to merge FLVNS into VNSR (surviving corporation). The goal of the merger is to effect significant cost savings in back office and administrative operations and enable a streamlining of the management structure. The merger will allow clinical policies to be consolidated, reduce redundancy in reporting requirements to state and federal agencies, and centralize services to improve care delivery.

BFA Attachment A is the organizational structure before and after approval. VNSR will change its name to UR Medicine Home Care Certified Care Services, Inc. UR Medicine Hospice will be operated under UR Medicine Hospice under UR Medicine Home Care Certified Services. This is all part of the re-branding initiative. There will be no interruption to services and both facilities will remain in their current geographic locations with no changes.

Operating Budget

The applicant has submitted their current operating results (2017) and the combined operating budget, in 2018 dollars, for the first and third years post-merger, as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare (General Inpt.)	\$2,136,987	\$2,157,459	\$2,311,906
Medicaid (General Inpt.)	28,224	28,040	30,324
Medicare (Home Care)	5,059,670	7,416,360	7,951,037
Medicaid (Home Care)	29,760	33,089	35,448
Commercial/Other (Inpt.)	768,600	479,232	513,114
Commercial/Other (Home Care)	<u>801,450</u>	<u>856,992</u>	<u>919,483</u>
Total Revenues	\$8,824,691	\$10,971,172	\$11,761,312
<u>Expenses</u>			
Inpatient	\$3,565,114	\$3,160,641	\$3,300,409
Home Care	<u>5,704,373</u>	<u>7,749,545</u>	<u>8,126,701</u>
Total Expenses	\$9,269,487	\$10,910,186	\$11,427,110
Net Income/(Loss)	<u>(\$444,796)</u>	<u>\$60,986</u>	<u>\$334,202</u>

Projected utilization by site of service for years one and three is as follows:

<u>Service Site</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient Days	4,581	3,975	4,132
Home Care Visits	<u>38,390</u>	<u>51,407</u>	<u>53,463</u>
Total	42,971	55,382	57,595

Projected utilization by payor source for years one and three is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	84.1%	88.4%	88.3%
Medicaid	0.5%	0.4%	0.5%
Comm./Private Pay	15.4%	11.2%	11.2%

Budget projections are based on the following:

- Medicaid revenues are based on historical experience.
- Medicare revenues are based on a 2% rate increase per episode based on the trended data in Year One, and a 5% rate increase based on the New Medicare rate methodology slated to begin in 2020 in Year Three.
- Commercial payers are based upon historical experience.
- Utilization increase is based on an increase in referral volume provider through collaboration with University of Rochester Medical Center in creating new revenue streams.
- Revenue and Expenses are based on historical experience adjusted for changes in projected volume and efficiencies related to consolidating operations.

Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

The submitted budget shows positive net income for the first and third years of operation. The Vice President and Chief Financial Officer of the University of Rochester Medical Center (URMC), the passive parent of SHCG, had provided a letter documenting their financial support to VNSR over the years, and reconfirming their commitment to support VNSR in the future should the need arise to ensure the success of the hospice program.

BFA Attachment B is a summary of Strong Home Care Group, Inc.'s 2016-2017 certified financial statements. As shown, the entity had a negative working capital position, negative net asset position, and an operating loss of \$4,560,989 in 2017.

BFA Attachment C is a summary of Strong Memorial Hospital's fiscal year ending June 30, 2018 certified financial statements. As shown, the entity has a positive working capital position, position net asset position, and an operating gain of \$98,264,204. As of October 10, 2018, VNSR has a \$15.2M payable to the URMC and Strong Memorial Hospital for services they provided in support of the agency.

Visiting Nurse Service of Rochester and Monroe County, Inc. has been affiliated with the University of Rochester since 1998 when the University was approved as the passive parent of SHCG. The University strongly supports the merger of VNSR and FLNVS and is committed to support them financially going forward. A HSBC Line of Credit up to a \$5.75 million cap, guaranteed by the University of Rochester, is available to VNSR to be used for operational support as needed.

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

Attachments

BFA Attachment A	Organizational Charts
BFA Attachment B	2016 & 2017 Certified Financial Statements Strong Home Care Group, Inc.
BFA Attachment C	06/2017 & 06/2018 Certified Financial Statements Strong Memorial Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 13th day of December 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 merge the Hospice Program of Visiting Nurse Service of Rochester and Monroe County, Inc. and the Ontario-Yates Hospice Program of Finger Lakes Visiting Nurse Service, 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:

181405 E

Visiting Nurse Hospice and Palliative Care

APPROVAL CONTINGENT UPON:

1. Submission of a Board Resolution authorizing the Visiting Nurse Service of Rochester to merge with the Ontario-Yates Hospice Program of the Finger Lakes, acceptable to the Department. [CSL]
2. Submission of a Board Resolution authorizing the Ontario-Yates Hospice Program of Finger Lakes Visiting Nurse Service to merge with the Hospice Program of Visiting Nurse Service of Rochester and Monroe County, Inc, acceptable to the Department. [CSL]
3. Submission of the applicant's Plan of Merger, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's proposed Certificate of Merger, acceptable to the Department. [CSL]
5. Submission of a copy of the amendment to the certificate of incorporation of the applicant, acceptable to the Department. [CSL]
6. Submission of a copy of the certificate of assumed name of the applicant, acceptable to the Department. [CSL]
7. Submission of a copy of the amendment to the certificate of incorporation of Strong Home Care Group, 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 # 181403-E
Visiting Nurse Service of Rochester and Monroe County

Program: Certified Home Health Agency
Purpose: Establishment

County: Monroe
Acknowledged: June 11, 2018

Executive Summary

Description

Visiting Nurse Service of Rochester and Monroe County, Inc. (VNSR), a voluntary not-for-profit, Article 36 Certified Home Health Agency (CHHA) located at 2180 Empire Boulevard, Webster (Monroe County), requests approval to merge Finger Lakes Visiting Nurse Service, Inc. (FLVNS), a voluntary not-for-profit, Article 36 CHHA located at 756 Pre-Emption Road, Geneva (Ontario County), into its operation. VNSR is authorized to serve Monroe, Livingston, Ontario, Wayne and Wyoming counties. FLVNS is authorized to serve Ontario, Wayne, Seneca and Yates counties. Both CHHAs are certified to provide Home Health Aide, Personal Care, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy and Speech Language Pathology services. Upon approval by the Public Health and Health Planning Council (PHHPC), VNSR will be the surviving entity, adding Seneca and Yates counties to its authorized geographic service area. There will be no change in services provided.

Strong Home Care Group (SHCG), whose sole member is the University of Rochester, is the corporate parent of VNSR and FLVNS. The corporate restructuring is designed to streamline the governance and operations, reduce duplication, and increase efficiencies. The goals of the merger include reducing administrative overhead related to bank accounts, payrolls, benefits contracts, vendor contracts and payor contracts, and reducing duplication of effort related to cost and statistical reports, financial statements, audits and IRS filings. VNSR and

FLVNS each also operate an Article 40 Hospice. Merger of the Hospice operations to be licensed under VNSR is under review (CON 181405).

As part of the corporate reorganization, the entities will be rebranded to highlight their relationship to the University of Rochester's health care system, UR Medicine. As such, SHCG is requesting approval to change its corporate name to name to UR Medicine Home Care, Inc. and VNSR is requesting to change its corporate name to UR Medicine Home Care, Certified Services, Inc. BFA Attachment A presents the organizational chart for the System before and after the merger.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in 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

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

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Gain/(Loss).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the amendment to the certificate of incorporation of the applicant, acceptable to the Department. [CSL]
3. Submission of a copy of the amendment to the certificate of incorporation of Strong Home Care Group, 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

December 13, 2018

Need and Program Analysis

Description of Project

Visiting Nurse Service of Rochester and Monroe County, Inc, a not-for-profit business corporation which operates a Certified Home Health Agency (CHHA), seeks approval to acquire and merge the assets of Finger Lakes Visiting Nurse Service, Inc. CHHA.

At the close of this transaction, Fingers Lakes Visiting Nurse Service, Inc. will ultimately close and Visiting Nurse Service of Rochester and Monroe County, Inc. will be the surviving Certified Home Health Agency. Additionally, the name of the surviving CHHA will be changed to UR Medicine Home Care, Certified Service, Inc.

Currently, Finger Lakes Visiting Nurse Service, Inc. is controlled by Visiting Nurse Service of Rochester and Monroe County, Inc. The parent corporation of Visiting Nurse Service of Rochester and Monroe County, Inc. is Strong Home Care Group d/b/a UR Medicine Home Care. The sole member of Strong Home Care Group is the University of Rochester. This structure was approved by the Public Health Council in 1999.

Visiting Nurse Service of Rochester and Monroe County, Inc. currently serves the following counties from an office located at located at 2180 Empire Boulevard, Webster, New York 14580:

Monroe	Livingston	Ontario	Wayne	Wyoming
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As a result of this merger, Visiting Nurse Service of Rochester and Monroe County, Inc. will add the following counties to their service area:

Seneca	Yates
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Visiting Nurse Service of Rochester and Monroe County, Inc. provides the following services:

Home Health Aide	Occupational Therapy	Nutrition
Personal Care	Nursing	Medical Supplies & Equipment
Medical Social Services	Physical Therapy	Speech Language Pathology

This project will have no impact on the services being provided by Visiting Nurse Service of Rochester and Monroe County, Inc.

Character and Competence Review

The Board of Directors of Visiting Nurse Service of Rochester and Monroe County, Inc., to be known as UR Medicine Home Care, Certified Service, Inc. is as follows:

<p>Gloria G. Harrington – Board Member Executive Director, Quail Summit, Inc. <u>Affiliations</u> Danforth Tower (ACF) (2011–2016) Jonathan Child (ACF) (2011– 016) Hudson-Ridge (ACF) (2011–2016) The Northfield (ACF) (2011– 016) Long Pond Senior Apartments (ACF) (2011–2016)</p>	<p>Daniel A. Mendelson, MD – Board Member Professor, Attending Physician, University of Rochester <u>Affiliations</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) Strong Partners Health System Monroe Community Hospital (2011-2014) The Highlands at Brighton (SNF) (2011- 2014)</p>
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<p>Hazel P. Robertshaw, RN (NY, UK) – Board Member VP of Patient Care Services/CNO, UR Thompson Health <u>Affiliation</u> F.F. Thompson Hospital (2007 – February 2018)</p>	<p>Mark S. Cronin – Chair Chief Operating Officer, Accountable Health Partners, University of Rochester <u>Affiliation</u> St. Ann’s Community (SNF) (June 2013 – Present)</p>
<p>Mark F. Prunoske – Board Member Senior Vice President, CFO, F.F. Thompson Hospital <u>Affiliation</u> F.F. Thompson Hospital</p>	<p>Kathleen R. Whelehan – Board Member President, CEO, The Upstate National Bank</p>
<p>Mary Savastano Cutting, LMSW – Board Member Director of Case Management/Social Work, Thompson Health</p>	<p>James E. Dickson II, MD – Board Member Retired</p>
<p>Ann M. Harrington, RN – Director Executive Director, New York Organization of Nurse Executives <u>Affiliation</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) (June 2017 – Present)</p>	<p>Martha T. Davis – Board Member Retired</p>
<p>Portia Y. James – Board Member Director, Human Resources, Paychex, Inc. <u>Affiliations</u> St. John’s Health Care Corporation (2010 – 2014)</p>	<p>Alan H. Resnick – Board Member Retired <u>Affiliations</u> ACM Medical Laboratories Planned Parenthood of Central and Western New York</p>
<p>Diana R. Kurty, CPA – Board Member Partner, Lumina Partners <u>Affiliations</u> Strong Memorial Hospital Eastman Dental Center</p>	<p>John R. Horvath, CPA – Board Member Retired</p>
<p>Ann Marie P. Cook – Board Member President/CEO, Lifespan <u>Affiliations</u> Visiting Nurse Service of Rochester and Monroe County, Inc. (CHHA) Highland Hospital</p>	<p>Jane M. Shukitis, RN – Ex-Officio Director President, CEO, University of Rochester Medical Center <u>Affiliations</u> Unity Living Center (SNF) (April 2012 – December 2014) Park Ridge Nursing Home (April 2012 – December 2014) Edna Tina Wilson Nursing Home (April 2012 – December 2014) Unity at Home (LHCSA) (2002 – December 2014) Park Ridge at Home (LTHHCP) (1992 – December 2014) Rochester Regional Health System Home Care (CHHA) (2011 – 2014)</p>
<p>Steven I. Goldstein – Board Member President/CEO – University of Rochester Strong Memorial Hospital</p>	<p>David J. Lipari – Board Member Principal, Lipari Insurance Agency LLC</p>
<p>Michael E. McRae, NHA – Board Member President/CEO, St. Ann’s Community <u>Affiliation</u> St. Ann’s Community (April 2014 – Present)</p>	<p>Elisa DeJesus – Board Member Director, Family Services Division, Ibero-American Action League, Inc.</p>

<p>Jason S. Feinberg, MD – Board Member Vice President of Medical Affairs, Chief Medical Officer- Finger Lakes Health <u>Affiliation</u> FLH Medical PC</p>	<p>Jeffrey F. Paille, CPA – Board Member Partner, Bonadio & Co., LLP</p>
<p>Irene Burke – Board Member Manager of Actuarial Department, Burke Group</p>	

Gloria G. Harrington disclosed that during her period of affiliation with The Northfield an enforcement action was taken against the facilities regarding elopement.

James E. Dickson II disclosed one settled malpractice claim within the past seven years.

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

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

The Bureau of Professional Credentialing has indicated that Michael E. McRae, NHA license 04562, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Nursing and Midwifery Council of the United Kingdom indicated no issue with the licensure of the health care professionals associated with this application.

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

The Office of the Professions indicates no issue with the licensure of the Certified Public Accountants associated with this application.

A seven-year review, unless otherwise indicated, of the operations of all facilities in the Strong Home Care Group, as well as all facilities affiliated with members of the board was performed as a part of this review.

The Bureau of Quality and Surveillance reviewed the compliance history of the affiliated Nursing Homes and Skilled Nursing Facilities and reports as follows:

- St. John’s Health Care Corporation was fined \$10,000 pursuant to a stipulation and order dated June 20, 2011 for inspection findings on September 27, 2010 for violations of 10 NYCRR Part 415.
- St. John’s Health Care Corporation was fined \$10,000 pursuant to a stipulation and order dated March 10, 2016 for inspection findings on August 2, 2012 for violations of 10 NYCRR Part 415.
- Edna Tina Wilson Living Center was fined \$10,000 pursuant to a stipulation and order dated September 22, 2015 for inspection findings on October 25, 2013 for violations of 10 NYCRR Part 415.

The Bureau of Quality and Surveillance reported that the remaining affiliated Nursing Homes and Skilled Nursing Facilities have no histories of enforcement action taken.

Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the affiliated Adult Care Facilities and reports as follows:

- The Northfield was fined \$3,000.00 pursuant to a stipulation and order dated March 11, 2011 for inspection findings on November 3, 2010 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

The Division of Adult Care Facilities and Assisted Living Surveillance reported that the remaining affiliated Adult Care facilities have no histories of enforcement action taken.

The Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic & Treatment Centers and reports as follows:

- Strong Memorial Hospital was fined \$10,000.00 pursuant to a stipulation and order dated October 30, 2018 for inspection findings on April 30, 2018 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 405.7(b)(5).

The Division of Hospitals and Diagnostic & Treatment Centers reported that the remaining affiliated Hospitals and Diagnostic & Treatment Centers have no histories of enforcement action taken.

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated CHHAs, LHCSAs, and Hospice providers and reports as follows:

- Finger Lakes Visiting Nurse Service, Inc. was fined \$7,500.00 pursuant to a stipulation and order dated March 20, 2013 for inspection findings on November 18, 2010. The agency was found to be in violation of 10 NYCRR Section 763.11(a), 763.11(b) – Governing Authority; 763.4(h) – Policy and Procedure of Service Delivery; 763.6(b), 763.6(c), 763.6(e) – Patient Assessment and Plan of Care.

The Division of Home and Community Based Services reported that the remaining affiliated LHCSAs, CHHAs, and LTHHCPs have no histories of enforcement action taken.

The information provided by the Clinical Laboratory Evaluation Program has indicated the clinical laboratory associated with this application has met the requirements and regulations of the Public Health Law.

CHHA Quality of Patient Care Star Ratings as of November 8, 2018 New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Visiting Nurse Service of Rochester and Monroe County, Inc.	3 out of 5 stars
Finger Lakes Visiting Nurse Service, Inc	3 out of 5 stars

Conclusion

There will be no change in services as a result of this application. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Agreement and Plan of Merger

An executed Plan of Merger Agreement between VNSR and FLVNS has been submitted, to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	October 5, 2017 (Governing Boards' adoption date)
Merging Entities:	Visiting Nurse Service of Rochester and Monroe County, Inc. and Finger Lakes Visiting Nurse Service, Inc.
Surviving Entity:	Visiting Nurse Service of Rochester and Monroe County, Inc. to be renamed UR Medicine Home Care, Certified Services, Inc.
Asset Acquired:	All remaining assets
Liabilities Acquired:	All remaining liabilities
Purchase Price:	\$-0-

In October 5, 2017, the Governing Boards of SHCG, a New York not-for-profit 501(c)(3) corporation and parent of VNSR and FLVNS, passed a resolution to merge FLVNS into VNSR (surviving corporation). The goal of the merger is to effect significant cost savings in back office and administrative operations and enable a streamlining of the management structure. The merger will allow clinical policies to be consolidated, reduce redundancy in reporting requirements to state and federal agencies, and centralize services to improve care delivery.

BFA Attachment A presents the organizational structure before and after approval. VNSR will change its name to UR Medicine Home Care Certified Care Services, Inc. UR Medicine Home Care, Certified Services, Inc. will be operated under UR Medicine Home Care, Inc. This is all part of the re-branding initiative. There will be no interruption to services and both facilities will remain in their current geographic locations with no changes.

Operating Budget

The applicant has submitted their current operating results (2017) and the combined operating budget, in 2018 dollars, for the first and third years post-merger, summarized below:

	<u>Current Year</u>	<u>First Year</u>	<u>Three Year</u>
<u>Revenues</u>			
Commercial FFS	\$10,065,000	\$5,228,000	\$5,636,000
Commercial MC	0	9,294,000	10,016,000
Medicare MC	9,055,000	14,253,000	15,829,000
Medicaid FFS	0	113,000	242,000
Medicaid MC	1,042,000	1,762,000	1,768,000
Private Pay	4,900	16,000	11,000
Other	0	17,000	18,000
Total Revenue	\$20,211,000	\$30,683,000	33,520,000
<u>Expenses</u>			
Operating	\$20,486,725	\$28,648,724	\$29,973,647
Capital	144,785	168,383	170,067
Total Expenses	\$20,631,510	\$28,817,107	\$30,143,714
Net Income	<u>(\$420,510)</u>	<u>\$1,865,893</u>	<u>\$3,376,286</u>
Utilization - Visits	147,742	215,269	224,689
HHA Hours	17,364	29,884	30,610

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

Payor	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Commercial FFS	86,853	58.79%	40,531	18.83%	42,383	18.86%
Commercial MC	0	0%	72,059	33.47%	75,348	33.53%
Medicare MC	51,416	34.80%	81,917	38.05%	85,676	38.13%
Medicaid FFS	0	0%	545	.25%	1,153	.51%
Medicaid MC	8,911	6.03%	19,582	9.10%	19,631	8.74%
Private Pay	462	.31%	467	9.10%	337	.15%
Charity Care	100	.07%	47	.02%	34	.02%
Other	0	0%	121	.06%	127	.06%
Total	147,742	100%	215,269	100%	224,689	100%

Expense, utilization and revenue assumptions are based on the historical experience of the CHHAs. Revenues reflect current payment rates, which are expected to remain flat for Year One and Year Three. Year One is based on 2018 budgeted data, due to the fact much of the consolidation of back-office functions has already been completed.

Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs associated with this application. The submitted budget shows positive net income for the first and third years of operation. The Vice President and Chief Financial Officer of the University of Rochester Medical Center (URMC), the passive parent of SHCG, had provided a letter documenting their financial support to VNSR over the years, and reconfirming their commitment to support VNSR in the future should the need arise to ensure the success of the CHHA program.

BFA Attachment B is a summary of Strong Home Care Group, Inc.'s 2016-2017 certified financial statements. As shown, the entity had a negative working capital position, negative net asset position, and an operating loss of \$4,560,989 in 2017.

BFA Attachment C is a summary of Strong Memorial Hospital's fiscal year ending June 30, 2018 certified financial statements. As shown, the entity has a positive working capital position, position net asset position, and an operating gain of \$98,264,204. As of October 10, 2018, VNSR has a \$15.2M payable to the URMC and Strong Memorial Hospital for services they provided in support of the agency.

Visiting Nurse Service of Rochester and Monroe County, Inc. has been affiliated with the University of Rochester since 1998 when the University was approved as the passive parent of SHCG. The University strongly supports the merger of VNSR and FLNVS and is committed to support them financially going forward. A HSBC Line of Credit up to a \$5.75 million cap, guaranteed by the University of Rochester, is available to VNSR to be used for operational support as needed.

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

Attachments

- BFA Attachment A Organizational Charts
- BFA Attachment B 2016 & 2017 Certified Financial Statements Strong Home Care Group, Inc.
- BFA Attachment C 06/2017 & 06/2018 Certified Financial Statements Strong Memorial Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 13th day of December 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 merge Finger Lakes Visiting Nurse Service, Inc. into Visiting Nurse Service of Rochester and Syracuse, 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:

181403 E

Visiting Nurse Service of Rochester and
Monroe County

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the amendment to the certificate of incorporation of the applicant, acceptable to the Department. [CSL]
3. Submission of a copy of the amendment to the certificate of incorporation of Strong Home Care Group, 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 # 171041-E
Shining Star Home Health Care

Program: Certified Home Health Agency
Purpose: Establishment

County: Kings
Acknowledged: January 19, 2017

Executive Summary

Description

Shining Star Home Care, LLC (Shining Star), a proprietary, Article 36 certified home health agency (CHHA), requests approval for a three-year extension to its limited life operating certification. The agency was established as a special pilot program CHHA, certified to serve individuals at higher risk for hospitalization due to heart disease, stroke and diabetes. The agency is authorized to serve individuals in Bronx, Kings, New York and Queens Counties. The CHHA was approved through CON 072094 with a conditional five-year limited life and began operations effective January 17, 2012. The applicant notified the Department before their limited life expiration, requesting a three-year extension. The CHHA currently operates from leased office space located at 5922 18th Avenue, Brooklyn (Kings County).

Shining Star's services are limited to the special pilot program population authorized under its initial operating certificate. The CHHA is certified for the following services: home health aides, medical social services, medical supplies equipment and appliances, nursing, nutrition, occupational therapy, physical therapy, and speech language pathology

The membership of Shining Star Home Care, LLC consists of Yechiel Landau (80%) and Yvette Henriquez (20%).

OPCHSM Recommendation

Contingent Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter

Need Summary

Utilization has been significantly below projected visits. In its original 2007 application, Shining Star projected in excess of 175,000 visits by Year Three. Shining Star reports 2,999 visits in 2016 and 4,313 for 2017 (per Cost Reports). The applicant anticipates increased visits over the next three years. The agency did not meet the 2% charity care requirement in any of its five years of operation but is projecting 2% going forward.

Program Summary

From its initial date of operation of January 17, 2012 through the present time, Shining Star Home Care, LLC d/b/a Shining Star Home Health Care has remained in compliance with all Conditions of Participation, with no enforcement actions taken against them.

Financial Summary

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

Table with 3 columns: Category, Year One, Year Three. Rows: Revenue, Expenses, Net Income.

The projected net income is positive going forward, however it is dependent upon the applicant maintaining utilization levels and cost control efforts. The applicant also requires working capital to fund operations, which is to be provided by majority member Yechiel Landau, or as an interest free personal loan from a friend of Mr. Landau's with repayment when the operation becomes more profitable.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an unrelated, independent entity, acceptable to the Department, to provide annual reports to the Department. The reports shall include, but not be limited to:
 - a. Utilization data by payor;
 - b. Data comparing the PQI rates of the communities served by the CHHA from the effective date of the CHHA's operating certificate;
 - c. Data showing Emergency Department visit rates of patients served compared to the general population in the neighborhoods served by the CHHA;
 - d. Data comparing hospital readmission rate of patients served compared to the general population in the neighborhoods served by the CHHA;
 - e. Utilization by the diagnosis of the patients served by the CHHA. [CHA]
2. Submission of a photocopy of the Operating Agreement of Shining Star Home Health Care, LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. Services are limited to the special pilot program population of individuals in Bornx, Kings, New York, and Queens Counties identified as being at high risk for hospitalization due to heart disease, stroke, and diabetes.
2. Continued submission of annual reports, prepared by an unrelated, independent entity, providing at a minimum the data required in the contingency, and reporting the percent of patients in compliance with the condition of approval related to the approved special pilot program population. Annual reports must be submitted no later than March 15th of each year for the proceeding calendar year. [CHA]

Council Action Date

December 13, 2018

Need and Program Analysis

Review Summary

This special pilot program CHHA operates from its sole practice location in leased office space at 5922 18th Avenue, Brooklyn, New York 12204. It was approved to serve individuals identified as being at higher risk for hospitalization due to heart disease, stroke, and diabetes, in the approved geographic service area of Bronx County, Kings County, New York County, and Queens County. Shining Star offers the services of home health aide, medical social services, medical supplies/equipment/appliances, nursing, nutritional services, occupational therapy, physical therapy, and speech language pathology.

As required in the Public Health Council conditional approval, annual reports by an outside independent agency have been submitted to NYSDOH for years 2012/2013 through 2017.

In its establishment application, Shining Star Home Care, LLC, d/b/a Shining Star Home Health Agency, cited the NYSDOH Prevention Quality Indicators that reports that low income minority neighborhoods located in the four above named counties have up to two to three times more hospital admissions and readmissions due to heart disease, stroke, and diabetes than the statewide average.

Background

Utilization (Visits)	072094 Projected Year One	072094 Projected Year Three	Actual 2013 (1 st Full Year)	Actual 2014	Actual 2015 (3 rd Full Year)	Actual 2016	Actual 2017
Nursing	7,199	21,783	240	1,773	3,176	2,261	2,386
Occupational Therapy	196	320	0	43	16	1	1
Physical Therapy	561	1,336	39	278	522	184	1,774
Speech/Language Pathology	27	57	0	17	37	1	1
Medical Social Services	21	307	2	14	4	12	4
Home Health Aide	26,748	151,465	1,788	3,618	2,924	540	147
Total	34,752	175,268	2,069	5,743	6,679	2,999	4,313

Source: Agency's Cost Reports

Analysis

The original approval of this CHHA was to permit a special pilot program to serve those individuals at risk for hospitalization due to heart disease, stroke and diabetes in communities within Kings, Queens, Bronx and New York Counties. It is not clear that this CHHA has served a distinctly different special population from that of other CHHAs, nor has the program of care been found to be unique.

In its five years of operation, the CHHA reports that it has served predominantly the target population:

- In 2012 (total of three patients served) and 2013 (total of 24 patients served), the applicant reports that one patient visited an Emergency Department, and two patients were readmitted to a hospital. None of those Shining Star patients was readmitted due to diabetes, heart disease, or stroke. The statewide averages for Emergency Department visits, and potentially preventable hospital readmission rates for Bronx, Kings, New York, and Queens Counties, for years 2012 and 2013, were unreported.
- In 2014, the applicant reports that seven of Shining Star's 205 patients (3.4%) visited an Emergency Department, compared to a statewide average that year of 23.13%, and three of those seven visits were due to unrelated occurrences (one injury due to a fall, one urinary tract infection, and one decline in three or more activities of daily living). Seven of Shining Star's 205 patients (3.4%) were readmitted to a hospital, compared to a potentially preventable hospital readmission rate that year for Bronx, Kings, New York, and Queens Counties ranging from 6.1% to 7.54%. None of those Shining Star patients was readmitted due to diabetes, heart disease, or stroke.
- In 2015, the applicant reports that eight of Shining Star's 214 patients (3.7%) visited an Emergency Department, compared to a statewide average that year of 23.53%, and five of those

eight visits were due to unrelated occurrences (four injuries due to a fall, and one urinary tract infection). Eight of Shining Star's 214 patients (3.7%) were readmitted to a hospital, compared to a potentially preventable hospital readmission rate that year for Bronx, Kings, New York, and Queens Counties ranging from 6.1% to 7.54%. One of those Shining Star patients was readmitted due to diabetes, and none were readmitted due to heart disease or stroke.

