

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

**COMMITTEE DAY**

**AGENDA**

*January 24, 2019*

*10:00 a.m.*

*New York State Department of Health Offices 90 Church Street, 4<sup>th</sup> Floor, Rooms 4A/4B, NYC*

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

Peter Robinson, Chair

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

**Certified Home Health Agency – Construction**

**Exhibit # 1**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 182216 C	St. Joseph's Hospital Health Center CHHA (Onondaga County)

**Acute Care Services – Construction**

**Exhibit # 2**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 182128 C	NYU Langone Hospitals (New York County)

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

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

**Exhibit # 3**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 182158 E	NYU Langone Hospitals (Nassau County)
2. 182220 E	Good Samaritan Hospital Home Care Department (Rockland County)
3. 181331 E	Elderwood Certified Home Health Agency, LLC (Erie County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 4**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 182214 E	Buffalo Surgery Center, LLC (Erie County)
2. 182125 B	Everett Road Surgery Center (Albany County)
3. 182183 C	Endoscopy Center of Niagara, LLC (Niagara County)

4 182205 B Wehrle Drive ASC  
(Erie County)

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

**Exhibit # 5**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	181059 E	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville (Erie County)
2.	181390 E	Warren Center for Rehabilitation and Nursing (Warren County)
3.	182218 E	Westgate Operations Associates, LLC d/b/a Rochester Center For Rehabilitation and Nursing (Monroe County)

**C. Home Health Agency Licensures**

**Exhibit # 6**

**Changes of Ownership with Consolidation**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	182015 E	Lincare of New York, Inc. (Albany County)

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

	<u>Number</u>	<u>Applicant/Facility</u>
1.	181303 E	2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville (Erie County)
2.	182165 E	Park Beach Assisted Living, LLC (Queens County)
3.	182187 E	Danforth Home Care Services Agency (Rensselaer County)

**D. Certificates**

**Exhibit # 7**

**Certificate of Dissolution**

Applicant

Community Care Organization, Inc.

The Foundation of New York-Presbyterian/Lawrence Hospital

The Foundation of New York-Presbyterian/Queens



Project # 182216-C
St. Joseph's Hospital Health Center CHHA

Program: Certified Home Health Agency
Purpose: Construction

County: Onondaga
Acknowledged: November 6, 2018

Executive Summary

Description

St Joseph's Hospital Health Center CHHA (St Joseph's CHHA), a voluntary not-for-profit, Article 36 certified home health agency (CHHA) located at 7246 Janus Park Drive, Liverpool (Onondaga County), requests approval to expand their geographic service area to include Oswego, Cayuga, Madison, Oneida, and Lewis counties. The CHHA is a hospital-based agency operated by Joseph's Hospital Health Center (SJH, the Hospital), a 451-bed, voluntary not-for-profit, Article 28 hospital located at 301 Prospect Avenue in Syracuse. The CHHA is authorized to serve Onondaga and Cortland counties and is licensed to provide Home Health Aide, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutrition, Occupational Therapy, Physical Therapy, Respiratory Therapy and Speech Language Pathology Therapy services. Upon approval, there will be no change in services provided by the CHHA.

This application is submitted in response to a New York State Department of Health (NHSDOH) contingency on the September 7, 2018 approval of St. Joseph's CHHA's request for a regulatory waiver of 10 NYCRR Sections 762.2(a) and 762.2(c)(2), as authorized under the Hospital-Home Care-Physician Collaboration Program, Public Health Law (PHL) Section 2805-x. BFA Attachment B is the regulatory waiver from the NYS Department of Health.

St Joseph's CHHA is proposing to add the counties contiguous to its current service area to better manage SJH's attributed lives population in Value Based Payment (VBP) contracts, through the provision of in-home services through its CHHA department.

Since January 1, 2017, SJH has been participating in risk-based VBP contracts with:

- Medicare, under the Medicare Shared Savings Program, Medicare Bundled Payment for Care Improvement Program;
Excellus Blue Cross, the major regional commercial payor, in their Accountable Cost and Quality Arrangement (ACQA) shared savings program; and
Medicaid, contracting with Fidelis Care and Molina under the NYS VBP Pilot Program for a shared savings arrangement.

The total attributed lives for which SJH is responsible in the proposed new CHHA service area counties is approximately 27,000. Adding the counties proposed in this application to the CHHA operation will enable SJH to effectively manage the patient population and meet the target measures for cost and quality with payors.

OPCHSM Recommendation

Approval for five years from September 7, 2018, the date of the PHL 2805-x regulatory waiver approval.

Need Summary

The expansion will help improve patient care access and outcomes.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance.

**Financial Summary**

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$16,499,993	\$17,919,300
Expenses	<u>24,943,560</u>	<u>26,439,605</u>
Net Income	\$(8,443,567)	\$(8,520,305)

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

#### **Approval for five years from September 7, 2018, 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**

**February 14, 2019**

## Need and Program Analysis

### Program Description

St. Joseph's Hospital Health Center, a not-for-profit corporation, operates an Article 36 Certified Home Health Agency. This project requests approval to expand the service area of St. Joseph's Hospital Health Center CHHA to include Oswego, Cayuga, Madison, Oneida and Lewis counties, with no change to currently approved services.

At present, St. Joseph's Hospital Health Center CHHA services Onondaga and Cortland counties. The demographics of the target populations of Oswego, Cayuga, Madison, Oneida and Lewis are very similar to those populations already being served with regard to population size, age, and socio-economic status.

To best serve these additional counties, St. Joseph's Hospital Health Center CHHA has stated that they will continue to geographically align clinical staff based on their residency to the area in which they are assigned to cover. In 2018, the average travel distance for clinical staff between visits was 8.1 miles. The applicant intends to utilize support staff in Onondaga County who have close proximity to the expanded service area.

### Complex Care Collaboration Model

Pursuant to 2805-x of the Public Health Law the Department may waive regulations under Title 10 of the New York Codes, Rules, and Regulations to support voluntary initiatives that support collaboration to improve patient care access and management, patient health outcomes, cost-effectiveness in the use of health care services and community population health. The Department approved a waiver of Sections 762.2(a) and 762.2(c)(2) of Title 10 of the New York Codes, Rules and Regulations for St. Joseph's Hospital Health Center to initiate a Complex Care Collaboration program in the counties listed above.

Upon approval of this project, the Complex Care Collaboration Model will be approved for a five-year period from the date of the waiver approval, September 7, 2018.

St. Joseph's Complex Care Collaboration Model (CCCM) proposal will support patients with complex care needs in all counties in which St. Joseph's has attributed patients under value-based payment/risk arrangements to reduce avoidable utilizations and improve health outcomes, thus the request for the additional counties.

According to St. Joseph's, the inability to currently fully integrate services due to the limitation on the geographic service area is resulting in a growing disparity in patient utilization rates. For those patients in areas the CHHA has approval to serve, they have seen a 45% reduction in monthly inpatient admissions, a 27% reduction in monthly ED visits, and a 70% reduction in CPEP utilization. Expanding the service area will allow St. Joseph's to implement their model for all their attributed patients.

### Quality

Information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings as of December 14, 2018</b>	
<b>New York Average: 3 out of 5 stars    National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
St. Joseph's Hospital Health Center CHHA	3 out of 5 stars

## Conclusion

Expanding the service area will allow St. Joseph's to implement their model of complex care collaboration and reduce inpatient admissions, ED visits, and CPEP utilizations.

## Financial Analysis

### Operating Budget

The applicant has submitted the CHHA's current results for the year ending June 30, 2017, and the projected first and third year operating budgets, in 2019 dollars, as summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Commercial-FFS	\$152.91	\$1,402,943	\$151.48	\$1,473,913	\$149.35	\$1,598,005
Medicare-FFS	\$160.56	7,996,696	\$158.50	8,420,523	\$154.93	9,076,216
Medicare-MC	\$156.18	3,713,074	\$154.86	3,903,924	\$149.10	4,339,370
Medicaid-FFS	\$183.93	940,451	\$178.34	983,161	\$168.39	1,055,456
Medicaid-MC	\$178.63	1,540,842	\$175.61	1,609,652	\$170.55	1,737,257
Private Pay	\$139.76	40,529	\$135.74	46,829	\$136.38	49,097
Other (incl. Wk. Comp.)	\$154.48	<u>55,151</u>	\$145.18	<u>61,991</u>	\$144.57	<u>63,899</u>
Total Revenue		\$15,689,686		\$16,499,993		\$17,919,300
<b>Expenses</b>						
Operating	\$205.79	\$19,990,358	\$200.84	\$20,790,247	\$192.48	\$22,258,792
Capital	<u>\$42.72</u>	<u>4,149,813</u>	<u>\$40.12</u>	<u>4,153,313</u>	<u>\$36.16</u>	<u>4,180,813</u>
Total	\$248.51	\$24,140,171	\$240.96	\$24,943,560	\$228.64	\$26,439,605
Gain/Loss		(\$8,450,485)		(\$8,443,567)		(\$8,520,305)
Total Visits		97,141		103,516		115,641

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

	Current Year	Year One	Year Three
Commercial-FFS	9.4%	9.4%	9.3%
Medicare-FFS	51.3%	51.3%	50.7%
Medicare-MC	24.5%	24.4%	25.2%
Medicaid-FFS	5.3%	5.3%	5.4%
Medicaid-MC	8.9%	8.9%	8.8%
Private Pay	0.3%	0.3%	0.3%
Other (incl. Charity) *	<u>0.4%</u>	<u>0.4%</u>	<u>0.4%</u>
Total	100.0%	100.0%	100.0%

\*The applicant's charity care policy is to assess the individual based on income to determine eligibility fee, reduced fees, and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

The following is noted with respect to the submitted budget:

- Revenues, expenses, and utilization are based on historical experience. The increases are related to the expansion of their service area.
- The Medicare managed care episodic payment is estimated at \$2,659.86.
- As a hospital-based CHHA, the financials of the agency are included in the financial statements of St. Joseph's Health, Inc., which includes the Hospital. The Hospital funds losses experienced by individual programs via other programs and services that operate with positive margins.