- In 2016, the applicant reports two (1.3%) of Shining Star's patients went to the ED, compared with a New York average of 10.7% and a national average of 12.9%. Two (1.3%) of Shining Star's patients were admitted to the hospital, compared to a New York average of 16.4% and a national average of 15.9%.
- Shining Star reports that in 2016 it discontinued its Allscripts clinical software medical record system which had proven to be overly expensive and unreliable for information reporting purposes. Shining Star instead invested in a new clinical software system called Home Care Home Base. The applicant states that implementing this new intake and clinical documentation software system during 2016 affected its ability to accept admissions, process intake data, and properly maintain clinical data during 2016, which was a factor in the decrease in admissions by 74 patients from 2015 to 2016, and the increase in hospital readmissions in 2016. Looking forward, Shining Star had also taken the following initiatives to both increase intake and utilization, and prevent future Emergency Department visits and hospital readmissions:
 - Renegotiating various HMO and MLTCP contracts, resulting in better reimbursement rates for services and improved financial stability
 - Partnering with Relias Learning to customize orientation and inservice education curriculum used to train the CHHA's skilled professionals
 - Creating an advanced wound care program with staff trained as specialists to treat complex wounds, providing an advantage over other CHHAs who typically do not accept such patients
 - Hiring a specialized Case Manager to provide extensive clinical oversight for patients who are at risk for hospital readmission
 - Engaging in weekly conference calls with patients, families, doctors, nurses, and case managers. Patients at higher risk for hospital readmission receive daily telephone calls at home from clinical professionals to ensure proper medications were taken in the proper dosages and at the proper times of day. If additional services or care are required, the clinical professional will immediately contact the patient's nurse to provide timely intervention before an emergency situation arises.
 - Partnering with a particular pharmacy that pre-packages patient medications in small packets, to help ensure the patient is taking the correct dose at the correct time, in order to alleviate medication errors, a leading reason for both Emergency Department visits and hospital readmissions.
- The applicant reports that in 2017 only 12 of Shining Star's 726 patients (1.7%) were discharged to a hospital or Emergency Department. The applicant reports that, per statistics published by the Agency for Healthcare Research and Quality, the average readmission rate for patients seven days after discharge from a hospital was 7.5%, and 30 days after discharge from a hospital was 21.1%.

The applicant reports that three of the three patients served in 2012, 18 of the 24 patients served in 2013, 168 of the 205 patients served in 2014, 161 of the 214 patients served in 2015, 132 of the 152 patients served in 2016, and 672 of the 768 patients served in 2017, had diagnoses that identified the patient as being at higher risk for hospitalization due to heart disease, stroke, or diabetes. Accordingly, 100% in 2012, 75% in 2013, 82% in 2014, 75% in 2015, 87% in 2016, and 87.5% in 2017 of the patients served by Shining Star Home Care, during its first six years of operation, had diagnoses that identified the patient as being at higher risk for hospitalization due to heart disease, stroke, or diabetes.

Shining Star has a 3.5 CMS Quality of Patient Care Star Rating, compared to a NYS average of 3 stars and a national average of 3.5 stars.

The NYSDOH Division of Home and Community Based Services reports that, from its initial date of operation of January 17, 2012, through the present time, Shining Star Home Care, LLC, d/b/a Shining Star Home Health Care, has remained in compliance with all Conditions of Participation, with no history of any enforcement actions taken against this CHHA.

Financial Analysis

The applicant submitted their current year (2017) results, their half-year 2018 results, and their first and third year operating budgets subsequent to approval, in 2018 dollars, as shown below:

	<u>Current Year</u>	<u>2018 (6 mos)</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>				
Medicare	\$74,920	\$44,732	\$110,093	\$113,396
Medicaid	22,035	90,132	57,940	59,678
HMO/MLTC*	339,341	201,202	504,099	519,222
All Other	<u>4,407</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenues	\$440,703	\$336,066	\$672,132	\$692,296
<u>Total Expenses</u>				
Operating	\$569,612	\$229,937	\$577,225	\$582,465
Space Occupancy	<u>22,977</u>	<u>15,000</u>	<u>26,859</u>	<u>32,168</u>
Total Expenses	\$592,589	\$244,937	\$604,084	\$614,633
Net Income/(Loss)	<u>(\$151,886)</u>	<u>\$91,129</u>	<u>\$68,048</u>	<u>\$77,663</u>
Utilization (visits)	4,119**	2875	5,154	5,309
Cost per Visit	\$143.87	\$85.20	\$117.21	\$115.77

* Represents Dually-Eligible Manage Medicaid/Medicare

** Net Income/Loss differences for 2017 (as submitted by the applicant) would be immaterially different if actual utilization of 4,313 was used as the basis.

The following is noted with respect to the submitted budgets:

- Medicare and Medicaid services are reimbursed on an episodic basis. The applicant projected revenues for Year One based on Shining Star's annualized revenues from January 1, 2018 through June 30, 2018 (certified reports). This amount was then increased by 3% for Year Three to account for inflation.
- HMO/MLTC category represents patients who are dually-eligible for both Medicare and Medicaid. These Medicare and Medicaid plans are managed by HMO/MLTC/FIDA plans pursuant to the New York Managed Long-Term Care mandatory enrollment policy. All other revenues are based on existing rates.
- The first and third year utilization projections are based on averages experienced during the same January through June 2018 period plus charity care.
- Internal reports submitted by the applicant indicate that the number of visits through December 31, 2017 grew to 4,119, representing a 37.3% increase over 2016. During the first six months of 2018, visits totaled 2,875 (1,607 visit during the 1st quarter and 1,268 visits in the 2nd quarter). On an annualized basis, this shows continued growth over 2017. The budget projects the number of visits to be about 5,154 (around 1,289 visits per quarter).
- The cost per visit declined from \$232 in 2016 to \$144 in 2017. The results stem mostly from the increase in utilization and efficiencies through better management of staff time/productivity. The applicant has also improved information technology through the implementation of a new clinical software system (Home Care Home Base) and has partnered with QIRT (Quality In Real Time) to conduct audits on clinical documentation that is expected to ensure access to data for decisions that support preventing re-hospitalizations. During the first half of 2018, the applicant continued to reduce overall costs through efficiencies.

- Utilization by payor source for the submitted current and projected operating budgets is as follows:

Payor	Current Year		2018 (6 Mos.)		Year One		Year Three	
	Visits	%	Visits	%	Visits	%	Visits	%
Medicare	796	19.3%	411	14.3%	762	14.8%	786	14.8%
Medicaid	311	7.6%	485	16.9%	422	8.2%	435	8.2%
All Other*	3012	73.1%	1,979	68.8%	3,866	75.0%	3,982	75.0%
Charity Care	0	0%	0	0%	104	2.0%	106	2.0%
Total	4,119	100%	2,875	100%	5,154	100%	5,309	100%

*Includes Dually-Eligible Managed Medicaid/Medicare

- The applicant plans on reaching 2% Charity Care utilization in Year One and Year Three because of its relationships with Ahavas Chesed, NYC Health + Hospitals' Woodhull Hospital and Coney Island Hospital and the United Jewish Organizations of Williamsburg and North Brooklyn.

In their establishment application, the applicant committed to 2% Charity Care and 67% Medicaid utilization in Year One, and 2% Charity Care and 54% Medicaid utilization in Year Three. The applicant acknowledges that they have not fulfilled that commitment. The decline in Medicaid utilization is attributed to an increase in the number Medicare post-discharge hospital patients served by the agency. Also contributing are the patients classified as "Dually-Eligible Managed Medicaid/Medicare."

To address the utilization issues and the financial results shown above, the applicant has identified Mr. Ari Goldberger as an individual who possesses home care experience and has been informally advising the operator regarding day-to-day operations and developing relationships with local hospitals and several Managed Care Organizations. The applicant indicated that they are realizing the benefit of Mr. Goldberger's experience and resources and have already begun to receive patient referrals. The applicant anticipates entering into a Consulting Agreement.

The applicant cites the following recent activities as beneficial to the long-term performance of the facility: recently renegotiated various Managed Care contracts; increasing reimbursement; implementation of a new clinical software system; a partnership with Quality In Real Time; a partnership with Relias Learning for customized orientation and education curriculum; the creation of an advanced wound care program; hiring of a specialized case manager; and a partnership with a pharmacy to provide pre-packaged patient medication. Paul Rosenstock, M.D. and Robert Goodman, M.D. provide letters of support for the CHHA's mission.

Capability and Feasibility

There are no project costs associated with this application. The budget demonstrates net income in Year One and Year Three of \$68,048 and \$77,663, respectively. Year One projects a 25.1% increase in utilization over the Current Year 2017. However, using recently provided 2018 half-year utilization data, the Year One projection represents a 10% reduction over 2018 annualized visits. Concurrent with the projected utilization, the applicant projects revenue per visit to increase by 11.1%, going from \$117 in 2018 (annualized) to a budgeted per visit rate of \$130. As noted above, budgeted revenue and utilization projections were based upon actual results obtained during January through June 2018. Per the recently provided certified 2017 data, the cost per visit has declined 38% between the Current Year (2016) and 2017 (going from \$232 in 2016 to \$144 in 2017). Using recently provided 2018 half-year cost data, the Year One projection represents a 38% cost increase (going from \$85 per visit in 2018 to \$117); however, compared to 2017 the Year One projection represents a cost per visit decrease of 18.5% (going from \$144 per visit in 2017 to \$117) supporting the applicant's ongoing efforts to efficiently operate the CHHA.

Working capital is estimated at \$100,681 based on two months of Year One expenses. However, as shown on BFA Attachments A, B and C (Shining Star's certified 2015, 2016 and 2017 financial statements, respectively), the CHHA has been sustaining operating losses. Each year, member contributions and/or member loans were made, and in 2017 Yechiel Landau (80% member) made an equity contribution of \$263,295 and converted a \$733,466 loan to equity, bringing the net assets to a negative \$393,531. BFA Attachment D is the certified financial statement for the first-half of 2018, which shows net income of \$91,129. The applicant further states that a large portion of the \$368,657 in accounts payable are for invoices that the vendors couldn't provide documentation to support their

validity. They are dated three years or older and per the applicant the vendors have not requested payment in the past two years.

The applicant provided a letter of interest from New Capital Ventures, LLC expressing willingness to provide a personal loan to Mr. Yechiel Landau, a majority member of the applicant, in the amount of \$1,410,000 to be used to fund the agency's working capital needs. The letter states that this would be a personal loan between friends, with no interest charged and repayment of the principal amount to be provided whenever funds become available. Capital One bank statements for New Capital Ventures, LLC for the period ending September 30, 2017, indicates sufficient resources are available to fund this transaction. Going forward, Shining Star intends to cover any operating losses with the proceeds of this personal loan, as well as with the personal liquid assets of Mr. Yechiel Landau. The applicant indicated that during its limited life, Mr. Landau has funded operating losses with his personal liquid assets, as well as from the proceeds of other personal loans provided to him from Hiram Capital, LLC (an entity related to New Capital Ventures, LLC).

BFA Attachment A is the 2015 certified financial statements of Shining Star Home Care, LLC. As shown, the entity had a negative working capital position and a negative net asset position in 2015. Also, the entity demonstrated a net loss of \$666,069. BFA Attachments B and C are the certified 2016 and 2017 audited financial statements of Shining Star Home Care, LLC. As shown, the entity had ongoing negative working capital and negative net asset positions and achieved an operating loss off \$493,675 in 2016 and \$151,886 in 2017 (accrual basis). BFA Attachment D is the entity's 2018 certified financials (first six months) which shows negative working capital, negative net assets, and positive net income of \$91,151. The applicant attributes the 2016 loss to low utilization, while 2018 results through June show positive net income based on improved efficiency and increased utilization.

Attachments

BFA Attachment A	2015 Certified financial statement of Shining Star Home Care, LLC
BFA Attachment B	2016 Certified financial statement of Shining Star Home Care, LLC
BFA Attachment C	2017 Certified financial statements of Shining Star Home Care, LLC
BFA Attachment D	January-June 2018 Certified financial statements of Shining Star Home Care, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 13th day of December 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to request for a three-year extension of limited life for CON #072094-E, 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

171041 E

Shining Star Home Health Care

APPROVAL CONTINGENT UPON:

Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an unrelated, independent entity, acceptable to the Department, to provide annual reports to the Department. The reports shall include, but not be limited to:
 - a. Utilization data by payor;
 - b. Data comparing the PQI rates of the communities served by the CHHA from the effective date of the CHHA's operating certificate;
 - c. Data showing Emergency Department visit rates of patients served compared to the general population in the neighborhoods served by the CHHA;
 - d. Data comparing hospital readmission rate of patients served compared to the general population in the neighborhoods served by the CHHA;
 - e. Utilization by the diagnosis of the patients served by the CHHA. [CHA]
2. Submission of a photocopy of the Operating Agreement of Shining Star Home Health Care, LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. Services are limited to the special pilot program population of individuals in Bornx, Kings, New York, and Queens Counties identified as being at high risk for hospitalization due to heart disease, stroke, and diabetes.
2. Continued submission of annual reports, prepared by an unrelated, independent entity, providing at a minimum the data required in the contingency, and reporting the percent of patients in compliance with the condition of approval related to the approved special pilot program population. Annual reports must be submitted no later than March 15th of each year for the proceeding calendar year. [CHA]

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



Project # 181293-E
Carthage Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Jefferson
Acknowledged: April 27, 2018

Executive Summary

Description

CLR Carthage LLC d/b/a Carthage Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Carthage Center for Rehabilitation and Nursing is a 90-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1045 West Street, Carthage (Jefferson County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR Carthage LLC		
Members	Current	Proposed
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR Carthage LLC are seeking approval to acquire the operating interests in the following six RHCFs: Glens Falls Center for Rehabilitation and Nursing (CON 181294), New Paltz Center for Rehabilitation and Nursing (CON 181295), Onondaga Center for Rehabilitation and Nursing (CON 181297),

Schenectady Center for Rehabilitation and Nursing (CON 181298), Slate Valley Center for Rehabilitation and Nursing (CON 181299) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant members will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$6,755,583
Expenses	<u>6,169,031</u>
Gain/(Loss)	\$586,552

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 Articles of Organization, 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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Carthage Center for Rehabilitation and Nursing	Same
Address	1045 West St Carthage, NY, 13619	Same
RHCF Capacity	90	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Carthage LLC	Same
	Amir Abramchik 50%	Kenneth Rozenberg* 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
		Amir Abramchik 3%
		*managing member

Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Essex Center for Rehabilitation and Healthcare	Current	**	**	****	**
	03/2014 <i>Data 07/2014</i>	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	**
	10/2017	*	**	****	*
Carthage Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	***	**	*****	**

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus Facility. The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements. Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreements have been submitted as follows:

Date:	February 25, 2018
Description:	Purchase of 47% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description:	Purchase 41% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 8, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid-FFS	\$177.23	\$4,153,865	\$172.10	\$4,075,156	\$172.10	\$4,075,156
Medicaid-MC	\$169.52	443,803	\$181.25	479,406	\$181.25	479,406
Medicare-FFS	\$526.03	1,078,891	\$468.69	970,657	\$468.69	970,657
Medicare-MC	\$345.00	214,245	\$348.37	218,776	\$348.37	218,776
Commercial	\$295.00	82,010	\$295.00	82,600	\$295.00	82,600
Private Pay/Other	\$340.23	862,825	362.60	928,988	362.00	928,988
Other Operating		17,176		0		0
Total		\$6,852,815		\$6,755,583		\$6,755,583
Expenses						
Operating	\$207.04	\$6,530,327	\$182.60	\$5,818,479	\$182.60	\$5,818,479
Capital	19.72	622,173	11.30	360,013	11.00	350,552
Total Expenses	\$226.76	\$7,152,500	\$193.90	\$6,178,492	\$193.60	\$6,169,031
Net Income (Loss)		<u>(\$299,685)</u>		<u>\$577,091</u>		<u>\$586,552</u>
Patient Days		31,542		31,865		31,865
Utilization %		95.76%		97.0%		97.0%

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

- The current year reflects the facility's 2016 revenues and expenses. CLR Carthage LLC became the new operator of the facility as of September 1, 2017. Therefore, 2018 will be the first full year financial data to be filed with the Department under the new operator. For the 2017 RHCF filing, the new operator will be required to file only Part 1 of the RHCF cost report, which provides statistical information related to the time period the new operator has owned the facility.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare rate is the actual average daily rate experienced by the facility during 2016 and the forecasted Year One and Year Three Medicare rate is the applicant's projection using a more conservative rate. The Private Pay rates were based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 5% through various initiatives including renegotiating contracts.
- The facility's projected utilization for Year One and Year Three is 97%. It is noted that historical utilization for 2017 was 97.07%. The applicant has increased utilization by implementing a number of measures including:
 - Further develop and marketing the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System;
 - Implement a marketing team focused on community outreach and eldercare education;
 - Seek to retain existing staff, implement training and leadership programs and provide career path opportunities; and
 - Implement an improved food service program.