### **Capability and Feasibility**

There are no project costs associated with this application. The submitted budget indicates a net loss of \$8,443,567 during the first year after the expansion. Revenues, expenses, and utilization are based on historical experience. The projected increases in revenues, expenses and utilization are related to the expansion of their service area. The CFO of St Joseph's Hospital Health Center has submitted an affidavit indicating a financial commitment to continue the operations of the CHHA. The CHHA has historically been funded by the Hospital and is included as part of the financial statements of St. Joseph's Health, Inc. The hospital-based CHHA helps reduce avoidable inpatient admissions and preventable Emergency Department (ED) visits. SJH sees the leveraging of home care services as key to achieving targeted acute care length of stay (LOS) reductions and associated operating cost reduction opportunities. The increased utilization of home health services has resulted in reduced skilled nursing facility days and patient re-admissions, which supports their attainment of gain share distributions under the at-risk payment models for commercial, traditional Medicare and Medicaid Managed Care insurers.

BFA Attachment A is a financial summary of St Joseph's Health, Inc. and Subsidiaries (the Hospital) for June 30, 2017 and June 30, 2018 (certified), and their internal financials thru September 30, 2018. The hospital shows positive working capital and positive equity for all periods shown. The hospital indicates a net loss on the internal financial statements ending September 30, 2018, which is due to a one-time expense related to prior periods totaling approximately \$1.8 million. The hospital is working on initiatives related to LOS, care retention, access to care, and ED throughput to strengthen the overall financial performance of the organization.

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

## **Attachments**

- BFA Attachment A June 30, 2017 & June 30, 2018 certified financial summary and internals as of September 30, 2018
- BFA Attachment B Regulatory waiver of 10 NYCRR Sections 762.2(a) and 762.2(c)(2)





**Project # 182128-C**  
**NYU Langone Hospitals**

**Program:** Hospital  
**Purpose:** Construction

**County:** New York  
**Acknowledged:** September 26, 2018

**Executive Summary**

**Description**

NYU Langone Hospitals (NYULH), an 844-bed, voluntary not-for-profit, Article 28 acute care hospital located at 550 First Avenue, New York (New York County), requests approval for NYU Winthrop Hospital (NYU Winthrop) to become a division of NYULH. NYU Winthrop is a 591-bed, voluntary, not-for-profit, Article 28 acute care hospital located at 259 First Street, Mineola (Nassau County). NYU Langone Health System (the System) has a passive parent relationship with NYULH and an active parent relationship with NYU Winthrop. BFA Attachment C presents the organizational chart of the System pre-closing and post-closing.

On April 1, 2017, the System implemented the first phase of a two-phase affiliation whereby it became the active parent and co-operator of NYU Winthrop and its Article 36 certified home health agency (CHHA), NYU Winthrop CHHA (CON 162391). This is the second phase of the affiliation, whereby the Winthrop campus will be operated as a division of NYULH. Upon completion of phase two, NYU Winthrop will cease to exist as a separate entity and its assets and liabilities will merge into NYULH. However, NYU Winthrop's Board of Directors will remain intact to advise NYULH's Board of Trustees and senior management on local issues. The System will maintain its role as sole member and passive parent of NYULH, and New York University will remain as the sole corporate member and passive parent of the System.

Phase one of the affiliation was anticipated to generate substantial savings through efficiencies in information technology (IT), patient care management, and revenue cycle and supply

chain management. These integration activities have resulted in annualized savings of \$24.5 million, with the expectation that annualized savings will increase to \$50 million. The governing bodies of NYULH, NYU Winthrop and the System determined that a full asset merger of NYU Winthrop into NYULH would garner even greater savings and enhance patient care. The merger will provide NYU Winthrop with access to investment capital needed for improvements in clinical program expansion, increase operational efficiencies, and provide transformational investments in IT, real estate and common platforms.

Concurrently under review, NYULH is seeking approval to be established as the operator of NYU Winthrop CHHA (CON 182158).

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There will not be any impact on need or utilization through the completion of this project. There will be no change to beds or services as a direct result of this application.

**Program Summary**

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

**Financial Summary**

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

	<u>Current Year*</u>	<u>Year One</u>
Revenues	\$5,130,404,684	\$6,151,479,279
Expenses	<u>4,869,768,967</u>	<u>5,788,306,728</u>
Net Income	\$260,635,717	\$363,172,551

*\*NYULH and NYU Winthrop combined*

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

#### **Approval contingent upon:**

1. Submission of an executed Merger Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of NYU Langone Hospitals (NYULH), acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of NYULH, acceptable to the Department. ([CSL]
4. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of NYU Langone Health System (Health System), acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of Health System, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Resolution of the Board of Trustees of NYULH, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Merger Agreement of NYU Winthrop Hospital (NYU Winthrop) into NYULH, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Merger of NYU Winthrop into NYULH, 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**

**February 14, 2019**

## Need and Program Analysis

### Background

NYU Langone Hospitals (NYULH) located at 550 First Ave, New York, NY 10016 seeks approval to acquire and certify NYU Winthrop Hospital (NYU Winthrop), located at 259 First Street Mineola, NY 11501, as a division.

Upon approval, NYU Winthrop will cease to exist as a separate entity, and its assets and liabilities will merge into NYU Langone Hospitals. An advisory board comprised of members of the current Winthrop Board of Directors will provide input on local issues directly to the NYULH Board of Trustees and senior management team. There will be no changes to beds or services as a direct result of this application

### Compliance with Applicable Codes, Rules and Regulations

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

### Prevention Agenda

The priorities selected for action in NYU Winthrop Hospital's most recent community service plan are in alignment with the Community Health Improvement Plan developed by the Long Island Health Collaborative. The two priorities to be addressed are (1) Preventing Chronic Disease, focusing on Obesity and Preventive Care and Management, which includes strategies to reduce obesity; incorporation of the 5-2-1-0 program in Head Start; conducting cancer screening; offering a free, 6-week tobacco smoking cessation workshop for adults; and offering Tai Chi classes to prevent arthritis; and (2) Promoting Mental Health and Preventing Substance Abuse by focusing on conducting Mental Health First Aid classes and distributing wellness information. The Long Island Health Collaborative has a diverse group of organizational partners.

Winthrop's 2017 workplan update report indicated that recruitment and retention of participants into classes and integrating well-being are challenging. The applicant reported about \$1 million of Community Benefit spending on community health improvement.

### 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. There will be no impact on need or utilization through the completion of this transaction.

## Financial Analysis

### Merger Agreement

The applicant has submitted a draft Merger Agreement between NYULH and NYU Winthrop. The terms of the agreement are summarized below:

Merging Entities:	NYU Langone Hospitals and NYU Winthrop Hospital
Surviving Entity:	NYU Langone Hospitals
Asset Acquired:	All assets
Liabilities Acquired:	All liabilities
Purchase Price:	\$-0-

## Operating Budget

The applicant has submitted their current year ending August 31, 2017, and their first-year operating results post-merger, in 2018 dollars, as shown below:

<b>2017 – Current Year</b>	<b>NYU Langone</b>	<b>NYU Winthrop</b>	<b>Combined</b>
Operating Revenue	\$4,129,615,684	\$1,000,789,000	\$5,130,404,684
Operating Expenses	<u>3,881,358,967</u>	<u>988,410,000</u>	<u>4,869,768,967</u>
Total Net Income/Loss	\$248,256,717	\$12,379,000	\$260,635,717

Total Discharges	68,637	24,546	93,183
Total Visits	1,752,123	462,146	2,214,269

<b>Combined</b>	<b>Current Year</b>	<b>Year One</b>
Operating Revenue	\$5,130,404,684	\$6,151,479,279
Operating Expenses	<u>4,869,768,967</u>	<u>5,788,306,728</u>
Total Net Income/Loss	\$260,635,717	\$363,172,551

Total Discharges	93,183	108,202
Total Visits	2,214,269	2,214,453

<b>Combined (by Payor)</b>	<b>Current Year</b>	<b>Year One</b>
<u>Revenues</u>	<u>Total</u>	<u>Total</u>
Commercial (FFS+MC)	\$3,016,761,642	\$3,528,647,034
Medicare (FFS+MC)	1,145,275,557	1,385,523,229
Medicaid (FFS+ MC)	597,204,177	676,065,392
Private Pay	33,342,567	40,999,416
Uninsured/Charity	2,719,000	3,496,462
All Other	<u>335,101,651</u>	<u>516,747,748</u>
Total Revenue	\$5,130,404,684	\$6,151,479,279

<u>Expenses</u>		
Operating	\$4,503,051,683	\$5,330,265,207
Capital	<u>366,717,284</u>	<u>458,041,521</u>
Total	\$4,869,768,967	\$5,788,306,728

Net Income (Loss)	<u>\$260,635,717</u>	<u>\$363,172,551</u>
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Total Discharges	93,183	108,202
Total Visits	2,214,269	2,214,453

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

<u>Inpatient Discharges</u>	<u>Current Year</u>	<u>Year One</u>
Commercial (FFS+MC)	38.10%	39.31%
Medicare (FFS+MC)	33.57%	34.16%
Medicaid (FFS+MC)	24.88%	23.78%
Private Pay	0.75%	0.25%
Uninsured/Charity	1.40%	1.23%
All Other	<u>1.30%</u>	<u>1.27%</u>
	100.00%	100.00%

<u>Outpatient Visits</u>	<u>Current Year</u>	<u>Year One</u>
Commercial (FFS+MC)	35.06%	41.46%
Medicare (FFS+MC)	26.37%	24.37%
Medicaid (FFS+MC)	30.75%	26.86%
Private Pay	1.68%	1.54%
Uninsured/Charity	4.51%	4.41%
All Other	1.63%	1.36%
	100.00%	100.00%

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

- Revenues, expenses, and utilization are based on historical experience. The increases are related to the full asset merger agreement and NYULH (surviving entity) acquiring NYU Winthrop. It is anticipated that the merger will produce benefits through clinical program expansion, operational efficiencies including revenue cycle improvements, transformational investments in IT and Real Estate and common platforms.
- Volume and Growth assumptions are based on the following:
  - Increased volume due to greater throughput resulting from initiatives such as Discharge Before Noon and Information Systems improvements to ease documentation;
  - Volume increases due to Family Group Practice (FGP) base of physicians on Long Island;
  - Continued growth in the Emergency Department (ED);
  - Clinical Documentation Improvement (CDI) program that is focused on improvements on quality measures and financial outcomes;
  - Opening of an endoscopy center in Riverhead in Year 3;
  - Length of Stay initiatives;
  - Expansion of Operating Room (OR) hours;
  - 23 hour extended stay coverage at an offsite Ambulatory Surgical Unit (ASU);
- Expense assumptions are based on the following:
  - Salary increases of 3% and 2.5% for Years 1 and 3, respectively;
  - Increase in Full-Time Employees (FTEs) with additional growth from programmatic changes;
  - Increases in employee benefits per year with additional increases for new FTEs;
  - Annual increases for Pharmaceutical and Medical/Surgical supplies;
  - Clinical product standardization; and
  - 3% annual increase for FGP subsidy.