- Utilization by payor source for the first and third year after the change in ownership is summarized below:

Payor	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	82.61%	82.61%
Medicare	8.47%	8.47%
Private Pay & Commercial	8.92%	8.92%

- The breakeven utilization is projected at 88.72% in the first year.
- The facility's Medicaid admissions of 26.7% in 2016 and 25.7% in 2017 exceeded Jefferson County's 75% threshold rates of 9.8% for 2016 and 13.6% for 2017.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$1,029,749 based on two months of first year expenses, which can be funded through current operations of \$686,505 (current assets minus current liabilities as of 12/31/17) and proposed members' equity of \$343,244. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCs that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHC acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCs whose ownership interest will increase to 85% upon PHHC approval of this application, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects net income of \$577,091 and \$586,552 from operations in the first and third year, respectively. The budget appears reasonable.

BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$666,568. It is noted that assets include \$2,398,939 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$1,732,371.

BFA Attachment C, the Financial Summary of Carthage Nursing and Rehabilitation Center, indicates that the facility has experienced negative working capital and equity positions, an average net loss of \$385,000 for 2015-2016, and an average occupancy of 94.65%. The applicant stated that the operating losses were the results of a combination of the facility's small size and expenditures exceeding reimbursement rates and revenue projections by payor. The losses accumulated over time resulting in the negative positions. Carthage Nursing and Rehabilitation Center has reversed this trend in 2017 through the following initiatives:

- reduced expenses by renegotiating vendor contracts;
- analyzed staff expenses along with reworking staff schedules to keep overtime expenses down; and
- reduced bad debt expenses through an accounts receivable collection plan.

BFA Attachment D is the Financial Summary of the proposed member's affiliated RHC, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	CLR Carthage LLC, Kenneth Rozenberg and Proposed Members' Net Worth
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary, Carthage Nursing and Rehabilitation Center, LLC, 2015- 2017
BFA Attachment D	Proposed Member's Affiliated RHCF Financial Summary

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181293 E

Carthage Center for Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Amended Articles of Organization, 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 # 181295-E
New Paltz Center for Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Ulster
Acknowledged: May 3, 2018

Executive Summary

Description

CLR New Paltz LLC d/b/a New Paltz Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. New Paltz Center for Rehabilitation and Nursing is a 77-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1 Jansen Road, New Paltz (Ulster County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR New Paltz LLC		
<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR New Paltz LLC are seeking approval to acquire the operating interests in the following six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), Glens Falls Center for Rehabilitation and Nursing (CON 181294), Onondaga Center for

Rehabilitation and Nursing (CON 181297), Schenectady Center for Rehabilitation and Nursing (CON 181298), Slate Valley Center for Rehabilitation and Nursing (CON 181299) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant members will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$7,220,672
Expenses	<u>6,828,784</u>
Gain/(Loss)	\$391,888

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 Certificate of Amendment to the Articles of Organization of CLR New Paltz 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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed																				
Facility Name	New Paltz Center for Rehabilitation and Nursing	Same																				
Address	1 Jansen Rd New Paltz, NY, 12561	Same																				
RHCF Capacity	77	Same																				
ADHC Program Capacity	N/A	Same																				
Type of Operator	Proprietary	Same																				
Class of Operator	Proprietary	Same																				
Operator	CLR New Paltz LLC	Same																				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Amir Abramchik</td> <td style="width: 10%; text-align: right;">50%</td> <td style="width: 20%;">Kenneth Rozenberg*</td> <td style="width: 10%; text-align: right;">85%</td> </tr> <tr> <td>Hillel Weinberfer</td> <td style="text-align: right;">41%</td> <td>Yisroel Wolff</td> <td style="text-align: right;">4%</td> </tr> <tr> <td>Kenneth Rozenberg</td> <td style="text-align: right;">9%</td> <td>Nathan Goldman</td> <td style="text-align: right;">4%</td> </tr> <tr> <td></td> <td></td> <td>Maxwell Mase</td> <td style="text-align: right;">4%</td> </tr> <tr> <td></td> <td></td> <td>Amir Abramchik</td> <td style="text-align: right;">3%</td> </tr> </table>	Amir Abramchik	50%	Kenneth Rozenberg*	85%	Hillel Weinberfer	41%	Yisroel Wolff	4%	Kenneth Rozenberg	9%	Nathan Goldman	4%			Maxwell Mase	4%			Amir Abramchik	3%	
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Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
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Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

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Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of

policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Essex Center for Rehabilitation and Healthcare	Current	**	**	****	**
	03/2014 <i>Data 07/2014</i>	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	**
	10/2017	*	**	****	*
New Paltz Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	****	***	****	****

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus facility). The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.

- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements.

Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreements have been submitted as follows:

Date:	February 25, 2018
Description	Purchase 47% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description	Purchase 41% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%), and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 12, 2018, the facility has no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
<u>Revenues</u>						
Medicaid FFS	\$263.40	\$3,771,129	\$212.65	\$3,197,618	\$212.65	\$3,265,028
Medicaid MC	\$218.36	\$880,446	\$210.18	\$890,112	\$210.18	\$908,818
Medicare FFS	\$460.06	\$1,196,604	\$530.75	\$1,449,478	\$530.75	\$1,480,262
Medicare MC	\$367.00	\$635,277	\$367.00	\$667,206	\$367.00	\$681,519
Commercial FFS	\$349.69	\$72,385	\$400.00	\$86,400	\$400.00	\$88,400
Private Pay/Other	\$280.96	\$711,678	\$349.57	\$929,858	\$349.67	\$949,342
Other Operating		<u>\$10,605</u>		<u>\$0</u>		<u>\$0</u>
Total Revenues		\$7,278,124		\$7,220,672		\$7,373,369
<u>Expenses</u>						
Operating	\$292.68	\$7,440,140	\$244.34	\$6,523,203	\$239.30	\$6,523,203
Capital	<u>\$21.37</u>	<u>\$543,160</u>	<u>\$11.45</u>	<u>\$305,581</u>	<u>\$9.64</u>	<u>\$262,858</u>
Total Expenses	\$314.04	\$7,983,300	\$255.79	\$6,828,784	\$248.94	\$6,786,061
Net Income (Loss)		<u>(705,176)</u>		<u>391,888</u>		<u>587,308</u>
Patient Days		25,421		26,697		27,260
Max days		28,914		28,105		28,105
Utilization %		87.92%		95.0%		97.0%

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

- The current year reflects the facility's 2016 revenues and expenses. CLR New Paltz LLC became the new operator of the facility as of September 1, 2017. Therefore, 2018 will be the first full year financial data to be filed with the Department under the new operator. For the 2017 RHCf filing, the new operator will be required to file only Part 1 of the RHCf cost report, which provides statistical information related to the time period the new operator has owned the facility.
- The current year 2016 occupancy reflects 79 beds. Under CON 162258 and effective September 1, 2017, two RHCf beds were decertified leaving 77 net beds, which are reflected in the first and third year budget utilization calculations.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate plus assessments. The current year Medicare rate is the actual daily rate experienced by the facility during 2016 and the forecasted year one and year three Medicare rate is the actual daily rate for 2018. The Private Pay rates were based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 14.5% through various initiatives including re-negotiating contracts. The staffing projections, a reduction of 7.88 FTEs, are based on the new operator's staffing plan as implemented upon the change of ownership. The staffing may be adjusted further based upon resident need.
- The facility's projected utilization for Year One and Year Three is 95% and 97%, respectively. It is noted that utilization for the past four years (2013-2016) has averaged around 86.5% and current occupancy was 85.6% as of December 31, 2017. As of April 30, 2018, the utilization is 95.25%. The applicant has increased utilization by implementing a number of measures including:
 - Further develop and market the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System;
 - Implement a marketing team focused on community outreach and eldercare education;
 - Seek to retain existing staff, implement training and leadership programs, and provide career path opportunities; and
 - Implement an improved food service program.

- Utilization by payor source for the current year (2016) and the first and third year after the change in ownership is summarized below:

Payor	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	72.19%	72.19%
Medicare	17.04%	17.04%
Private Pay & Commercial	10.77%	10.77%

- The breakeven utilization is projected at 89.8% in the first year.
- The facility's Medicaid admissions of 21.5% in 2016 and 27.8% in 2017 exceeded Ulster County's 75% threshold rate of 19.5% in 2016 and 15.4% in 2017.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$1,138,131 based on two months of first year expenses, which can be funded through current operations of \$996,218 (current assets minus current liabilities as of 12/31/2017) and proposed member's equity of \$141,913. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCs that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHC acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCs whose ownership interest will increase to 85% upon PHHPC approval of this application, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects a \$391,888 and a \$587,308 net income from operations in the first and third year, respectively. The budget appears reasonable.

BFA Attachment B presents the pro forma balance sheet of New Paltz Center for Rehabilitation and Nursing, which indicates positive members' equity of \$487,966. It is noted that assets include \$2,092,390 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$1,604,423.

BFA Attachment C, the Financial Summary of New Paltz Center for Rehabilitation and Nursing, indicates that the facility has working capital in the amount of \$996,218, positive equity position of \$487,966, and net income of \$33,194 for the period September 1, 2017 through December 31, 2017. Occupancy for this last quarter of 2017 was at 97%. For the previous 2015-2016 period, the facility experienced negative working capital and equity positions and had an average net loss of \$739,954, with average occupancy level of 91.5%. The applicant stated that prior operating losses were the results of a combination of the facility's small size and expenditures exceeding reimbursement rates and revenue projections by payor. The losses accumulated over time resulting in negative positions. The applicant plans to maintain increased occupancy by accepting more clinically complex residents and implementing the above stated measures. The applicant intends to reduce expenses by:

- reducing staff by 7.88 FTEs;
- analyzing staff expenses and re-working staff schedules to keep overtime expenses down;
- re-negotiating vendor contracts; and
- reducing bad debt expenses through an accounts receivable collection plan.

BFA Attachment D presents the Financial Summary of the proposed member's affiliated RHC, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	CLR New Paltz LLC – Kenneth Rozenberg and Proposed Members Net Worth
BFA Attachment B	New Paltz Center for Rehabilitation and Nursing – Pro Forma Balance Sheet
BFA Attachment C	New Paltz Center for Rehabilitation and Nursing – Financial Summary 2015-2017
BFA Attachment D	Proposed Member’s Affiliated RHCF Financial Summary

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181295 E

New Paltz Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a Certificate of Amendment to the Articles of Organization of CLR New Paltz 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 # 181297-E
Onondaga Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Onondaga
Acknowledged: May 1, 2018

Executive Summary

Description

CLR Minoa LLC d/b/a Onondaga Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Onondaga Center for Rehabilitation and Nursing is an 80-bed, proprietary, Article 28 residential health care facility (RHCF) located at 217 East Avenue, Minoa, (Onondaga County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR Minoa LLC		
<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR Minoa LLC are seeking approval to acquire the operating interests in the following six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), Glens Falls Center for Rehabilitation and Nursing (CON 181294), New Paltz Center for

Rehabilitation and Nursing (CON 181295), Schenectady Center for Rehabilitation and Nursing (CON 181298), Slate Valley Center for Rehabilitation and Nursing (CON 181299) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$8,262,022
Expenses	<u>6,922,273</u>
Gain/(Loss)	\$1,339,649

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 Articles of Organization, 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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Onondaga Center for Rehabilitation and Nursing	Same
Address	217 East Avenue, Minoa NY, 13116	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Minoa LLC	Same
	Amir Abramchik 50%	Kenneth Rozenberg* 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
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Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

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Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the

difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

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Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
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Onondaga Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	*	*	****	***

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus facility (dsff). As a result, there is no current Quintile rating. The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

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- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.

- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements.

Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreements have been submitted as follows:

Date:	February 25, 2018
Description	Purchase of 47% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description	Purchase 41% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 10, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	<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	\$245.18	\$3,536,981	\$219.75	\$3,469,853	\$219.75	\$3,542,810
Medicaid-MC	\$243.98	331,813	\$233.31	347,632	\$233.31	354,865
Medicare-FFS	\$514.77	1,601,972	\$465.87	1,586,753	\$465.87	1,620,296
Medicare-MC	\$434.09	780,060	\$447.15	879,544	\$447.15	897,877
Commercial	\$393.49	57,450	\$399.43	52,325	\$325.00	53,300
Private Pay	\$380.95	\$1,715,051	\$390.89	\$1,925,915	390.89	\$1,966,177
Other Operating		<u>11,919</u>		<u>0</u>		<u>0</u>
Total		\$8,035,246		\$8,262,022		\$8,435,325
<u>Expenses</u>						
Operating	\$292.39	\$7,410,048	\$237.81	\$6,589,887	\$242.68	\$6,589,887
Capital	<u>18.01</u>	<u>456,359</u>	<u>12.00</u>	<u>332,486</u>	<u>11.08</u>	<u>300,953</u>
Total Expenses	\$310.40	\$7,866,407	\$249.81	\$6,922,373	\$253.76	\$6,890,840
Net Income (Loss)		<u>\$168,839</u>		<u>\$1,339,649</u>		<u>\$1,544,485</u>
Patient Days		25,343		27,741		28,323
Utilization %		84.4%		95.0%		97.0%

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

- The current year reflects the facility's 2016 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 2016 and the forecasted year one and year three Medicare rate is the applicant's projection using a more conservative rate. The Private Pay rates were based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 12% through reducing expenses such as salaries, employee benefits, professional fees, supplies, and purchased contract services. Other capital expenses that will be reduced include depreciation and rent expense.
- Utilization for Year One and Year Three is projected at 95% and 97% respectively. This is anticipated to raise revenue while cutting costs. It is noted that utilization for the past four years has averaged around 86.01% and current occupancy is 84.4% as of the 2016 cost report summary. The applicant plans on increasing utilization by implementing many measures including:
 - Further develop and marketing the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System; and
 - Implement a marketing team focused on community outreach and eldercare education.
- Utilization by payor source for the first and third year after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Years One and Three</u>
Payor		
Medicaid	62.3%	62.0%
Medicare	19.4%	19.4%
Private Pay & Commercial	18.3%	18.6%

- The breakeven utilization is projected at 85% using current cost (2016) cost report summary.
- The facility's Medicaid admissions of 9.6% in 2016 and 13.4% in 2017 did not meet Onondaga County's 75% threshold rate of 16.6% in 2016 and 14.0% in 2017. To ensure continued access to Medicaid recipients the facility: regularly engages with hospital discharge planners to make them

aware of the facility's Medicaid access program; communicates with hospital discharge planners on a regular basis regarding availability at the facility and informs community resources that serve low income and frail populations who may eventually use the nursing facility and inform them about the facility's Medicaid access program.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$1,153,729 based on two months of first year expenses, which can be funded through current operations of \$861,348 (current assets minus current liabilities as of 12/31/2017) and proposed member's equity of \$292,381. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCFS that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHCF acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCFS whose ownership interest will increase to 85% upon PHHPC approval, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects a \$1,339,649 and a \$1,544,485 net income from operations in the first and third year, respectively. The budget appears reasonable.

BFA Attachment B presents the pro-forma balance sheet as of the first day of operation, which shows a positive members' equity of \$990,393. It is noted that assets include \$2,184,640 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$1,194,247.

BFA Attachment C, Financial Summary of Onondaga Center for Rehabilitation and Nursing, indicates that the facility currently has a positive working capital of \$861,348 and current positive equity position of \$990,391. The facility experienced an average net loss of \$155,500 for 2015-2016. The applicant stated that the operating losses were the results of a combination of the facility's small size and expenditures exceeding reimbursement rates and revenue projections by payor. The 2017 draft financial indicate that Onondaga Center for Rehabilitation and Nursing has reversed this trend indicating a net income of \$540,489.

BFA Attachment D presents the Financial Summary of the proposed member's affiliated RHCF, which shows the facilities maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	CLR Minoa LLC, Proposed Members Net Worth
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary, Onondaga Center of Rehabilitation and Nursing, 2015 - 2017
BFA Attachment D	Proposed members Affiliated RHCF Financial Summary

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181297 E

Onondaga Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Amended Articles of Organization, 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 # 181298-E
Schenectady Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Schenectady
Acknowledged: April 27, 2018

Executive Summary

Description

CLR Schenectady LLC d/b/a Schenectady Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Schenectady Center for Rehabilitation and Nursing is a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 526 Altamont Avenue, Schenectady (Schenectady County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR Schenectady LLC		
<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR Schenectady LLC are seeking approval to acquire the operating interests in the following six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), Glens Falls Center for Rehabilitation and

Nursing (CON 181294), New Paltz Center for Rehabilitation and Nursing (CON 181295), Onondaga Center for Rehabilitation and Nursing (CON 181297), Slate Valley Center for Rehabilitation and Nursing (CON 181299) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$25,255,818
Expenses	<u>24,465,353</u>
Gain/(Loss)	\$790,465

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 applicants Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants amended executed and completed Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Consulting Services 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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Schenectady Center for Rehabilitation and Nursing	Same
Address	528 Altamont Ave, Schenectady, NY 12303	Same
RHCF Capacity	240	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Schenectady LLC	Same
	Amir Abramchik 50%	*Kenneth Rozenberg 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
		Amir Abramchik 3%
		*managing member

Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the

difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Essex Center for Rehabilitation and Healthcare	Current	**	**	****	**
	03/2014 <i>Data 07/2014</i>	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	**
	10/2017	*	**	****	*
Schenectady Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	****	***	*****	***

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus facility). The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.

- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements. Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreement have been submitted as follows:

Date:	February 25, 2018
Description	Purchase 47.0% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description	Purchase 41.0% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 8, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicaid-FFS	\$256.08	\$14,671,574	\$228.76	\$13,291,414	\$228.76	\$13,291,414
Medicaid-MC	\$265.85	1,221,315	\$265.85	1,234,607	\$265.85	1,234,607
Medicare-FFS	\$571.32	3,657,576	\$571.32	3,698,154	\$571.32	3,698,154
Medicare - MC	\$435.55	2,311,899	\$435.55	2,337,161	\$435.55	2,337,161
Commercial	\$478.79	459,639	\$478.79	464,426	\$478.79	464,426
Private Pay/Other	\$411.31	4,184,649	\$411.32	4,230,056	\$411.32	4,230,056
Other Operating		<u>65,100</u>		<u>0</u>		<u>0</u>
Total		\$26,571,752		\$25,255,818		\$25,255,818
Expenses						
Operating	\$253.70	\$21,541,041	\$248.28	\$21,312,153	\$248.28	\$21,312,153
Capital	<u>39.63</u>	<u>3,364,758</u>	<u>36.94</u>	<u>3,171,162</u>	<u>34.06</u>	<u>3,153,200</u>
Total Expenses	\$293.33	\$24,905,799	\$285.22	\$24,483,315	\$285.01	\$24,465,353
Net Income (Loss)		<u>\$1,665,953</u>		<u>\$772,503</u>		<u>\$790,465</u>
Patient Days		84,906		85,839		85,839
Utilization %		96.66%		98.0%		98.0%

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

- The current year reflects the facility's 2016 revenues and expenses. CLR Schenectady LLC became the new operator as of September 1, 2017. Therefore, 2018 will be the first full year financial data to be filed with the Department under the new operator. For the 2017 RHCF filing, the new operator will be required to file only Part 1 of the RHCF cost report, which provides statistical information related to the time period the new operator has owned the facility.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare rate is the actual average daily rate experienced by the facility during 2016. The Private Pay rates were based on the current operator's average rates for 2016.
- 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 Year Three is 98%. It is noted that the historical utilization for 2017 was 95.32% and 96.98% as of June 30, 2018. The applicant plans on increasing utilization by implementing a number of measures including:
 - Further develop and marketing the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System;
 - Implement a marketing team focused on community outreach and eldercare education;
 - Seek to retain existing staff, implement training and leadership programs and provide career path opportunities; and
 - Implement an improved food service program.
- Utilization by payor source for the first and third year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Years One & Three</u>
Medicaid	73.10%	73.10%
Medicare	13.79%	13.79%
Private Pay & Commercial	13.11%	13.11%

- The breakeven utilization is projected at 95.0% in the first year.

- The facility's Medicaid admissions of 6.0% in 2016 and 1.6% in 2017 did not meet or exceed Schenectady County's 75% threshold rates of 6.9% for 2016 and 14.2% for 2017. The current operator commenced operation of the facility on September 1, 2017. Currently, 45% of the facility's residents are Medicaid recipients. The applicant indicated that the average of Medicaid admissions at the facility from January 1, 2018 to June 9, 2018 was 8%. In order to ensure continued access to Medicaid recipients the facility:
 - Regularly engages with hospital discharge planners to make them aware of the facility's Medicaid access program;
 - Communicates with local hospital discharge planners on a regular basis regarding bed availability at the facility; and
 - Informs 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 program.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$4,080,553 based on two months of first year expenses, which can be funded through current operations of \$2,339,560 (current assets minus current liabilities as of 12/31/17) and proposed members' equity of \$ 1,740,993. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCs that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHC acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCs whose ownership interest will increase to 85% upon PHHPC approval, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects a net operational income of \$772,503 and \$790,465 in the first year and third year, respectively. Kenneth Rozenberg has submitted an affidavit stating that he will contribute capital as needed for the first and third year of operations. BFA Attachment E presents the budget sensitivity analysis based on current utilization of the facility as of June 30, 2018, which shows the first and third year budgeted revenues would increase by \$586,387 resulting in a net operating income in year one of \$1,358,890 and in year three of \$1,376,852. The budget appears reasonable.

BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$6,959,797. It is noted that assets include \$6,225,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of \$734,797.

BFA Attachment C, Financial Summary of Schenectady Nursing and Rehabilitation Center, indicates that the facility has maintained positive working capital and equity positions, an average net operational income of \$2,002,000 for 2015-2016, and an average occupancy of 96.65%.

BFA Attachment D is the Financial Summary of the proposed member's affiliated RHC, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A CLR Schenectady LLC, Proposed Members Net Worth and Kenneth Rozenberg Net Worth
- BFA Attachment B Pro Forma Balance Sheet
- BFA Attachment C Financial Summary, Schenectady Nursing and Rehabilitation Center, LLC, 2015- 2017
- BFA Attachment D Proposed member's Affiliated RHCFC Financial Summary
- BFA Attachment E Budget Sensitivity

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181298 E

Schenectady Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicants Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants amended executed and completed Articles or Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Consulting Services 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 # 181299-E
Slate Valley Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Washington
Acknowledged: April 27, 2018

Executive Summary

Description

CLR Granville LLC d/b/a Slate Valley Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Slate Valley Center for Rehabilitation and Nursing is an 88-bed, proprietary, Article 28 residential health care facility (RHCF) located at 10421 State Route 40, Granville (Washington County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR Granville LLC		
<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR Granville LLC are seeking approval to acquire the operating interests in the following six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), Glens Falls Center for Rehabilitation and Nursing (CON 181294), New Paltz Center for

Rehabilitation and Nursing (CON 181295), Onondaga Center for Rehabilitation and Nursing (CON 181297), Schenectady Center for Rehabilitation and Nursing (CON 181298) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant members will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$7,560,406
Expenses	<u>6,927,247</u>
Gain/(Loss)	\$633,159

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicants amended executed and completed Articles or Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
3. Please submit a photocopy of proof of filing and receipt by the NYS Department of State, of the applicants Certificate of Assumed Name. [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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Slate Valley Center for Rehabilitation and Nursing	Same
Address	10421 State Route 40 Granville, NY 12832	Same
RHCF Capacity	88	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Granville LLC	Same
	Amir Abramchik 50%	*Kenneth Rozenberg 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
		Amir Abramchik 3%
		*managing member

Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the

difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Essex Center for Rehabilitation and Healthcare	Current	**	**	****	**
	03/2014 <i>Data 07/2014</i>	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	**
	10/2017	*	**	****	*
Slate Valley Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	****	***	*****	***

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus facility). The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.

- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements. Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreements have been submitted as follows:

Date:	February 25, 2018
Description:	Purchase of 47% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description:	Purchase 41% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 21, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid-FFS	\$202.64	\$4,308,903	\$186.98	\$4,018,948	\$186.98	\$4,103,650
Medicaid-MC	\$195.66	244,575	\$199.86	252,423	\$199.86	257,819
Medicare-FFS	\$435.56	1,146,398	\$464.86	1,236,992	\$464.86	1,263,025
Medicare-MC	\$456.25	619,131	\$456.25	626,431	\$456.25	625,306
Commercial	\$249.00	2,739	\$249.00	2,988	\$249.00	2,988
Private Pay/VA *	\$301.31	1,106,396	\$341.68	1,266,639	\$342.50	1,293,262
Other Operating **		<u>17,367</u>		<u>\$0</u>		<u>\$0</u>
Total Revenue		\$7,445,509		\$7,404,421		\$7,560,406
Expenses						
Operating	\$234.14	\$7,067,679	\$215.23	\$6,567,571	\$210.79	\$6,567,571
Capital	<u>20.60</u>	<u>621,787</u>	<u>12.44</u>	<u>379,654</u>	<u>11.54</u>	<u>359,676</u>
Total Expenses:	\$254.74	\$7,689,466	\$227.67	\$6,947,225	\$222.33	\$6,927,247
Net Income (Loss)		<u>(\$243,957)</u>		<u>\$457,196</u>		<u>\$633,159</u>
Patient Days		30,186		30,514		31,157
Utilization %		94.7%		95%		97%

* Combination of private pay and Veterans Administration.

** Other revenues in the current year includes cafeteria, TV rentals, unrestricted investment income, and other miscellaneous income.

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

- The current year reflects the facility's 2016 actual revenues and expenses based on 88 beds.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare FFS and MC rates are the actual daily rates experienced by the facility during 2016. The forecasted Year One and Year Three Medicare rates are the applicant's projection based on current Medicare FFS and MC reimbursement methodologies. The Medicare FFS rate is projected to increase going forward. The Private Pay rates were based on the current operator's average rates during 2016.
- The total projected Year One decrease in cost is projected to total \$742,241 which will positively impact the facility. The expense assumptions are based on the applicant's proposal to decrease costs in Year One and Year Three by implementing a number of measures including:
 - Reducing labor related expenses by approximately \$459,798 in the first year. Staff FTE reductions are expected in management, technician/specialist and physical therapy assistant staff. RNs, LPNs and Aides FTEs will be slightly increased.
 - The cost of medical supplies and non-medical supplies will decrease by approximately \$113,000 in Year One by renegotiating contracts with vendors.
 - Costs related to purchased services will decrease by \$42,493 in Year One.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

Payor	Current	Years One
	Year	&Three
Medicaid	74.6%	74.5%
Medicare	13.2%	13.2%
Private Pay/Comm.	12.2%	10.8%

- The facility's projected utilization is 95% and 97% for Year One and Year Three, respectively. For 2013 through 2016, the facility averaged approximately 92.93% utilization. To increase utilization the applicant intends to strengthen relationships with hospital discharge planners and focus on community outreach.
- The breakeven utilization is projected at 91% in the first year.

- The facility's Medicaid admissions of 10.9% in 2016 did not meet Washington County's 75% threshold rate of 22.8% for 2016. However, the facility's 2017 Medicaid admissions of 17.8% far exceeded Washington County's 75% threshold of 12.9%. To ensure continued access to Medicaid recipients, the applicant stated they will work with community partners such as discharge planners, outreach programs and strengthen existing relationships to service the frail populations who may need this type of service.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$1,157,871 based on two months of first year expenses of which \$493,110 can be funded from current operations current assets minus current liabilities as of 12/31/17) and proposed members' equity of \$664,761. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCFS that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHCFS acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCFS whose ownership interest will increase to 85% upon PHHPC approval of this application, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects net income of \$457,196 and \$633,159 from operations in the first and third year, respectively. The budget appears reasonable.

BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which shows a positive members' equity of \$529,892. It is noted that assets include \$2,380,933 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$1,851,041.