### **Capability and Feasibility**

There are no project costs associated with this application. The submitted budgets indicate a net income of \$363,172,551 during the first year after the merger.

BFA Attachment A is a financial summary of the 2016 – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Langone Hospitals. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income for the periods shown.

BFA Attachment B is a financial summary of the 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Winthrop Hospital. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income for the periods shown.

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

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## **Attachments**

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- BFA Attachment A Financial Summary – 2016 – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Langone Hospitals
- BFA Attachment B Financial Summary – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Winthrop Hospital



**Project # 182158-E  
NYU Langone Hospitals**

**Program:** Hospital  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** October 4, 2018

**Executive Summary**

**Description**

NYU Langone Hospitals (NYULH), an 844-bed, voluntary not-for-profit, Article 28 acute care hospital located at 550 First Avenue, New York (New York County), requests approval to transfer ownership of NYU Winthrop Hospital Certified Home Health Agency (Winthrop CHHA), an Article 36 CHHA located at 290 Old Country Road in Mineola (Nassau County), from NYU Winthrop Hospital (NYU Winthrop) to NYULH. On April 1, 2017, NYU Langone Health System (the System) implemented the first phase of a two-phase affiliation when it became the active parent and co-operator of NYU Winthrop and Winthrop CHHA (CON 162391). Upon approval of this application, NYULH will be established as the operator of Winthrop CHHA. There will be no change in services provided or counties served by the CHHA.

Concurrently under review, NYULH is seeking approval for the second phase where NYU Winthrop will become a division of NYULH (CON 182128). NYU Winthrop is a 591-bed, voluntary not-for-profit, Article 28 acute care hospital located at 259 First Street in Mineola (Nassau County). Upon completion of phase two, NYU Winthrop will cease to exist as a

separate entity and its assets and liabilities will merge into NYULH. The System will maintain its role as sole member and passive parent of NYULH and New York University will continue to be the sole corporate member and passive parent of the System.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There will be no change to counties served or services provided 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 photocopy of a final, complete, executed and dated Merger Agreement between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
2. Submission of a photocopy of a final, executed and filed Certificate of Merger between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
3. Submission of a photocopy of applicant's final, executed and filed Certificate of Amendment of its Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the final executed and filed Certificate of Amendment of the Certificate of Incorporation of NYU Winthrop Hospital, acceptable to the Department. [CSL]
5. Submission of a photocopy of the final amended bylaws of each of (a) applicant, (b) NYU Winthrop Hospital and (c) NYU Langone Health System, acceptable to the Department. [CSL]
6. Submission of evidence, acceptable to the Department, of the authorization of the merger of NYU Winthrop Hospital with and into NYU Langone Hospitals by the boards of trustees of each of (a) NYU Langone Health System, (b) NYU Langone Hospitals, (c) NYU Winthrop Hospital, and (d) New York University. [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**

**February 14, 2019**

## **Need and Program Analysis**

### **Program Description**

NYU Langone Hospitals, a not-for-profit corporation, requests approval to acquire and merge the assets of a Certified Home Health Agency (CHHA) currently operated by NYU Winthrop Hospital, under Article 36 of the Public Health Law.

Currently, NYU Langone Health System is the active parent of NYU Winthrop Hospital and the passive parent of NYU Langone Hospitals. The sole member of NYU Langone Health System is New York University. This structure was approved by the Public Health and Health Planning Council (PHHPC) in CON 162391, which was granted final approval on March 28, 2017. This project proposes for NYU Langone Hospitals to acquire and merge the assets of NYU Winthrop Hospital. At the close of this transaction, NYU Winthrop Hospital CHHA will be operated by NYU Langone Hospitals. NYU Langone Health System would be the sole parent of NYU Langone Hospitals, with New York University as the grandparent.

The corporate structure of NYU Langone Health System currently includes the following facilities, which were reviewed as part of this project:

- NYU Langone Hospitals (Hospital)
- NYU Langone Hospitals – Brooklyn (Hospital)
- NYU Orthopedic Hospital (Hospital)
- NYU Langone Health Cobble Hill (Free Standing Emergency Department)

This project will have no impact on the services provided or counties served by NYU Winthrop Hospital CHHA.

### **Character and Competence Review**

The Board of Trustees of NYU Langone Hospital and NYU Langone Health System are identical. The following members of the board have been previously approved by the Public Health and Health Planning Council in Hospital CON 162391 and provided updated information for review:

<b>William R. Berkley</b>	<b>Casey Box</b>
<b>Edgar Bronfman, Jr.</b>	<b>Susan Block Casdin</b>
<b>Kenneth I. Chenault</b>	<b>William J. Constantine</b>
<b>Jamie Dimon</b>	<b>Fiona B. Druckenmiller, Co-Chair</b>
<b>Laurence D. Fink, Co-Chair</b>	<b>Lori Fink</b>
<b>Luiz H. Fraga</b>	<b>Paolo Fresco</b>
<b>Trudy Elbaum Gottesman</b>	<b>Robert I. Grossman, MD</b>
<b>Andrew Hamilton, PhD</b>	<b>Mel Karmazin</b>
<b>Kenneth G. Langone, Chair</b>	<b>Sidney Lapidus</b>
<b>Thomas H. Lee</b>	<b>Laurence C. Leeds, Jr.</b>
<b>Martin Lipton, Esq.</b>	<b>Stephen F. Mack</b>
<b>Roberto A. Mignone</b>	<b>Edward J. Minskoff</b>
<b>Thomas K. Montag</b>	<b>Thomas S. Murphy</b>
<b>Thomas S. Murphy, Jr.</b>	<b>Frank T. Nickell</b>
<b>Debra Perelman</b>	<b>Ronald O. Perelman</b>
<b>Isaac Perlmutter</b>	<b>Laura Perlmutter</b>
<b>Douglas A. Phillips</b>	<b>Richard P. Richman</b>
<b>Linda Gosden Robinson</b>	<b>E. John Rosenwald, Jr.</b>
<b>Alan D. Schwartz</b>	<b>Barry F. Schwartz</b>
<b>Bernard L. Schwartz</b>	<b>Larry A. Silverstein</b>
<b>Carla Solomon, PhD</b>	<b>William C. Steere, Jr.</b>
<b>Daniel Sundheim</b>	<b>Chandrika Tandon</b>
<b>Allen R. Thorpe</b>	<b>Alice M. Tisch</b>

<b>Thomas J. Tisch</b>	<b>Jan T. Vilcek, MD, PhD</b>
<b>Bradley J. Wechsler</b>	<b>Anthony Welters, Esq.</b>

The following members are new to the Board of Trustees of and were reviewed accordingly:

<b>Robert M. Valletta</b> Retired <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital	<b>Melanie J. Clark</b> Not employed <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital
<b>Stephanie Pianka (ex officio)</b> Senior VP, CFO, NYU <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital	<b>Charles M. Strain, Esq.</b> Partner, Farrell Fritz, PC  <b>Walter W. Buckley Jr.</b> Retired

Charles M. Strain disclosed that his employer, Farrell Fritz, PC is occasionally named as a defendant in civil actions.

Stephanie Pianka disclosed she was a defendant in civil litigation against a company by which she was previously employed. The company settled the case and the litigation was terminated. Ms. Pianka also disclosed that as the Chief Financial Officer of New York University she is sometimes engaged in legal actions arising out of the normal course of the University's operations. Additionally, Ms. Pianka disclosed she held equity interest in Avaya, Inc. which filed chapter 11 bankruptcy in January 2017.

A search of the individuals 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.

#### **Facility Compliance / Enforcement**

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers reported that during the time-period 2011 to 2018, the affiliated Hospitals and Extension Clinics 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 Home for the time-period 2011 to 2018, and reports as follows:

- An enforcement action was taken against Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (RHCF) in March 2012, based on two surveys completed on February 16, 2011, and April 29, 2011, citing violations in 10 NYCRR 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.22 (a)(1-4) Resident Records Complete; and 415.12(j) Quality of Care: Hydration. A total state civil penalty in the amount of \$22,000 was imposed and paid. The facility is now in compliance.

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agencies and Long Term Home Health Care Program for the time-period 2011 to 2018, and reports that the affiliated Certified Home Health Agencies and Long Term Home Health Care Program have no histories of enforcement action taken.

<b>CHHA Quality of Patient Care Star Ratings</b> as of November 28, 2018	
<b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
NYU Winthrop Hospital	4 out of 5 stars

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

**Conclusion**

There will be no change to Counties Served and 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**

**Financial Analysis**

There are no projected changes in the utilization, revenues or expenses of Winthrop CHHA as a direct result of this project.

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 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility

**Capability and Feasibility**

There are no project costs or budgets associated with this application. BFA Attachment A is YULH's consolidated certified financial statements for the year ended August 31, 2017, and unaudited internal financials through August 31, 2018. NYULH maintained positive working capital, net asset position and net operating income of \$300,222,000 and \$136,002,000 in 2017 and as of August 31, 2018, respectively.

BFA Attachment B is NYU Winthrop's consolidated certified financial statements for the period ending August 31, 2017, and their unaudited internal financial statements through August 31, 2018. During the successor period of April 1, 2017 and August 31, 2017, Winthrop maintained positive working capital and net asset positions and reported an operating income of \$18,536,779. Winthrop maintained positive working capital, net assets and a net operating income of \$59,032,662 as of August 31, 2018.

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

**Attachments**

- |                  |                                                                                                                   |
|------------------|-------------------------------------------------------------------------------------------------------------------|
| BFA Attachment A | NYULH August 31, 2017 certified financial statements, and internal financial statements through August 31, 2018   |
| BFA Attachment B | Winthrop August 31, 2017 certified financial statements and internal financial statements through August 31, 2018 |
| BFA Attachment C | NYULH's proposed pre- and post-closing corporate organizational chart                                             |



Project # 182220-E
Good Samaritan Hospital Home Care Department

Program: Certified Home Health Agency
Purpose: Establishment

County: Rockland
Acknowledged: November 9, 2018

Executive Summary

Description

Good Samaritan Hospital of Suffern (the Hospital) requests approval for a change in the controlling entity of the Good Samaritan Hospital Home Care Department, a voluntary not for profit, Article 36 certified home health agency (CHHA) operated by the Hospital. The controlling entity, Bon Secours Charity Health System, Inc. (BSCHS), received approval to be established as the sole corporate member and controlling entity of the CHHA under CON 001146. Through this application, WMC Health Network-Rockland, Inc. and Westchester County Health Care Corporation (WCHCC) will be established as controlling entities of the CHHA. WMC Health Network-Rockland, a wholly-owned, not-for-profit subsidiary of WCHCC, will become the majority corporate member of BSCHS. BFA Attachment A presents the organizational chart before and after the change in corporate membership.

There are no costs associated with this project. There will be no change in the authorized services or service area of the CHHA as a result of the proposed change in the controlling entity, and there are no projected changes in the utilization, revenues or expenses of the CHHA as a direct result of this project.

WCHCC has also entered into a management agreement with BSCHS, which was approved by the New York State Department of Health, whereby WCHCC provides oversight of the day-to-day operation of BSCHS and all of its entities through a Chief Executive Officer employed by WCHCC. They also perform certain management support services.

OPCHSM Recommendation
Contingent Approval

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

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

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

Table with 2 columns: Category (Revenues, Expenses, Net Loss) and Year One values (\$19,367,164, 19,613,437, (\$246,273)).

## **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 and restated certificate of incorporation of WMC Health Network-Rockland, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Management 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. Submission of a copy of the fully executed Certificate of Assumed Name for Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department at the time of project completion. [CHA]

### **Council Action Date**

**February 14, 2019**

## Program Analysis

### Program Description

Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department, a not-for-profit corporation, requests approval to establish WMC Health Network – Rockland, Inc. and Westchester County Health Care Corporation as new controlling entities of an existing Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law.

Good Samaritan Hospital Home Care Department is a Certified Home Health Agency (CHHA) serving Rockland, Orange, Bronx, New York and Westchester counties. Currently, the sole corporate member of Good Samaritan Hospital of Suffern, Inc. is Bon Secours Charity Health System, Inc. The corporate membership of Bon Secours Charity Health System, Inc. is comprised of Bon Secours Health System, Inc. which has 100% economic interest and Sisters of Charity of Saint Elizabeth. This project seeks to establish WMC Health Network-Rockland, Inc., a wholly owned not-for-profit subsidiary of Westchester County Health Care Corporation, a public benefit corporation, as a third member of Bon Secours Charity Health System, Inc. At the close of this transaction, Bon Secours Health System, Inc. will hold 40% economic interest in Bon Secours Charity Health System, Inc. and WMC Health Network – Rockland, Inc. will become the majority member with 60% economic interest. Please refer to BFA Attachment A – Before and After Organizational Charts for more detail regarding this transaction.

Westchester County Health Care Corporation has ownership in the following facilities:

- Westchester Medical Center (Hospital)
- MidHudson Regional Hospital (Division of Westchester Medical Center)
- HealthAlliance Hospital Broadway Campus
- HealthAlliance Hospital St. Mary's Avenue Campus
- Margaretville Hospital
- Mountainside Residential Care Center (RHCF)
- North Road LHCSA, Inc.
- Westchester County Health Care Corporation d/b/a MidHudson Valley Division of WMC Certified Home Health Services (CHHA)

This project will have no impact on the services provided or counties served by Good Samaritan Hospital Home Care Department.

### Character and Competence Review

Westchester County Health Care Corporation is a public benefit corporation pursuant to Title 1, Article 10-C, Chapter 43-A of the Public Authorities Law of the State of New York. The board of Westchester County Health Care Corporation is comprised of fifteen (15) voting members, eight of which are appointed by the New York State governor, with the remaining seven being appointed by the legislature of Westchester County. The board of Westchester County Health Care Corporation also includes four non-voting members, consisting of one chief executive officer appointed by the fifteen (15) voting board members, one appointed by the Westchester County executive, one appointed by the majority leader of the Westchester County legislature, and one appointed by the minority leader of the Westchester County legislature. A public benefit corporation is a government agency, and pursuant to 10 NYCRR 760.3(c)(1) – (4), character and competence review of the governing body of any government subdivision shall consider the governing body as a whole, rather than the individual elected or appointed members of the governing body. In accordance with 10 NYCRR 760.3(c)(1) – (4), the individual board members of Westchester County Health Corporation were not reviewed as part of this project.

The Board of Directors of WMC Health Network – Rockland, Inc. is as follows:

<p><b>Gary F. Brudnicki</b> – Director Senior EVP, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Westchester Medical Center</li> <li>• Bon Secours Charity Health System, Inc.</li> <li>• Health Alliance, Inc.</li> </ul>	<p><b>Mitchell C. Hochberg</b> – Director President, Lightstone</p>
<p><b>Michael D. Israel</b> – Director President &amp; CEO, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Westchester Medical Center</li> <li>• Bon Secours Charity Health System, Inc.</li> <li>• Health Alliance, Inc.</li> </ul>	<p><b>Zubeen P. Shroff</b> – Director Managing Director, Galen Partners</p>
<p><b>Julie A. Switzer, Esq.</b> – Director EVP &amp; General Counsel, Westchester Medical Center Health Network <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Westchester Medical Center</li> <li>• Bon Secours Charity Health System, Inc.</li> <li>• Health Alliance, Inc.</li> </ul>	<p><b>Mark S. Tulis, Esq.</b> – Director Lawyer, Mark S. Tulis, P.C./Tulis Wilkes, LLP <u>Affiliations</u> Westchester Medical Center (Hospital)</p>

In November 2011, Westchester Medical Center received a Civil Investigative Demand (CID) from the United States Attorney’s Office for the Southern District of New York regarding inpatient and outpatient mental health services furnished at Westchester Medical Center’s Behavioral Health Center. The investigation stemmed from a qui tam complaint. The matter was settled in October 2012.

In March 2015, Westchester Medical Center settled a qui tam complaint related to contractual agreements between physicians on its staff.

In July 2015, Westchester Medical Center received a Civil Investigative Demand (CID) related to claims submitted to the Medicaid and Medicare programs during clinical trials. The CID is still pending.

Mitchell C. Hochberg disclosed he was named in a civil suit on February 21, 2018 regarding an employment dispute.

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

A search of the individuals named above on the New York State Unified Court System revealed that the individuals are currently registered and have no disciplinary actions taken against them.

A seven-year compliance review of the following providers was performed as part of this project:

- Good Samaritan Hospital of Suffern
- Bon Secours Community Hospital
- St. Anthony Community Hospital
- Westchester Medical Center (Hospital)
- MidHudson Regional Hospital (Division of Westchester Medical Center)
- HealthAlliance Hospital Broadway Campus
- HealthAlliance Hospital St. Mary’s Avenue Campus
- Margaretville Hospital
- St. Anthony’s Sleep Disorder Institute (Extension Clinic)
- Women’s Imaging Center (Extension Clinic)
- Center for Physical Rehabilitation (Extension Clinic)
- Bon Secours Sleep Disorder Institute (Extension Clinic)
- Mountainside Residential Care Center (RHCF)



- Schervier Pavilion (RHCF)
- St. Joseph's Place (RHCF)
- Mount Alverno Center (ACF/ALP)
- Westchester County Health Care Corporation d/b/a MidHudson Valley Division of WMC Certified Home Health Services (CHHA)
- Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department (CHHA)
- North Road LHCSA, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

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

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings</b> as of January 2, 2019	
<b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department	3.5 out of 5 stars
Westchester County Health Care Corporation d/b/a Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services	3 out of 5 stars

The 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

### Operating Budget

The applicant submitted their current year and first year operating budgets, in 2018 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>
<u>Revenues</u>		
Medicaid FFS	\$162,016	\$162,016
Medicaid MC	761,982	761,982
Medicare FFS	9,923,818	9,923,818
Medicare MC	2,508,742	2,508,742
Commercial FFS	4,736,374	4,736,374
Commercial MC	1,170,199	1,170,199
Private Pay	<u>104,033</u>	<u>104,033</u>
Total Revenue	\$19,367,164	\$19,367,164
<u>Expenses</u>		
Operating	\$19,105,935	\$19,105,935
Capital	<u>507,502</u>	<u>507,502</u>
Total Expenses	\$19,613,437	\$19,613,437
Net Loss	<u>(\$246,273)</u>	<u>(\$246,273)</u>
<u>Utilization</u>		
Visits	81,177	81,177
Hours	12,589	12,589

Utilization by payor during the current year and the first year after change in controlling entity:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	1.2%	1.2%
Medicaid MC	3.8%	3.8%
Medicare FFS	52.6%	52.6%
Medicare MC	12.4%	12.4%
Commercial FFS	23.5%	23.5%
Commercial MC	5.7%	5.7%
Private Pay	<u>0.8%</u>	<u>0.8%</u>
Total	100%	100%

Expense and utilization assumptions are based on the historical experience of the CHHA.