BFA Attachment C, Financial Summary of Slate Valley Nursing and Rehabilitation Center, indicates that the facility has experienced negative working capital and equity position positions, an average net loss of \$408,500 for 2015-2016, and an average occupancy of 93.78%. The applicant stated that the operating losses were the result of a combination of the facility's low occupancy rate (averaging 93.35% during 2015 and 2016). The losses accumulated over time resulting in negative positions. Slate Valley Nursing and Rehabilitation Center has reversed this trend in 2017 through the following initiatives:

- reduced expenses substantially which the 2017 draft revenues ended with a \$12,682 positive net income;
- analyzed staff schedules to reduce overtime to reduce staffing and benefit expenses; and
- reduced current liabilities which would also increase cash flow as seen on Attachment C.

BFA Attachment D is the Financial Summary of the proposed member's affiliated RHCFS, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	CLR Granville LLC, Proposed Members Net Worth
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary, Slate Valley Nursing and Rehabilitation Center
BFA Attachment D	Proposed members Affiliated RHCFS Financial Summary

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181299 E

Slate Valley Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicants amended executed and completed Articles or Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
3. Please submit a photocopy of proof of filing and receipt by the NYS Department of State, of the applicants Certificate of Assumed Name. [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 # 181300-E
Troy Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Rensselaer
Acknowledged: April 27, 2018

Executive Summary

Description

CLR Troy LLC d/b/a Troy Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Troy Center for Rehabilitation and Nursing is a 78-bed, proprietary, Article 28 residential health care facility (RHCF) located at 49 Marvin Avenue, Troy (Rensselaer County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

CLR Troy LLC		
<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Amir Abramchik	50%	3%
Hillel Weinberger	41%	0%
Kenneth Rozenberg	9%	85%
Yisroel Wolff	--	4%
Maxwell Mase	--	4%
Nathan Goldman	--	4%

Concurrently under review, the applicant members of CLR Troy LLC are seeking approval to acquire the operating interests in the following other six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), Glens Falls Center for Rehabilitation and Nursing (CON 181294), New Paltz Center for

Rehabilitation and Nursing (CON 181295), Onondaga Center for Rehabilitation and Nursing (CON 181297), Schenectady Center for Rehabilitation and Nursing (CON 181298) and Slate Valley Center for Rehabilitation and Nursing (CON 181299).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Revenues	\$6,764,976
Expenses	<u>6,761,127</u>
Gain/(Loss)	\$3,849

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 Certificate of Amendment to the Articles of Organization of CLR Troy 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

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Troy Center for Rehabilitation and Nursing	Same
Address	49 Marvin Avenue Troy NY, 12180	Same
RHCF Capacity	78	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Troy LLC	Same
	Amir Abramchik 50%	Kenneth Rozenberg* 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
		Amir Abramchik 3%
		*managing member

Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
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Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

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Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the

difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Essex Center for Rehabilitation and Healthcare	Current	**	**	****	**
	03/2014 <i>Data 07/2014</i>	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	**
	10/2017	*	**	****	*
Troy Center for Rehabilitation and Nursing	<i>Subject of CON (Current)</i>	****	***	*****	***

KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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MISSOURI

Serenity Rehabilitation and Nursing Butler	06/2018	*	*	****	***
Serenity Rehabilitation and Nursing Kansas City	06/2018	*	*	*	****

Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

Granville Center for Rehabilitation and Nursing recently graduated from being a designated Special Focus facility). The issues surrounding its designation as a Special Focus Facility predate the ownership disclosed on this CON application.

Enforcement History

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-18-039 for surveillance findings on June 14, 2018 (4 years, 3 months after proposed owners took over ownership of Essex). Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18 (4 years after proposed owners took over ownership of Essex). Paid and closed.

- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 (1 year, 5 months after proposed owners took over ownership of Essex) for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 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 Granville Center for Rehabilitation and Nursing for the period identified above revealed that there were no enforcements.

Affidavits were provided by the applicant for the out of state facilities which disclosed no enforcement issues.

Conclusion

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

Financial Analysis

Assignment of Membership Interests

Executed assignment of membership interest purchase agreement have been submitted as follows:

Date:	February 25, 2018
Description	Purchase 47.0% Membership Interest
Assignor:	Amir Abramchik
Assignee:	Kenneth Rozenberg
Purchase Price:	\$10
Payment of Purchase Price:	Equity paid on February 25, 2018

Date:	February 25, 2018
Description	Purchase 41.0% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 6, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
<u>Revenues</u>						
Medicaid - FFS	\$256.41	\$4,503,917	\$210.92	\$3,912,355	\$210.92	\$3,994,614
Medicaid - MC	\$216.61	886,585	\$216.61	936,188	\$216.61	955,900
Medicare - FFS	\$494.76	980,608	\$494.76	1,035,533	\$494.76	1,057,302
Medicare - MC	\$379.25	504,782	\$379.25	533,226	\$379.25	544,603
Commercial	\$301.41	74,449	\$301.41	78,367	\$301.41	79,874
Private Pay/Other	\$313.67	44,228	\$313.67	129,860	\$313.67	132,683
Other Operating		<u>10,688</u>		<u>0</u>		<u>0</u>
Total Revenue		\$7,005,257		\$6,625,529		\$6,764,976
<u>Expenses</u>						
Operating	\$281.56	\$7,211,051	\$239.08	\$6,465,893	\$234.16	\$6,465,893
Capital	<u>11.84</u>	<u>303,122</u>	<u>11.64</u>	<u>314,912</u>	<u>10.69</u>	<u>295,234</u>
Total Expenses	\$293.40	\$7,514,173	\$250.72	\$6,780,805	\$244.85	\$6,761,127
Net Income (Loss)		<u>(\$508,916)</u>		<u>(\$155,276)</u>		<u>\$3,849</u>
Patient Days		25,611		27,044		27,613
Utilization %		87.47%		95.00%		97.00%

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

- The current year reflects the facility's 2016 revenues and expenses. CLR Troy LLC became the new operator of the facility as of September 1, 2017. Therefore, 2018 will be the first full year financial data to be filed with the Department under the new operator. For the 2017 RHCf filing, the new operator will be required to file only Part 1 of the RHCf cost report, which provides statistical information related to the time period the new operator has owned the facility.
- 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 2016 and the forecasted year one and year three Medicare rate is the applicant's projection using a more conservative rate. The Private Pay rates were based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 10.0%% through various initiatives including renegotiating contracts.
- The facility's projected utilization is 95.00% for Year One and 97% for Year Three. It is noted that historical utilization for 2017 was 89.35% and 89.17% as of June 30, 2018. The applicant plans on increasing utilization by implementing a number of measures including:
 - Further develop and marketing the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System;
 - Implement a marketing team focused on community outreach and eldercare education;
 - Seek to retain existing staff, implement training and leadership programs and provide career path opportunities; and
 - Implement an improved food service program.

- Utilization by payor source for the first and third year after the change in ownership is summarized below:

Payor	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	77.07%	84.65%
Medicare	21.24%	12.98%
Private Pay & Commercial	1.69%	2.37%

- The breakeven utilization is projected at 97.21% in the first year.
- The facility's Medicaid admissions of 20.9% in 2017 did not exceed Rensselaer County's 75% threshold rate of 22.2% in 2017. However, the facility's 2016 Medicaid admission of 27.9% far exceeded Rensselaer County's 75% threshold rate of 18.2% for 2016. BFA believes that the new members will make the appropriate effort to maintain the 75% threshold going forward.

Capability and Feasibility

There are no project costs associated with this application. Each of the five assignments will be purchased for \$10.

The working capital requirement is estimated at \$1,130,134 based on two months of first year expenses, which can be funded through current operations of \$654,027 (current assets minus current liabilities as of 12/31/17) and proposed member's equity of \$476,107. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCs that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHC acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCs whose ownership interest will increase to 85% upon PHHPC approval of the applications, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects a \$155,276 net loss and a \$3,849 net income from operations in the first and third year, respectively. Kenneth Rozenberg has submitted an affidavit stating that he will cover any operational losses sustained by the facility. BFA Attachment E presents the budget sensitivity analysis based on current utilization of the facility as of June 30, 2018, which shows the first-year budgeted revenues would decrease by \$30,556 resulting in a net loss in year one of \$185,832 and a net loss in year three of \$26,707. Utilization was 89.17% as of June 30, 2018. The budget appears reasonable.

BFA Attachment B provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$532,714. It is noted that assets include \$2,096,461 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$1,563,747.

BFA Attachment C, Financial Summary of Troy Center for Rehabilitation and Nursing, indicates that the facility has experienced negative working capital, negative equity position and experienced an average net loss of \$425,500 for 2015-2016 and an average occupancy of 86.95%. The applicant stated that the operating losses were the results of a combination of the facility's small size and expenditures exceeding reimbursement rates and revenue projections by payor. The losses accumulated over time resulting in negative positions. Troy Nursing and Rehabilitation Center has reversed this trend in 2017 through the following initiatives;

- reduced expenses by renegotiating vendor contracts,
- analyzing staffing expenses along with reworking staff schedules to keep overtime expenses down,
- and reduce bad debt expenses through an accounts receivable collection plan.

BFA Attachment D presents the Financial Summary of the proposed member's affiliated RHC, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A CLR Troy LLC, Proposed Members Net Worth and Kenneth Rozenberg Net Worth
(submitted under CON 181293 CLR Carthage LLC)
- BFA Attachment B Pro Forma Balance Sheet
- BFA Attachment C Financial Summary, Troy Center for Rehabilitation and Nursing, LLC, 2015- 2017
- BFA Attachment D Proposed members Affiliated RHCF Financial Summary
- BFA Attachment E Budget Sensitivity

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181300 E

Troy Center for Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a Certificate of Amendment to the Articles of Organization of CLR Troy 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 # 181294-E
Glens Falls Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Warren
Acknowledged: April 27, 2018

Executive Summary

Description

CLR Glens Falls LLC d/b/a Glens Falls Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to transfer a total of 88% ownership interest to an existing member and three new members, with one member withdrawing completely. Glens Falls Center for Rehabilitation and Nursing is a 117-bed, proprietary, Article 28 residential health care facility (RHCF) located at 152 Sherman Avenue, Glens Falls (Warren County). There will be no change in the lease agreement or consulting services agreement, and no change in beds or services provided.

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

Table with 3 columns: Members, Current, Proposed. Rows include Amir Abramchik (50% to 3%), Hillel Weinberger (41% to 0%), Kenneth Rozenberg (9% to 85%), Yisroel Wolff (0% to 4%), Maxwell Mase (0% to 4%), Nathan Goldman (0% to 4%).

Concurrently under review, the applicant members of CLR Glens Falls LLC are seeking approval to acquire the operating interests in the following six RHCFs: Carthage Center for Rehabilitation and Nursing (CON 181293), New Paltz Center for Rehabilitation and Nursing (CON 181295), Onondaga Center for

Rehabilitation and Nursing (CON 181297), Schenectady Center for Rehabilitation and Nursing (CON 181298), Slate Valley Center for Rehabilitation and Nursing (CON 181299) and Troy Center for Rehabilitation and Nursing (CON 181300).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant members will purchase 88% ownership interest at \$10 for each of the five assignments, for a total value of \$50. The proposed budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues (\$10,013,211), Expenses (9,373,577), Gain/(Loss) (\$762,634).

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 Certificate of Amendment to the Articles of Organization of CLR Glens Falls LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

December 13, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Glens Falls Center for Rehabilitation and Nursing	Same
Address	152 Sherman Ave Glens Falls, NY, 12801	Same
RHCF Capacity	117	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CLR Glens Falls LLC	Same
	Amir Abramchik 50%	Kenneth Rozenberg* 85%
	Hillel Weinberfer 41%	Yisroel Wolff 4%
	Kenneth Rozenberg 9%	Nathan Goldman 4%
		Maxwell Mase 4%
		Amir Abramchik 3%
		*managing member

Character and Competence

Only the new members, Yisroel Wolff, Nathan Goldman, and Maxwell Mase, are subject to a Character and Competence review.

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010, which is a nursing home business office. Mr. Wolff was the CEO of HBS Professional Services; a Health Care Recruitment business. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care (NY) (5%)	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is the current Administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing (NY) (5%)	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO) (1%)	06/2018 to present
Overland Park Center for Rehab (KS) (1%)	06/2018 to present

Quality Review

The applicants have stated that the low ratings at Essex and Granville are attributable to two factors (1) staffing and (2) clinical oversight. Applicant indicates that survey results have been impacted by inconsistent practices due to varying competencies, based upon varying comprehension of policies/procedures and varying technical skill proficiencies. Varying competencies were in part due to the

difficulty in recruiting and retaining staff, particularly in upstate areas. Low staffing ratings were attributed to the geographic location of the facility. Applicant states that they have experienced difficulties in recruitment and retention of qualified staff due to low population densities and lack of qualified/licensed nursing staff.

Applicant states that Centers Health Care has put corrective measures in place, such as relocating and housing line staff from out of state and offering busing and free transportation for staff to travel to rural areas. Additionally, a staffing support department has been established to address staffing concerns at each facility. Initiatives have been implemented to recruit and retain employees providing direct care services including provision of training and education necessary to receive CNA licensure in exchange for a commitment to accept employment at a facility for a term of one year (with the option to continue after the one-year term has expired). Specific measures implemented include: in-service trainings and staff education; changes in policies and procedures where necessary; demonstration of competencies (all staff must demonstrate competencies in their area of licensure at the time of hire and annually thereafter); buddy system where all direct care employees are paired with an experienced staff member during their first few weeks of employment to ensure new staff member is equipped with the appropriate skills and knowledge of quality assurance policies and procedures.

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KANSAS

Serenity Rehabilitation and Nursing Overland Park	06/2018	**	*	***	****
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Data date: 09/2018

Notes: Greyed out facilities are not applicable due to recent acquisition; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park; Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Kansas City

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Date:	February 25, 2018
Description	Purchase 41.0% Membership Interest
Assignor:	Hillel Weinberger
Assignee:	Yisroel Wolff (4%), Nathan Goldman (4%), Maxwell Mase (4%) and Kenneth Rozenberg (29%)
Purchase Price:	\$10 each
Payment of Purchase Price:	Equity paid on February 25, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 June 6, 2018, the facility had no outstanding Medicaid liabilities.

Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid-FFS	\$207.24	\$5,084,452	\$179.76	\$4,498,314	\$179.76	\$4,592,868
Medicaid-MC	\$175.35	594,255	\$175.35	606,185	\$175.35	618,810
Medicare-FFS	\$490.25	1,272,685	\$490.25	1,298,672	\$490.25	1,326,126
Medicare-MC	\$444.64	1,228,978	\$444.64	1,283,044	\$444.64	1,280,119
Commercial	\$395.00	22,910	\$395.00	24,095	\$395.00	24,490
Private Pay	\$338.89	2,181,412	\$338.89	2,224,474	\$338.89	2,271,241
Other Operating		<u>22,557</u>		<u>0</u>		<u>0</u>
Total		\$10,407,249		\$9,928,182		\$10,013,211
Expenses						
Operating	\$238.08	\$9,470,164	\$220.56	\$8,949,016	\$216.02	\$8,949,016
Interest	0.52	20,598	3.92	159,103	3.66	151,638
Capital	<u>14.54</u>	<u>578,411</u>	<u>7.77</u>	<u>315,220</u>	<u>6.59</u>	<u>272,923</u>
Total Expenses	\$253.14	\$10,069,173	\$232.25	\$9,423,339	\$226.27	\$9,373,577
Net Income (Loss)		<u>\$338,076</u>		<u>\$504,843</u>		<u>\$762,634</u>
Patient Days		39,778		40,575		41,427
Utilization %		90.6%		95.0%		97.0%

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

- The current year reflects the facility's 2016 revenues and expenses. CLR Glens Falls LLC became the new operator of the facility as of September 1, 2017. Therefore, 2018 will be the first full year financial data to be filed with the Department under the new operator. For the 2017 RHCf filing, the new operator will be required to file only Part 1 of the RHCf cost report, which provides statistical information related to the time period the new operator has owned the facility.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare rate is the actual average daily rate experienced by the facility during 2016. The Private Pay rates were based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by at least 6.4% and 6.9% through various initiatives including renegotiating contracts for year one and year three, respectively.
- The facility's projected utilization for Year One is 95% and Year Three is 97%. It is noted that historical utilization for 2017 was 96.7%, due in part to a decrease of three RHCf beds implemented under CON 162261, and 93.39% as of June 30, 2018. The applicant is trying to increase utilization by implementing a number of measures including:
 - Further develop and marketing the facility's short-term rehabilitation program along with implementing a specific initiative to accept more clinically complex and difficult to place residents;
 - Enhance provider relationships and improved collaboration with local health plans, hospital discharge planners, assisted living facilities, and other local health care providers, and seek to partner with the local DSRIP Performing Provider System;
 - Implement a marketing team focused on community outreach and eldercare education;
 - Seek to retain existing staff, implement training and leadership programs and provide career path opportunities; and
 - Implement an improved food service program.

- Utilization by payor source for the first and third year after the change in ownership is summarized below:

Payor	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	70.20%	70.19%
Medicare	13.47%	13.48%
Private Pay & Commercial	16.33%	16.33%

- The breakeven utilization is projected at 90.18% in the first year.
- The facility's Medicaid admissions of 7.7% in 2016 and 9.9% in 2017 exceeded Warren County's 75% threshold rates of 6.2% for 2016 and 7.0% for 2017.

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 88% membership interest at \$10 for each of the five assignments.

The working capital requirement is estimated at \$1,570,557 based on two months of first year expenses, which can be funded through current operations of \$799,480 (current assets minus current liabilities as of 12/31/17) and proposed member's equity of \$771,077. As previously noted, the applicant members are seeking approval to acquire the operating interests of six other RHCFS that are concurrently under review. BFA Attachment A shows that not all members have sufficient equity to meet the working capital requirements for all seven RHCF acquisitions. Kenneth Rozenberg, an existing 9% member in all of the RHCFS whose ownership interest will increase to 85% upon PHHPC approval of this application, has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects a \$504,843 and a \$762.634 net income from operations in the first and third year, respectively. Kenneth Rozenberg has submitted an affidavit stating that he will contribute capital as needed for the first and third year of operations. BFA Attachment E presents the budget sensitivity analysis based on current utilization of the facility as of June 30, 2018, which shows the first and third year budgeted revenues would decrease by \$380,053 resulting in a net operating income in year one of \$124,790 and in year three of \$382,581. The budget appears reasonable.

BFA Attachment B presents CLR Glens Falls LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members equity of \$789,798. It is noted that assets include \$3,232,348 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill results in members' equity of negative \$2,442,550.

BFA Attachment C, Financial Summary of Glens Falls Center for Rehabilitation and Nursing, indicates that the facility has experienced positive working capital and equity positions, experienced an average net gain of \$373,500 for 2015-2016, and an average occupancy of 89.50%. Glens Falls Center for Rehabilitation and Nursing has an occupancy rate of 96.7% in 2017. Three RHCF beds were decertified effective September 1, 2017, which has resulted in an improved occupancy rate at the new reduced certified bed count (CON 162261).

BFA Attachment D presents the Financial Summary of the proposed member's affiliated RHCF, which shows the facility maintained positive working capital, positive net assets, and generated positive net income.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A CLR Glens Falls LLC, Kenneth Rozenberg and Proposed Members' Net Worth
BFA Attachment B Pro Forma Balance Sheet
BFA Attachment C Financial Summary, Glens Falls Center for Rehabilitation and Nursing, LLC,
2015- 2017
BFA Attachment D Proposed member's Affiliated RHCF Financial Summary
BFA Attachment E Budget Sensitivity

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 13th day of December 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 a total of 88 percent ownership interest from one withdrawing member and one existing member to another existing member and three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181294 E

FACILITY/APPLICANT:

Glens Falls Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a Certificate of Amendment to the Articles of Organization of CLR Glens Falls LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 182217-E
St. Joseph's Health, Inc.

Program: Hospital
Purpose: Establishment

County: Onondaga
Acknowledged: November 15, 2018

Executive Summary

Description

St. Joseph's Health, Inc. (SJH) and Trinity Health Corporation (Trinity) seek approval for Trinity to become co-established with SJH as the active parent/co-operator of St. Joseph's Hospital Health Center (SJHHC), a 451-bed, voluntary not-for-profit, Article 28 acute care hospital located at 301 Prospect Avenue, Syracuse (Onondaga County). SJH, a New York not-for-profit corporation located in Syracuse, was recently established as the active parent/co-operator of SJHHC (CON 171446). The two entities have mirror boards. Trinity, an Indiana nonprofit organization and parent of a national healthcare system operating across 21 states, is the current passive parent and sole member of SJH (since 2015).

There are no costs associated with this project. There will be no change in authorized services, the number or type of beds, or staffing upon approval of this project. In addition, there are no projected changes in the utilization, revenue or expenses of the Hospital or SJH affiliates because of this project. SJH is also the sole member of St. Joseph's Health Center Properties, Inc., St. Joseph's Hospital Health Center Foundation, Inc., and Embracing Age, Inc. Subsidiaries within the St. Joseph's healthcare system include Oswego Health Home Care, LLC, an Article 36 Certified Home Health Agency (CHHA), and Franciscan Health Support, Inc., an Article 36 Licensed Home Care Service Agency (LHCSA). BFA Attachment A presents the organizational charts of Trinity and St. Joseph's Health, Inc.

Upon Public Health and Health Planning Council (PHHPC) approval, Trinity will be approved for operator authorities over SJHHC and as they relate to obligated group financings, and system-wide activities that will enhance their participation in Trinity's national healthcare system. SJH will continue to exercise active parent authority over the day-to-day operations of the Operating 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 SJH and the Operating Entities access to additional capital resources at more favorable rates and terms.

Currently, SJH believes Trinity's limited authority as passive parent prevents SJH from realizing the full economic and operational benefits of being part of a national healthcare system and they cannot participate in the Trinity's Health Obligated Group or System Development Fund. Trinity is not seeking decision-making authority over the day-to-day operations of SJH or the Operating Entities. Both entities agree that certain decision-making is best done at the local level by SJH and the Operating Entities' Boards of Directors, as they know best the local community needs. At the same time, Trinity and SJH recognize that the benefits of being part of a national healthcare 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.

As active parent/co-operator, Trinity will have the operator rights, powers and authorities over the SPHP Licensed Entities under 10 NYCRR §405.1(c) and §600.9(c), specifically:

- 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;
- 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; and
- Approval to participate in the total gross income or net revenue of a medical facility.

SJH will continue to be the full active parent of SJHHC with authority to exercise all active parent powers under 10 NYCRR §405.1(c).

OPCHSM Recommendation

Contingent Approval

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 each healthcare facility, utilization, services or beds, or to the revenues or expenses of SJH or the Operating 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 contingent upon:

1. Submission of a photocopy of an amended Restated Certificate of Incorporation of St. Joseph's Hospital Health Center, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of St. Joseph's Hospital Health Center, acceptable to the Department. [CSL]
4. 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

December 13, 2018

Need and Program Analysis

Program Description

St. Joseph's Health, Inc. (SJH) and Trinity Health Corporation (Trinity) seek approval for Trinity to become co-established as the active parent/co-operator of St. Joseph's Hospital Health Center (SJHHC), a 451-bed, voluntary not-for-profit, Article 28 acute care hospital located at 301 Prospect Avenue, Syracuse (Onondaga County). There is no projected change in authorized services, the number or type of beds, or staffing upon approval of this project.

Both entities agree that certain decision-making is best done at the local level by SJH and its operating entities' Boards of Directors. At the same time, Trinity and SJH recognize the benefits of being part of a national healthcare system and the national parent having the ability to act decisively on behalf of all members of the system in matters that affect the entire system.

The corporate organizational structure of Trinity Health Corporation includes health care providers located in New York State, over which Trinity Health Corporation has control. (See **Programmatic Attachment A – Trinity Health Facilities in NYS.**)

Additionally, the corporate organizational structure of Trinity Health Corporation also includes over 93 hospitals and providers located in 21 additional states. (See **Programmatic Attachment B – Trinity Health Out-of-State Facilities.**)

Character and Competence

The Board of Directors of Trinity Health Corporation is as follows:

Kevin Barnett
James Bentley, PhD, *Chair*
Joseph Betancourt, MD
Benjamin Carter, *Treasurer*
Melanie Dreher, PhD, RN
Sr. Mary Fanning
Richard J. Gilfillan, MD, *President & CEO*
Mary Catherine Karl, *Vice-Chair*
George M. Philip
Sr. Kathleen Popko
Linda S. Ross, Esq., *Secretary*
David Southwell
Sr. Joan Marie 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 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 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.

Out-of-state compliance requests were sent to all the states identified in **Programmatic Attachment B – Trinity Health Out-of-State Facilities**. The out-of-state compliance information provided below was taken from Project 172230, which received contingent approval from the Public Health and Health Planning Council on April 16, 2018.

On December 4, 2018, the Applicant submitted a signed affidavit attesting to out-of-state findings that occurred between April 2018 to November 6, 2018. Please refer to **Programmatic Attachment C – Affidavit of Out-of-State Enforcement Actions** for those matters.

- 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.

Prevention Agenda

St. Joseph's Health Center suggests that their on-going Prevention Agenda work with Trinity Health Corporation would be strengthened by the approval of the application. The applicant indicates they collaborate with the local health department and other community-based organizations. On IRS Form 990, Schedule H for tax year 2016, the applicant reported zero dollars in net spending on community health improvement services.

The Department hopes that St. Joseph's Hospital Health Center will continue to collaborate with their local Prevention Agenda coalition and with Trinity Health Corporation to implement evidence-based community health improvement interventions in Onondaga County.

Conclusion

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

Overview of Master Indenture

SJH 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 SJH becomes a Designated Affiliate. As a Designated Affiliate, SJH 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, SJH will join the Credit Group as a Designated Affiliate like Trinity's other RHMs. Given its current revenues, SJH will most likely become a Material Designated Affiliate.

SJH's participation in the Trinity Health Obligated Group is a natural extension of the operation and alignment of healthcare financing in Trinity's multi-state health system. The applicant states that in 2015, the Department, in part, recognized Trinity's multi-state financing through its approval of SJHHC using Trinity's intercompany loan program. The Trinity intercompany loan program was and is a complement to the ability of organizations within the SJH 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 SJH. 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 healthcare entity within a multi-state system.

System Development Fund

The co-establishment of Trinity with SJH will also allow SJH 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 \$6.5 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

Co-establishment of Trinity as the active parent and co-operator of SJHHC and the participation of SJH in the Trinity Health Obligated Group will result in the following benefits to SJH and SJHHC:

- SJH and SJHHC will have access to additional capital resources at reduced rates through a unity of system resources.
- Debt management will be centralized and standardized, and SJH will have the benefit of Trinity's experience and expertise in managing debt.
- SJH can participate in the System Development Fund, which provides an alternative to going to the debt market for needed capital.
- Trinity, SJH and SJHHC 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.
- SJH will maintain dispositive management authority over day-to-day operations and other functions best performed at the local level.
- SJH 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, SJH 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 each healthcare facility, utilization, services or beds, or to the revenues or expenses of SJH or the Operating Entities as a direct and immediate result of this project, although each facility 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 SJH, which has maintained positive working capital, net assets and a net profit of \$5,074,000 from operations as of June 30, 2017 and \$996,000 from operations as of June 30, 2018.

BFA Attachments C is the consolidated certified financial summaries of Trinity, which has maintained positive working capital, net assets in 2017 and 2018, a net profit of \$136,926,000 from operations as of June 30, 2018 and a net loss of \$18,115,000 from operations as of June 30, 2017. The 2017 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, and approval is recommended.

Attachments

Programmatic Attachment A	Trinity Health Facilities in NYS
Programmatic Attachment B	Trinity Health Out-of-State Facilities
Programmatic Attachment C	Affidavit of Out-of-State Enforcement Actions
BFA Attachment A	Organizational Chart for Trinity-St. Joseph's Health
BFA Attachment B	Financial Summary, SJH Consolidated, as of June 30, 2017 and June 30, 2018
BFA Attachment C	Financial Summary, Trinity Consolidated as of June 30, 2017 and June 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 13th day of December 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 Trinity Health Corporation as the active parent/co-operator of St. Joseph's Hospital Health Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182217 E

St. Joseph's Health Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended Restated Certificate of Incorporation of St. Joseph's Hospital Health Center, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Trinity Health Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of St. Joseph's Hospital Health Center, acceptable to the Department. [CSL]
4. 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*.

Application Number: 182030
Name of Agency: Amerita of New York LLC d/b/a Amerita
Address: New Hyde Park
County: Nassau
Structure: Limited Liability Company

Amerita of New York LLC d/b/a Amerita, a limited liability company, requests approval to become the operator of a licensed home care services agency currently operated by Alexander Infusion, LLC d/b/a Avanti Health Care Services through the 100% purchases of Avanti's assets.

Based on the specialty nature of the applicant and the applicant services (specialty pharmacy and complex infusion provider), this requested change in ownership meets the Licensed Home Care Services Agency moratorium exception for applications that address a serious concern such as a lack of access to home care services in a geographic area or lack of appropriate care, language and cultural competence or special needs services. If the existing provider was not able to sell their agency and instead closed, resulting in the loss of specialty infusion services in the area, there is not enough capacity by other specialty infusion providers to accommodate the patients in the region.