### Capability and Feasibility

There are no project costs associated with this application. The submitted budget projects a \$246,273 net loss in Year One after the change in corporate structure. Revenues are based on current reimbursement methodologies. The applicant has indicated that the losses will be offset via operations of Westchester County Health Care Network. The submitted budget appears reasonable.

BFA Attachment B is a summary of Westchester County Health Care Corporation's 2016-2017 certified financial statements. As shown, the entity had an average positive working capital position and an average negative net asset position from 2016 through 2017. The average negative net asset position is due to mandatory accounting adoptions of the non-cash GASB 75 (\$237.3 million) and GASB 68 (9.4 million), plus the unanticipated DSH reduction (\$40.0 million) in 2017. Subsequent to the issuance of the 2017 financial statements, the Federal Government restored Medicaid DSH funding for both 2017 and 2018 and Westchester Medical Center ultimately received the \$40 million, which is being recorded in 2018. The entity had net losses in 2016 and 2017.

HealthAlliance and its subsidiaries were included in the financial statements of WCHCC in 2016 and 2017, and there was an adjustment due to the temporary impact of the Medicaid DSH reduction. WCHCC has taken steps to bring HealthAlliance into profitability, including working to consolidate the two Kingston hospitals into one single location with the assistance of a new hospital construction project funded, in large part, by a Capital Restructuring Finance Program (CRFP) grant from the New York State Department of Health. Of the total \$88.7 million CRFP grant, \$75 million is apportioned to the hospital construction project.

BFA Attachment C is the 2017 certified financial statements of Bon Secours Health Care System. As shown, the entity had an average positive working capital position and an average positive net asset position in 2016 and 2017. The entity had positive net income in 2016 and 2017.

BFA Attachment D is the internal financial statements of Bon Secours Charity Health System as of March 31, 2018. As shown, the entity had a positive working capital position and a positive net asset position. The entity achieved an operating income of \$8,676,000 through March 31, 2018.

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

## **Attachments**

BFA Attachment A	Organizational Chart- Before and After
BFA Attachment B	Financial Summary- 2016-2017 certified financial statements Westchester County Health Care Corporation.
BFA Attachment C	Financial Summary- 2017 Certified Financial Statements of Bon Secours Charity Health System
BFA Attachment D	Financial Summary- March 31, 2018 Internal Financial Statements of Bon Secours Charity Health System.



**Project # 181331-E**  
**Elderwood Certified Home Health Agency, LLC**

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

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

**Executive Summary**

**Description**

Elderwood Certified Home Health Agency, LLC, a New York limited liability company, requests approval to be established as the new operator of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency, an Article 36 certified home health agency (CHHA) located at 2700 North Forest Road, Getzville (Erie County). The CHHA is currently owned and operated by Rosa Coplon Jewish Home and Infirmary, Inc., a not-for-profit corporation whose sole member is Menorah Campus, Inc., which also operates the 180-bed residential health care facility (RHCF) located on the same campus. There will be no change in service area or services as a result of the transition.

On November 22, 2017, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State (NYS), entered into an Asset Purchase Agreement (APA) with Menorah Campus, Inc. for the sale and acquisition of the CHHA's operating interests. The APA includes the sale of the following: Rosa Coplon Jewish Home and Infirmary (Rosa Coplon RHCF); Menorah Campus Adult Home, Inc. Licensed Home Care Services Agency; Dosberg Manor Adult Home; The Meadows, an enriched and independent living facility; Garden House, an assisted living residence; and senior living apartments known as Forest Creek Commons. Separate applications are being submitted for the sale of these entities, all of which are on the RHCF campus. The aggregate purchase price for the assets is \$46,750,000 of which \$750,000 is allocated to the sale of the CHHA.

The proposed ownership is as follows:

Elderwood Certified Home Health Agency, LLC	
<u>Members</u>	
2700 North Forest Road Operating Holdco, LLC	100%
Warren Cole (50%)	
Jeffery Rubin, D.D.S. (50%)	

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There will be no programmatic changes to the CHHA as a result of the change in ownership and all services will continue to be provided as approved for Erie County.

**Program Summary**

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

**Financial Summary**

The purchase price of \$750,000 will be met via members' equity. The proposed budget is as follows:

Revenues	\$1,462,238
Expenses	<u>\$1,138,025</u>
Net Income	\$324,213

## **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 building license agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]

#### **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**

**February 14, 2019**

# Need and Program Analysis

## **Program Description**

Elderwood Certified Home Health Agency, LLC d/b/a Elderwood Certified Home Health Agency, a limited liability company, requests approval for a change in ownership of a Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law.

The single member of Elderwood Certified Home Health Agency, LLC is 2700 North Forest Road Operating Holdco, LLC. The members of 2700 North Forest Road Operating Holdco, LLC are:

**Warren Cole**, Treasurer – 50%  
Partner, Post Acute Partners, LLC

**Dr. Jeffrey Rubin**, President – 50%  
Partner, Post Acute Partners, LLC

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

The applicant proposes to continue to serve the residents of Erie County from an office located at 2700 North Forest Road, Getzville, New York 14068.

The applicant proposes to continue to provide the following health care services:

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

## **Character and Competence**

### **Experience**

The ownership interests of Warren Cole and Dr. Jeffrey Rubin are identical. A seven-year review of the operations of the following affiliations was performed as part of this review (unless otherwise noted):

<u>NYS Nursing Homes</u>	
Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood of Uihlein at Lake Placid	10/2016 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Hornell	04/2016 to present
Elderwood of Lakeside at Brockport	01/2018 to present
Elderwood at Ticonderoga	04/2018 to present
Elderwood at Lockport	01/2018 to present
Elderwood at North Creek	01/2018 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Ticonderoga		04/2018 to present
Elderwood Village at Williamsville		07/2013 to present
Elderwood Assisted Living at Wheatfield		07/2013 to present
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Elderwood Assisted Living at Tonawanda		04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present

NYS Pharmacy

Woodmark Pharmacy of New York, LLC		07/2013 to present
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Massachusetts

Woodmark Pharmacy of Massachusetts	RX	06/2014- present
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Pennsylvania

Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	ICF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Elderwood Senior Living at Lancaster	HOM	02/2011-present

Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Vermont

Elderwood at Burlington	SNF	12/2018-present
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KEY

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Healthcare Consulting Companies

Elderwood Administrative Services, LLC  
Post-Acute Partners Management, LLC

Mr. Warren Cole and Dr. Jeffrey Rubin have submitted signed affidavits indicating that they each hold 50% ownership interest in the out-of-state healthcare facilities located in Massachusetts, Pennsylvania and Rhode Island. The affidavits state that all noted deficiencies had been corrected to the satisfaction of the agency in question within the prescribed time frames. The affidavits further confirm that none of these health care entities have received any material fines or civil monetary penalties during the past ten years or the time of ownership interest.

**Enforcement History**

**Elderwood at Ticonderoga:**

- A federal CMP of \$6,633 was assessed for July 24, 2017 survey findings.
- A federal CMP of \$15,625 was assessed for July 24, 2017 survey findings.

**Elderwood at Amherst:**

- The facility was fined \$4,840 pursuant to Tag 686-G- Treatment/Services to prevent/Heal Pressure Ulcers. The facility had a Federal Comparative Survey on 05/11/18 with G level (Harm) deficiency plus D, E, and F level deficiencies. The CMP was for the Federal Comparative Survey only.

**Elderwood at Grand Island:**

- The facility was fined \$ 2,000 pursuant to a Stipulation and Order for survey ending November 2, 2018. A deficiency was found under NYCRR 483.12(b)(1) prohibit and prevent abuse, neglect and exploitation of residents and misappropriation of resident property. 483.12(b)(2) establish policies and procedures to investigate any such allegations.

**Elderwood at Waverly:**

- The facility was fined \$10,000 pursuant to a Stipulation and Order for survey ending November 19, 2018 for an Immediate Jeopardy (IJ) - F-678-Cardio-Pulmonary Resuscitation.

**Elderwood at Williamsville:**

- The Facility incurred a Civil Monetary Penalty of \$3,250 on 09/19/2017.

**Elderwood Assisted Living at Waverly:**

- The facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

**Elderwood Assisted Living at Wheatfield:**

- The facility was fined \$2,800 pursuant to Stipulation and Order ACF-17-029 issued July 5, 2017 for inspections dated 7/27/2016 and 11/11/2016. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services.

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

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality and Surveillance has indicated that the remaining residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings as of January 14, 2019</b>	
<b>New York Average: 3 out of 5 stars    National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency	2.5 out of 5 stars



## Conclusion

There will be no change to services provided or the service area as a result of this application. The review of the Personal Qualifying Information indicates the applicant has the required character and competence to operate the CHHA.

## Financial Analysis

### Purchase and Sale Agreement

The applicant submitted an executed agreement for the purchase of the CHHA, to be effectuated upon Public Health and Health Planning Council approval of this application.

Date:	November 22, 2017
Purpose:	Buyer desires to purchase all rights of the Seller to own and operate the CHHA, and all CHHA's assets.
Seller:	Menorah Campus, Inc.
Buyer:	Post Acute Partners Acquisition, LLC
Assets Acquired:	Inventory; right, title/interest of the Seller to all furniture, furnishings, equipment, computers, machinery, mechanical and security systems, vehicles, office equipment; real property records; assumed contracts and all assumed admission agreements; licenses in connection with the facility; trademarks, trade names, service marks, trade dress used in connection with operation of the facility; patient records, books and records; DOH settlement payments; all tangible and intangible personal property used in connection with operation/maintenance of the facility.
Excluded Assets:	Sellers bank accounts, cash, cash equivalents, securities, HUD replacement reserves, mortgage sinking fund, replacement/tax escrow reserves, accounts receivable, refunds/reimbursements; prepaid expenses, deposits; claims, disputes, litigation, insurance proceeds; employee benefit plans; non-transferrable or non-assignable permits/licenses; and seller's financial books/records.
Assumed Liabilities:	Accrued paid time off for employees who are transitioned to the new operator.
Purchase Price:	\$750,000
Payment of the Purchase Price:	\$1,500,000 deposit held in escrow (applicable to the APA in total, including acquisitions other than the CHHA) to be applied to the overall purchase price at closing. Balance due at closing.