Alexander Infusion, LLC d/b/a Avanti Health Care Services, was previously approved as a home care services agency by the Public Health Council at its March 20, 1998 meeting and subsequently licensed 0708L001 effective May 21, 1998. An additional site was subsequently approved for this provider: 0708L002 effective February 9, 2007. At the time of Public Health Council approval, 4 members were approved: Alexander Myers, Pietro Piacquadio, Joseph Stanilewicz, and Kathleen Kelly. The membership interest of Alexander Myers was subsequently redeemed by the company in accordance with applicable provisions of the LLC's Operating Agreement. Following the redemption, the ownership of the LLC was reallocated among its 3 remaining members in equal shares. The reallocation was the subject of a licensure application (application no. 0939) approved by the Public Health Council on January 21, 2000. A second application (application no. 1204) was submitted following the death of Kathleen Kelly and approved by PHC on May 16, 2003. The remaining approved members of Alexander Infusion, LLC are Alexander Myers and Pietro Piacquadio.

Amerita of New York, LLC d/b/a Amerita, a New York State Limited Liability Company, is a wholly-owned subsidiary of Amerita, Inc. Amerita, Inc., a Kentucky Business Corporation, is a wholly-owned subsidiary of Pharmacy Corporation of America. The Board Members of Amerita, Inc. comprises the following individuals:

Richard D. Iriye, Pharmacist – Director
President, Amerita, Inc.

Thomas A. Caneris, Esq. – Director
Vice President/Secretary/General Counsel,
PharMerica Corporation

Scott R. Danitz, CPA – Director
CFO, Amerita, Inc.

Gregory S. Weishar – Director
President/CEO, PharMerica Corporation

Robert E. Dries, CPA – Director
Executive Vice President/CFO/Treasurer,
PharMerica Corporation

Pharmacy Corporation of America, a Delaware Business Corporation, is a wholly-owned subsidiary of PharMerica Holdings, Inc. The Board Members of Pharmacy Corporation of America comprises the following individuals:

Gregory S. Weishar – Director
(Previously Disclosed)

Robert E. Dries, Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – Director
(Previously Disclosed)

PharMerica Holdings, Inc., a Kentucky Business Corporation, is a wholly-owned subsidiary of PharMerica Corporation. The Board Members of PharMerica Holdings, Inc. comprises the following individuals:

Gregory S. Weishar – Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – Director
(Previously Disclosed)

Robert E. Dries, Director
(Previously Disclosed)

PharMerica Corporation, a California Business Corporation, is a wholly-owned subsidiary of Phoenix Guarantor, Inc. The Board Members of PharMerica Corporation comprises the following individuals:

Gregory S. Weishar – CEO/Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – General
Counsel/Director
(Previously Disclosed)

Robert E. Dries, Executive Vice President/Director
(Previously Disclosed)

Phoenix Guarantor, Inc., a Delaware Business Corporation, is a wholly-owned subsidiary of Phoenix Intermediate Holdings, Inc. The Board Members of Phoenix Guarantor, Inc. comprises the following individuals:

Gregory S. Weishar – CEO/Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – General
Counsel/Director
(Previously Disclosed)

Robert E. Dries, Executive Vice President/Director
(Previously Disclosed)

Phoenix Intermediate Holdings, Inc., a Delaware Business Corporation, is a wholly-owned subsidiary of Phoenix Parent Holdings, Inc. The Board Members of Phoenix Intermediate Holdings, Inc. comprises the following individuals:

Gregory S. Weishar – CEO/Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – General
Counsel/Director
(Previously Disclosed)

Robert E. Dries, Executive Vice President/Director
(Previously Disclosed)

The Board Members of Phoenix Parent Holdings, Inc., a Delaware Business Corporation, comprises the following individuals:

Gregory S. Weishar – CEO/Director
(Previously Disclosed)

Thomas A. Caneris, Esq. – General
Counsel/Director
(Previously Disclosed)

Robert E. Dries, Executive Vice President/Director
(Previously Disclosed)

Neelaksh K. Varshney – Director
Director, Kohlberg Kravis Roberts & Co. L.P.

Max C. Lin – Director
Member, Kohlberg Kravis Roberts & Co. L.P.

David E. Schreiber – Director
Consultant, DES Fremont Consulting

James C. Momtazee – Director
Member, Kohlberg Kravis Roberts & Co. L.P.

Hari K. Avula – Director
Senior Vice President/CFO, Walgreens Boots Alliance, Inc.

Affiliations:

- Eastern Paramedics, Inc.
- Corning Ambulance Services, Inc.
- Beacon Transportation, Inc.
- National Ambulance & Oxygen Service, Inc.
- American Medical Response of New York, LLC
- LaSalle Ambulance, Inc.
- Town's Ambulance Services, Inc.
- Med-Trans Corporation d/b/a SkyHealth

A search of the Thomas Caneris on the Supreme Court of Ohio Attorney Directory and the Kentucky Bar Association revealed that the individual is currently registered and has no disciplinary actions taken against them.

A search of Robert Dries on the Accountancy Board of Ohio revealed that the individual is currently registered and has no disciplinary actions taken against them.

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

On May 11, 2015, PharMerica Corporation (PharMerica) entered into a five-year Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS). The CIA relates to PharMerica's Long Term Care Division and, to a limited extent, to its infusion business. The CIA specifically addresses the areas of Compliance with Written Standards (that is, with applicable PharMerica policies and procedures), Code of Conduct and Training. In particular, the CIA is focused on the capture and documentation of all required elements for the proper dispensing of Category II controlled substances. In accordance with the CIA, PharMerica is required to submit an annual report to OIG that documents compliance with all provisions of the CIA and, between annual reports, to notify the OIG Monitor of changes, updates and other events that occur during each reporting period. In addition, all of PharMerica's long-term care pharmacy locations are subject to review if and when selected by IPRO. The CIA will terminate on May 10, 2020.

A seven-year review of the operations of the following facilities was performed as part of this review (unless otherwise noted). The information provided by the Bureau of EMS has indicated that the EMS agencies above have had no enforcement actions against them.

The applicant proposes to continue to serve the residents of the following counties from an office located at 23-50 Waters Edge Drive, Suite PG, Bayside, New York 11360:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to continue to serve the residents of the following counties from an office located at 75 Nassau Terminal Road, New Hyde Park, New York 11040:

Nassau	Suffolk
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The applicant proposes to provide the following health care services:

Nursing	Medical Supplies, Equipment and Appliances
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The review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Office of Primary Care and Health Systems Management

Approval Contingent Upon:

1. Submission of a photocopy of the applicant's Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 13th day of December 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:

182030 E

Amerita of New York LLC d/b/a Ameria

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]

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

Application Number: 182014
Name of Agency: The Mohawk Homestead, Inc. d/b/a The Mohawk Homestead Licensed Home Care Services Agency
Address: Mohawk
County: Herkimer
Structure: Not-for-Profit Corporation

The Mohawk Homestead, Inc. d/b/a The Mohawk Homestead Licensed Home Care Services Agency, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by The Mohawk Homestead, Inc., which currently operates a 41-bed Adult Home and has been awarded 20 Assisted Living Program (ALP) beds as part of the ALP 3400 Initiative. The LHCSA and the ALP have identical membership.

The Board of Directors of The Mohawk Homestead, Inc. d/b/a The Mohawk Homestead Licensed Home Care Services Agency is comprised of the following individuals:

Sharon M. Palmer – Board Member Retired	Larry S. Briggs – First Vice President Owner, Larry S. Briggs Insurance
Mary Lou VanDerwiel – Board Member Retired	David Dudgeon – Assistant Treasurer Associate Broker, Bruce Ward & Company
Dolores C. Aloisio – Board Member Retired	Deborah J. Marley – Second Vice President Marketing Representative, Medicine Shoppe
Claudia C. Gloor – Corresponding Secretary Retired	Sharon L. Murray – Recording Secretary Retired
Timothy R. Daly – Treasurer Bank Manager, Berkshire Bank	Peter W. Eramo – President Retired

All the individuals have been board members of the Adult Home, with several members serving since 2011. A search of the individuals and The Mohawk Homestead, Inc revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Herkimer County from an office located at 62 East Main Street, Mohawk, New York 13407.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care Aide
Physical Therapy	Occupational Therapy	

A seven-year review of the operations of The Mohawk Homestead (Adult Home) was performed.

- The Mohawk Homestead was fined \$118,000.00 pursuant to a stipulation and order dated November 1, 2016 for inspection findings on March 11, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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

Office of Primary Care and Health Systems Management

Approval Contingent upon:

- Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

Approval Condition upon:

- 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 13th day of December 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:

182014 E

The Mohawk Homestead, Inc. d/b/a The Mohawk
Homestead Licensed Homecare Services Agency

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON

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

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

Application Number: 182076
Name of Agency: The Eliot at Troy, LLC
Address: Troy
County: Rensselaer
Structure: Limited Liability Company

The Eliot at Troy, 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 is associated with The Eliot at Troy Assisted Living Program (ALP).

The following individual is the sole member of The Eliot at Troy, LLC:

Eric E. Newhouse, Esq. – 100% Membership, Managing Member
CEO, The Eliot at Erie Station
CEO, MedWiz Solutions, Inc.
CFO, Adult Care Management, LLC
President, Marquis Home Care LLC

Affiliations:

The Eliot at Erie Station (ALP) (05/07-present)
The Eliot at Erie Station (LHCSA) (05/07-present)
The Eliot at Catskill (AH) (08/10-present)
Marquis Home Care LLC (LHCSA) (10/13-present)
The Sentinel at Amsterdam (AH/ALP) (2016-present)
The Sentinel at Amsterdam (LHCSA) (2016-present)

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

A search of the individual named above on the New York State Unified Court System revealed that the individual is currently registered and has no disciplinary actions taken against them.

A seven-year review of the operations of the above facilities was performed as part of this review (unless otherwise noted).

The Eliot at Catskill:

- was fined \$5,700.00 pursuant to a stipulation and order dated August 30, 2016 for surveillance findings set forth in the reports of inspection dated July 24, 2015, December 8, 2015 and April 8, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services and 487.11(f)(8) Environmental Standards.
- was fined \$2,500.00 pursuant to a stipulation and order dated December 19, 2016 for surveillance findings set forth in the reports of inspection dated June 8, 2016 and July 29, 2016. Deficiencies were found under 18 NYCRR 487.4(f) Admission Standards, 487.8(c) Food Service, 487.8(e)(1) Food Service, 487.11(f)(8) Environmental Standards, 487.11(g) Environmental Standards, 487.11(h)(5) Environmental Standards, 487.11(k)(1-3) Environmental Standards, 487.11(k)(5) Environmental Standards and 487.11(k)(16) Environmental Standards.
- was fined \$7,770.00 pursuant to a stipulation and order dated October 16, 2017 for surveillance findings set forth in the reports of inspection dated October 25, 2016, May 11, 2017 and August 30, 2017. Deficiencies were found under 18 NYCRR Environmental Standards regulations.

The Sentinel at Amsterdam:

- signed a Stipulation and Order with a fine of \$1,065.00 for a survey dated September 28, 2018 for violations to Food Service regulations at 18 NYCRR §487.8(d)(1-2).

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

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Rensselaer County from an office located at 2909 Upper Tibbits Avenue, Troy, New York 12180.

The applicant proposes to provide the following health care services:

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

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

OPCHSM Recommendation

Approval conditional upon:

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 13th day of December 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:

182076 E

The Eliot at Troy, LLC

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: 182078
Name of Agency: Deer Run at River Ridge, LLC d/b/a The Sentinel of Amsterdam
Address: Amsterdam
County: Montgomery
Structure: Limited Liability Company

Deer Run at River Ridge, LLC d/b/a The Sentinel of Amsterdam, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Deer Run at River Ridge Assisted Living Program (ALP).

Deer Run at River Ridge, LLC d/b/a The Sentinel at Amsterdam was previously approved as a home care services agency by the Public Health Council at its February 9, 2017 meeting and subsequently licensed 2296L001 effective October 11, 2017. At that time the membership was as follows: Castlerock at Deer Run, LLC - 90.1% and The Sentinel at Amsterdam, LLC – 9.9 %.

Through an Asset Purchase Agreement, The Sentinel of Amsterdam will become the sole member of the LHCSA.

The following entity is the proposed sole member of Deer Run at River Ridge, LLC d/b/a The Sentinel of Amsterdam:

The Sentinel of Amsterdam, LLC – 100%

The members of The Sentinel of Amsterdam, LLC comprises the following individuals:

Eric E. Newhouse, Esq. - 66 2/3% **Naftali (Neil) Zelman** - 33 1/3%
COO, Adult Care Management, LLC

Affiliations:

The Eliot at Erie Station (AH/ALP) (04/10-present)
The Eliot at Erie Station (LHCSA) (04/10-present)
The Eliot at Catskill (AH) (09/10-present)
Marquis Home Care (LHCSA) (12/12-present)

Eric E. Newhouse is exempt from character and competence review because he was previously approved by the Public Health and Health Planning Council for this operator.

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

A seven-year review of the above facilities was performed as part of this review.

The Eliot at Catskill:

- was fined \$5,700.00 pursuant to a stipulation and order dated August 30, 2016 for surveillance findings set forth in the reports of inspection dated July 24, 2015, December 8, 2015 and April 8, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services and 487.11(f)(8) Environmental Standards.
- was fined \$2,500.00 pursuant to a stipulation and order dated December 19, 2016 for surveillance findings set forth in the reports of inspection dated June 8, 2016 and July 29, 2016. Deficiencies were found under 18 NYCRR 487.4(f) Admission Standards, 487.8(c) Food Service, 487.8(e)(1) Food Service, 487.11(f)(8) Environmental Standards, 487.11(g) Environmental Standards, 487.11(h)(5) Environmental Standards, 487.11(k)(1-3) Environmental Standards, 487.11(k)(5) Environmental Standards and 487.11(k)(16) Environmental Standards.

- was fined \$7,770.00 pursuant to a stipulation and order dated October 16, 2017 for surveillance findings set forth in the reports of inspection dated October 25, 2016, May 11, 2017 and August 30, 2017. Deficiencies were found under 18 NYCRR Environmental Standards regulations.

The Sentinel at Amsterdam signed a Stipulation and Order with a fine of \$1,065.00 for a survey dated September 28, 2018 for violations to Food Service regulations at 18 NYCRR §487.8(d)(1-2).

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

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Montgomery County from an office located at 10 Market Street, Amsterdam, New York 12010.

The applicant proposes to provide the following health care services:

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

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

Office of Primary Care and Health Systems Management

Approval Contingent Upon:

1. Submission of a copy of the articles of organization of the applicant, acceptable to the Department.

Approval Conditional upon:

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 13th day of December 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:

182078 E

The Sentinel of Amsterdam

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the articles of organization of the applicant, acceptable to the Department.

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*.