The aggregate purchase price for the assets is \$46,750,000 of which \$750,000 is allocated to the sale of the CHHA operations. The purchase price for the CHHA will be met entirely with members' equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of November 28, 2018, the facility has no outstanding Medicaid liabilities.

### Assignment of Rights

The applicant submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee/Operator:	Elderwood Certified Home Health Agency, LLC
Skilled Nursing Operating Assets Transferred:	Assets associated with the operation of the CHHA of Rosa Coplon Jewish Home and Infirmary CHHA
Assignment Fee:	\$10

### License Agreement

Premises:	1,200sq. ft. located at 2700 North Forest Road, Getzville, New York
Licensor:	2700 North Forest Road Operating Company, LLC
Licensee:	Elderwood Certified Home Health Agency, LLC
Term:	Indefinite
Rent:	\$9,163.83 per month, including utilities, taxes and maintenance.

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

### Administrative Services Agreement

Provider:	Elderwood Administrative Services, LLC
Company:	Elderwood Certified Home Health Agency, LLC dba Elderwood Certified Home Health Agency
Services Provided:	Assistance including: accounts receivable; billing; accounts payable; payroll; budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; marketing and business development; reimbursement; ancillary and other services; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, with automatic 1-year renewals for the period January 1-December 31.
Fee:	\$5,352 per month with periodic adjustments based on a consideration of the fees, scope of operations, changes in purchasing power, services being performed, size of non-professional workforce and the expenses of the provider, reflecting the fair market value.

Elderwood Administrative Services, LLC is owned by Warren Cole and Jeffrey Rubin, each at 50%. The administrative services provider submitted an attestation acknowledging that there are statutory and regulatory requirements that cannot be delegated and that Elderwood Certified Home Health Agency, LLC dba Elderwood Certified Home Health Agency will maintain responsibility and authority over the daily management and operations of the facility.

## Operating Budget

The applicant has submitted the CHHA's current results for 2017, and the projected first and third year operating budgets, in 2018/19 dollars, as summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare FFS	\$528,630	\$599,505	\$692,421
Medicare MC	\$359,343	\$536,777	\$619,994
Medicaid MC	\$77,554	\$102,482	\$118,353
Commercial MC	\$7,945	\$6,492	\$7,494
Private/Other	\$24,904	\$23,451	\$27,097
Bad Debt	\$0	(\$3,060)	(\$3,121)
Total Revenues	\$998,376	\$1,265,647	\$1,462,238
<u>Expenses</u>			
Operating	\$1,156,223	\$924,340	\$998,812
Capital	\$35,759	\$138,640	\$139,213
Total Expenses	\$1,191,982	\$1,062,980	\$1,138,025
Net Income (Loss)	<u>(\$193,606)</u>	<u>\$202,667</u>	<u>\$324,213</u>
Utilization: (Visits)*	8,054	5,874	6,462
Utilization: (Hours)**	5,232	10,257	11,283
	<i>* Nursing, PT, OT, SP, and Medical Social Service visits</i>		
	<i>**Home Health Aid hours</i>		

The significant change between visits and hours from Current Year and Years One and Three is due to the applicant's plan to provide more lower acuity services in the community. This new approach requires more Home Health Aid hours and fewer visits. This Home Care services plan is consistent with services provided by home care agencies affiliated with the applicant's members.

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

<u>Visits</u>	<u>Year One</u>	<u>Year Three</u>	<u>Hours</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	30.65%	30.66%	Medicare FFS	30.65%	30.65%
Medicare MC	54.80%	54.80%	Medicare MC	54.79%	54.80%
Medicaid MC	10.22%	10.21%	Medicaid MC	10.22%	10.21%
Commercial MC	.61%	.60%	Commercial MC	.60%	.60%
Private/Other	1.72%	1.72%	Private/Other	1.74%	1.73%
Charity Care	2.00%	2.01%	Charity Care	2.00%	2.01%

Charity care is expected to be 2%. The applicant states their policy is to assess individual based on income to determine eligibility fee reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

## Capability and Feasibility

PAP will acquire the CHHA's operations for \$750,000. The purchase price will be met with members' equity. PAP will assign its rights and title to the CHHA operations to Elderwood Certified Home Health Agency, LLC for \$10. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$189,671 based on two months of third year expenses. The full amount will be funded from the members' equity. BFA Attachment A is the net worth statements for the proposed members of Elderwood Certified Home Health Agency, LLC, which reveals sufficient resources to meet both the purchase price and the working capital equity requirements. BFA Attachment D is the pro forma balance sheet, which shows the entity will start with \$939,665 in equity.

The submitted budget projects gain of \$202,667 and \$324,213 in the first and third year, respectively. The submitted budget is reasonable.

BFA Attachment C is the 2017 and the internal 1/1/2018-9/30/2018 financial statements of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency. The facility achieved a positive net asset and working capital position for 2017 and for the period 1/1/2018-9/30/2018. The entity achieved a net loss from operations of \$128,316 in 2017 and a net loss from operations of \$256,152 for the period 1/1/2018-9/30/2018. The net loss shown is due to higher staffing attributed to campus shared services and nursing agency staffing. The applicant plans to bring staffing in-house consistent with its clinical staffing model, which will reduce current staffing expenses attributable to a contract staffing model.

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

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## **Attachments**

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BFA Attachment A	Personal Net Worth Statement- Proposed Members of Elderwood CHHA
BFA Attachment B	Organizational Chart
BFA Attachment C	2017 certified and the 1/1/2018-9/30/2018 Internal financial statements for Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency
BFA Attachment D	Pro Forma Balance Sheet of Elderwood CHHA



**Project # 182214-E**

**Buffalo Surgery Center, LLC**

**Program:** Diagnostic and Treatment Center  
**Purpose:** Establishment

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

**Executive Summary**

**Description**

Buffalo Surgery Center, LLC, an existing proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 3921 Sheridan Drive, Amherst (Erie County), requests approval to transfer 4.34% ownership from existing members to each of three new members for a total transfer of 13.02% ownership interest in the FASC. The transfer is being effectuated via the issuance of 100 units of ownership to each of the three new physician members in accordance with the Center's Fourth Amended and Restated Operating Agreement and under the terms of the applicable Purchase, Sale, and Joinder Agreements. Upon Public Health and Health Planning Council (PHHPC) approval of this application, each new physician member will own 4.34% membership interest in Buffalo Surgery Center, LLC. The proposed new members are David Pula, M.D., Ryan Wilkins, M.D. and Daniel Leberer, M.D., all of whom are currently performing procedures at the Center. The proposed new members have each executed a Purchase, Sale and Joinder Agreement pursuant to the terms of the Center's Fourth Amended and Restated Operating Agreement. The purchase price for each 4.34% membership interest is \$205,000 for a total

purchase price of \$615,000 for the 13.02% ownership transfer.

The FASC is licensed to provide three single-specialty services (gastroenterology, ophthalmology, and orthopedics) and serves patients from across all of Western New York, but primarily from Erie and Niagara counties.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There will be no Need recommendation for this project.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application and no change in services or business model.

## **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 the executed personal loan commitments for Drs. Pula and Leberer, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's unredacted Board Meeting Minutes of October 2, 2018, 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**

**February 14, 2019**

## Program Analysis

### Program Description

Buffalo Surgery Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified for three single surgical specialties (Gastroenterology, Ophthalmology, and Orthopedics), located at 3921 Sheridan Drive in Amherst (Erie County), requests approval to transfer a total of 13.02% ownership from existing owners to three new physician members— Drs. David Pula, Ryan Wilkins, and Daniel Leberer— each of whom are all currently performing procedures at the center. Upon approval, each of the new members will own a 4.34% membership interest in Buffalo Surgery Center, LLC.

The table below details the proposed change in ownership:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Proposed Membership Interest</b>
Lisa Daye, MD, <i>Medical Director</i>	5.00%	4.349%
Andrew Stoeckl, MD	5.00%	4.349%
Paul Paterson, MD	5.00%	4.349%
John Callahan, MD	5.00%	4.349%
Peter Shields, MD	5.00%	4.349%
David Bagnall, MD	5.00%	4.349%
James Slough, MD	5.00%	4.349%
James Kelly, DO	5.00%	4.349%
Jafar Siddiqui, MD	5.00%	4.349%
Bryan Butler, MD	5.00%	4.349%
Matthew Cywinski, MD	5.00%	4.349%
Mohammad Fayyaz, MD	5.00%	4.349%
Alok Gupta, MD	5.00%	4.349%
Joseph Leberer, MD	5.00%	4.349%
Jehad Miqdadi, MD	5.00%	4.349%
James Piscatelli, MD	5.00%	4.349%
Jeffrey Visco, MD	5.00%	4.349%
Nicholas Violante, DO	5.00%	4.349%
Timothy McGrath, MD	5.00%	4.349%
Kory Reed, MD	5.00%	4.349%
<b>*David Pula, MD</b>	----	<b>4.340%</b>
<b>*Ryan Wilkins, MD</b>	----	<b>4.340%</b>
<b>*Daniel Leberer, MD</b>	----	<b>4.340%</b>
<b>Total</b>	<b>100%</b>	<b>100%</b>

***\*Subject to Character and Competence Review***

The BSC Board of Directors will consist of: Drs. John Callahan, Lisa Daye, James Slough, Joseph Leberer and Matthew Cywinski

### Character and Competence

**Dr. Pula**, a board-certified orthopedic surgeon, has been practicing medicine for 15 years. Since October 2016, he has been employed by Excelsior Orthopaedics. Prior to that, he operated a private practice. Dr. Pula is a graduate of Tulane Medical School and has completed an orthopedic residency at Tripler Army Medical Center and a sports medicine fellowship at SUNY Buffalo School of Medicine.

**Dr. Wilkins** is also a board-certified orthopedic surgeon employed by Excelsior Orthopaedics since April 2016. Prior to that, he was employed by Joint Reconstruction Orthopedics in Amherst. He initially earned a degree in physical therapy from the University at Buffalo, however, after working briefly in that field, he enrolled in medical school. Upon earning his medical degree from the SUNY Buffalo School of Medicine, he went on to complete both an orthopedic surgery residency and a fellowship in sports medicine at SUNY Buffalo.

**Dr. Leberer** is a board-certified colon and rectal surgeon who graduated from the University at Buffalo School of Medicine and Biomedical Science. He completed a general surgical residency at Riverside Methodist Hospital and a Colon Rectal Fellowship at SUNY Buffalo.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the three (3) proposed individual members regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

### **Conclusion**

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

## **Financial Analysis**

### **Purchase, Sale and Joinder Agreement**

The applicant has submitted the executed Membership Subscription Agreements for the proposed members, the terms of which are summarized below:

Date:	October 10, 2018
Description:	Purchase of 4.34% membership interest for each new member
Company:	Buffalo Surgery Center, LLC
Purchasers:	David Pula, M.D., Ryan Wilkins, M.D. and Daniel Leberer, M.D.
Purchase Price:	\$205,000 per proposed new member
Payment of Purchase Price:	\$615,000 total balance due at closing.

Drs. David Pula and Daniel Leberer will fund their purchase price via the proceeds of a \$205,000 personal loan each physician will obtain. M&T Bank has provided the respective physician's letter of interest for a \$205,000 loan with a seven-year term at 5.75% interest. Payment of the purchase price due from Dr. Ryan Wilkins will be paid from his personal assets. BFA Attachment A is a summary of the proposed members' net worth statements. The net worth statement of Dr. Wilkins shows sufficient resources for the transaction.

### **Capability and Feasibility**

There are no project costs associated with this application and no change in services or business model. BFA Attachment C is the 2017 certified financial statements of Buffalo Surgery Center, LLC and their internal financial summary of as of September 30, 2018, which shows the entity has maintained a positive working capital position, net equity position, and experienced a net income of \$3,406,600 in 2017 and \$3,260,498 as of September 30, 2018.

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



## **Attachments**

- BFA Attachment A Personal Net Worth Statements of Proposed Members of Buffalo Surgery Center, LLC
- BFA Attachment B Current and Proposed Membership interest in Buffalo Surgery Center, LLC
- BFA Attachment C Buffalo Surgery Center, LLC. – 2017 Certified Financial Statements and Internal Financial Statements as of September 30, 2018



Project # 182125-B
Everett Road Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Albany
Acknowledged: September 21, 2018

Executive Summary

Description

Everett Road ASC, LLC d/b/a Everett Road Surgery Center, an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located in leased space at 123 Everett Road, Albany (Albany County). The proposed FASC will occupy approximately 22,200 square feet of space on the second floor of a 54,000-square foot, two-story medical office building that is currently under construction with an estimated completion date of June 2019. The building's first floor will house the private medical practice of Albany ENT & Allergy Services, P.C., which is relocating from its current location upon completion of construction. The proposed Center will consist of four operating rooms (ORs) at the onset, with space available to accommodate two additional ORs for future expansion.

Ownership of the operations will be as follows:

Table with 2 columns: Proposed Operator, Members. Rows include Ortho NY ASC Holdings, LLC (52%), AENT ASC Holdings, LLC (28%), and St. Peter's Hospital of the City of Albany (20%).

The members of Ortho NY ASC Holdings, LLC are orthopedic surgeons affiliated with Orthopedics NY, LLP (OrthoNY) and the members of AENT ASC Holdings, LLC are surgeons affiliated with Albany ENT & Allergy Services, P.C. All member surgeons are on the medical staff of St. Peter's Hospital of the City of Albany. Frank Conquista, M.D., who is Board-Certified in orthopedic surgery and a partner at

OrthoNY, will be the Medical Director of the Center. The applicant submitted an executed Transfer Agreement with St. Peters Hospital for back-up and emergency support services to be effectuated upon operating certification of the FASC.

OPCHSM Recommendation

Contingent Approval

Need Summary

The number of projected procedures is 4,415 in Year One and 4,648 in Year Three, with Medicaid at approximately 10% and Charity Care at approximately 2% each year.

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 for the center is \$11,523,767. Total reimbursable cost (total project cost less shell space) is \$8,551,067, to be funded via \$1,000,423 equity from the members of Everett Road Ambulatory Surgery Center, LLC, a \$4,050,000 construction loan at 5.45% interest for a ten-year term (self-amortizing), and a \$3,500,644 equipment loan at 5.45% interest for a seven-year term (self-amortizing). Berkshire Bank provided a letter of interest for the construction and equipment loans. The landlord is providing \$2,972,700 for construction of the second-floor shell space funded via \$2,167,173 equity, with the balance funded from the

proceeds of the \$8,200,000 building construction loan previously secured from Liberty Bank. The building's construction is underway with an estimated completion date of June 2019, at which time, with appropriate approvals, the build-out of the second-floor ASC can commence. The proposed budget is as follows:

Revenues	\$9,375,430	\$9,950,333
Expenses	<u>\$7,239,978</u>	<u>\$7,466,458</u>
Gain/(Loss)	\$2,135,452	\$2,483,875

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment (ASC), acceptable to the Department of Health. [BFA]
4. Submission of an executed construction loan commitment (ASC), acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of final, complete, executed and filed articles of organization of applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of final, complete, executed and filed articles of organization of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of final, executed operating agreements of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of a complete, final, dated and executed Lease Agreement between 123 Everett Road Real Estate Group LLC and applicant, acceptable to the Department. [CSL]
11. Submission of a photocopy of a complete, final, dated and executed Administrative Services and Billing Agreement between the applicant and OrthopedicsNY, LLC, acceptable to the Department. [CSL]
12. Submission of evidence, acceptable to the Department, of the consent of all Members of the applicant authorizing the establishment, leasing and administrative services actions provided for under this application. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
14. Submission of MEP Engineering (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 two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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. Construction must start on or before July 1, 2019 and construction must be completed by March 1, 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]
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

February 14, 2019

## Need Analysis

### Analysis

The applicant states the expected service area is Albany and Rensselaer Counties. However, given the location, the Department considered at Albany, Rensselaer, and Schenectady Counties. The table below shows the number of patient visits at ambulatory surgery centers in Albany County for 2016 and 2017. There are no ASCs operating in Rensselaer or Schenectady Counties.

Facility Name	Type	Patient Visits	
		2016	2017*
Albany Regional Eye Surgery Center	Single	11,663	13,128
OrthoNY Ambulatory Surgery Center - Albany	Single	4,732	4,760
New England Laser & Cosmetic Surgery Center	Multi	766	759
Capital Region Ambulatory Surgery Center	Single	8,884	8,944
St. Peter's Surgery and Endoscopy Center	Multi	18,477	18,061
<b>Totals</b>		<b>44,522</b>	<b>45,652</b>

*(Source: SPARCS 2017 data is annualized based upon 9 months of information)*

From 2016 to 2017, Albany County is estimated to have a 2.5% increase in ambulatory surgery center visits. The number of projected procedures is 4,415 in Year One and 4,648 in Year Three. The applicant estimates that over 70% of the projected cases will migrate from St. Peter's Hospital or its affiliated facilities. The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	457	10.35%	480	10.33%
Medicare FFS	980	22.20%	1,025	22.05%
Comm Ins- FFS	2,731	61.86%	2,887	62.11%
Private Pay	36	0.82%	38	0.82%
Charity Care	87	1.97%	90	1.94%
Other	124	2.80%	128	2.75%
<b>Total</b>	<b>4,415</b>	<b>100%</b>	<b>4,648</b>	<b>100%</b>

To serve the underinsured population, the Center intends to obtain contracts with the following Medicaid Managed Care plans: CDPHP, Fidelis, MVP, WellCare, UHC, UHS Community Care and BSNENY. The Center will contact the Whitney M. Young Health Center and Hudson Headwaters Health Network, both FQHC's, to provide service to the under-insured. The Center will adopt a financial assistance policy with a sliding fee scale. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will allow for additional access to multi-specialty ambulatory surgery services for the communities of Albany, Rensselaer, and Schenectady Counties.

## Program Analysis

### Program Description

<b>Proposed Operator</b>	Everett Road ASC, LLC
<b>Doing Business As</b>	Everett Road Surgery Center
<b>Site Address</b>	123 Everett Road Albany, NY 12205
<b>Surgical Specialties</b>	Multi-Specialty, to include: Orthopedic Surgery and Otolaryngologic Surgery
<b>Operating Rooms</b>	4
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am - 3:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	29.0 FTEs / 29.0 FTEs
<b>Medical Director</b>	Frank Congiusta, M.D.
<b>Emergency, In-Patient &amp; Back-up Support Services Agreement and Distance</b>	St. Peter's Hospital 4 miles / 14 minutes
<b>After-hours access</b>	Patient may call his or her surgeon's service and will be directed to the surgeon or to another surgeon of the same specialty on call.

### Character and Competence

Everett Road ASC is a physician-hospital joint venture whose members are OrthoNY ASC Holdings, LLC; AENT ASC Holdings, LLC; and St. Peter's Hospital of the City of Albany. The members of OrthoNY ASC Holdings, LLC are orthopedic surgeons who are members of the medical staff at St Peter's Hospital. The members of AENT ASC Holdings, LLC are surgeons who are members of St. Peter's Hospital staff.

<b>Member Name</b>	<b>Interest</b>
<b>OrthoNY ASC Holdings, LLC</b> <i>Members each hold a 5.8823% membership interest--</i> J. David Abraham, MD; James Alfandre, MD; Charles Buttaci, DO; Frank Congiusta, MD; Samuel Dellenbach, MD; David Dixon, MD; Fred Fletcher, MD; Kyle Flik, MD; Leonard Goldstock, MD; Lee Kaback, MD; Richard Katz, MD; William Montgomery, MD; Amar Parikh, MD; Luke Rigolosi, MD; W. James Smith, MD; Adam Suslak, MD; and John Whalen, MD	<b>52%</b>
<b>AENT ASC Holdings, LLC</b> <i>Members each hold a 12.5% membership interest--</i> Robert Adelson, MD; Robert Engle, MD; John Gavin, MD; Lawrence Kaufman, MD; Siobhan Kuhar, MD; Nora Perkins, MD; Jessica Riccio, MD; and Gavin Setzen, MD	<b>28%</b>
<b>St. Peter's Hospital of the City of Albany</b> <i>Officers and Directors--</i> Gary Dake, Chair; Beverly Karpiak, Vice-Chair; James K. Reed, MD, President; Ronald Guzior, Treasurer; Harold Gordon, Esq., Immediate Past Chair; Robert Swidler, Board Secretary; Robert Bylancik; Barbara Cottrell; AnnDiSarro; John Filippone, MD; George Hearst III; Sr. Phyllis Herbert; Robert Johnson, III, Esq.; Michael Keegan; Sr. Mary Ann LoGiudice; Norman Massry; Robert McCormick; Sr. Kathleen Natwin; Curtis Powell; Dan Roth, MD; James Slavin, MD; and Lisa Thorn, MD	<b>20%</b>
<b>Total</b>	<b>100%</b>

Everett Road ASC, LLC will be managed by a Board of Manager consisting of five managers, two managers each from OrthoNY ASC Holdings, LLC and AENT ASC Holdings, LLC, and one manager from St. Peter's Hospital. The proposed managers are: Frank Congiusta, MD; Samuel Dellenbaugh, MD; Gavin Setzen, MD; Lawrence Kaufman, MD; and Michael Finegan.

A Character and Competence Review was conducted on the sole representative of the St. Peter's Hospital Board of Managers, each of the 22 Officers and Directors of St. Peter's Hospital, and each of the 17 physician members of OrthoNY ASC Holdings, LLC and eight physician members of AENT ASC Holdings, LLC.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Abraham disclosed one settled malpractice case. The patient alleged an improperly fitting prosthesis during total hip replacement surgery which resulted in a significant limb length discrepancy, difficulty ambulating and loss of enjoyment of life. The case was settled for \$50,000 in November 2017.

Dr. Buttaci disclosed one pending malpractice case that is currently in litigation and relates to an injection that was given in September 2014 at OrthoNY.

Dr. Congiusta disclosed one pending malpractice claim. The claim alleges negligent surgery for a patient who underwent an open reductions/internal fixation for a fracture. A fracture occurred during surgery that necessitated additional surgery.

Dr. Fletcher disclosed two pending malpractice cases. One case (2013) involves a post-operative hematoma. The other case (2014) alleges nerve injury (foot drop) following a total knee replacement.

Dr. Katz disclosed one pending malpractice case alleging delay in diagnosis of a knee infection in 2017.

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.

**St. Peter's Board of Directors disclosed the following civil and administrative actions:**

Catholic Health East (CHE) and 13 of its affiliated hospitals, including St. Peter's Hospital, were among many hospitals investigated in a nationwide U.S. Department of Justice (DOJ) investigation which grew out of a qui tam action commenced in the United States District Court for the Southern District of Florida in January 2008. The investigation related to the procedures being followed by hundreds of hospitals and hospital systems regarding their compliance with the requirements of the Medicare National Coverage Determination applicable to implantable cardioverter defibrillators (ICDs). Ultimately, in March 2015, CHE settled the action on behalf of itself and its affiliates for \$11,025,000.00. The settlement included no admission of wrongdoing, and St. Peter's hospital was not required to enter into a corporate integrity agreement.

**Regarding St. Peter's-affiliated facilities:**

- On August 16, 2010, the Department issued a Stipulation and Order (S&O) and a \$2,000 fine to **Our Lady of Mercy Life Center** for a deficient practice related to Quality of Care identified on a survey concluded on June 1, 2009. Specifically, the facility did not ensure that a resident with an open fracture of two bones in the lower leg was sent to the hospital for evaluation in a timely manner or received adequate assessment of pain or pain management. In addition, the facility did not provide prescribed medications on admission.
- On August 17, 2010, the Department issued a S&O and \$3,500 fine to **Eddy Visiting Nurse and Rehab Association** for deficient practices identified (on multiple dates) related to the following State Regulation deficiency categories:

- *764.4(h) Policies and procedures of service delivery* – Failure to provide care in accordance with the plan of care; and Failure to ensure assessments reflect current condition and that physician is consulted when changes in plan of care are needed.
- *763.6(a) Patient assessment and plan of care* - Failure to ensure initial assessment is complete and addresses all patient needs; and Failure to ensure plan of care is sufficient in scope to meet those needs.
- *763.6 (b) Patient assessment and plan of care* - Failure to ensure effective communication among clinical supervisors and skilled nurses and among all personnel and/or disciplines involved in the patient’s care; Failure to ensure case management/coordination of care; Failure to follow agency’s policy and procedure for making appropriate referrals to other disciplines/ community services
- *763.11(b) Failure of governing body to assume responsibility for the overall management of the agency* (as it relates to the aforementioned findings).
- On August 18, 2016, the Department issued a S&O and \$2,000 fine against **St. Peter’s Hospital** for deficient practices noted on a validation survey concluded on January 7, 2016 which related to their food service/kitchen. Specifically, an Immediate Jeopardy situation was identified when three out of four solutions used to clean food preparation surfaces were below required concentrations to assure proper sanitization. Additionally, testing strips used to measure the effectiveness of the sanitizing solution were not readily available for staff use and food preparation staff lacked knowledge of the testing required.
- On March 27, 2017, the Department issued a S&O and a \$2,000 against the **Eddy Village Green** for deficient practices noted on a survey concluded on August 17, 2016 related to Quality of Care. Specifically, the facility was cited for failure to provide care and services for highest practicable potential when it was discovered that a resident had a fall which resulted in a hip fracture and review of house cameras and interviews revealed that the resident’s chair alarm had not been placed according to the plan of care and the facility’s fall investigation did not identify the care planned intervention to prevent injury had not been followed. Additionally, a Civil Money Penalty (CMP) was imposed in the amount of \$3,963.
- In August 2018, the Department issued a S&O and \$2,000 fine against **Eddy Village Green at Beverwyck** for deficient practice noted. Specifically, the facility did not ensure interventions were implemented to protect a resident from the effects of high outdoor temperatures on July 15, 2018, resulting in a transfer to the hospital and treatment for heat exhaustion. In addition, a Civil Money Penalty (CMP) was assessed in the amount of \$6,893.

### **Integration with Community Resources**

The Applicant has indicated that outreach to serve the underinsured population will include negotiation of contracts with several Medicaid Managed Care plans and development of referral arrangements with area federally qualified health centers (FQHCs). The Applicant will adopt a sliding fee schedule and is committed to treating all patients on the basis of need without discrimination due to any personal characteristics or ability to pay.

The Applicant plans on using an electronic medical record system and will consider participating in one or more Accountable Care Organizations (subject to its eligibility to do so) and may also consider participating in a regional health information organization and/or Health Information Exchange.

### **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 Building Agreement

The applicant has submitted a draft Lease Rental Agreement for the site, the terms of which are summarized below:

Premises:	22,020 sq. ft. of space on the second floor of a two-story medical building containing 53,897 rentable sq. ft. located at 123 Everett Road, Albany, New York, 12205
Landlord:	123 Everett Road Real Estate Group, LLC
Lessee:	Everett Road ASC, LLC d/b/a Everett Road Surgery Center
Term:	Initial term of 15 years and the right to two five-year extensions
Rental:	\$462,420.00 (\$21.00 per sq. ft.) per year
Provisions:	Tenant pays a pro rata share of real estate taxes and operating expenses based on rentable square footage, with operating expenses fixed at 40.9% and pro rata operational increases over the base year unless the tenant is solely responsible then tenant responsible for 100% of increase.

The applicant provided letters from two New York State licensed realtors attesting to the reasonableness of the per square foot rental amount. The lease agreement is non-arm's length. The applicant provided an affidavit stating that the landlord and tenant are affiliated entities by common membership.

The members of 123 Everett Road Real Estate Group, LLC are as follows:

- Albany ENT Real Estate Group, LLC – 58% (membership includes five of the eight members of AENT ASC Holdings, LLC, a 28% member of Everett Road ASC, LLC);
- 123 Real Estate Holdings, LLC – 22% (owned by 16 of the 17 members of Ortho NY ASC Holdings, LLC, a 52% member of Everett Road ASC, LLC); and
- Schuyler Hills Realty II, LLC – 20%.

BFA Attachment E shows the realty entity members and ownership percentages.

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, summarized below:

Service Provider:	Orthopedics NY, LLP ("OrthoNY")
Facility Operator:	Everett Road ASC, LLC ("Operator")
Services Provided:	Finance and Accounting; Billing and Collection; Administrative Services, and Human Resources support services
Exclusions:	OrthoNY shall not provide clinical services under this Agreement.
Term:	Three years with automatically renewals for additional one-year terms unless either party delivers written notice of termination not less than 90 days prior to expiration of the then-current term, or terminated at any time upon mutual written agreement of Operator and OrthoNY, or termination by either party upon 90 days written notice in the event of material breach, provided that the party alleged to be in breach has been given not less than 30 days written notice and opportunity to cure. This Agreement terminates automatically and without notice if OrthoNY is excluded from participation in Medicare, Medicaid or any other federal health care program.
Compensation:	\$400,000 per year payable in equal monthly installments of \$33,333.33

OrthoNY is an affiliate of Ortho NY ASC Holdings, LLC, a 52% member of the applicant. The draft agreement provides that the Facility Operator retains ultimate authority, responsibility and control in all final decisions associated with the services and acknowledges the reserve powers that must not be delegated. The applicant has submitted an executed attestation acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willingly engage in any such illegal delegations of authority.

**Total Project Cost and Financing**

Total project costs for allocated to the 2<sup>nd</sup> Floor construction is estimated at \$11,523,767 as follows:

	<u>Article 28</u>	<u>Bldg. Shell</u>	<u>Total Cost</u>
New Construction	\$3,445,825	\$2,972,700	\$6,418,525
Design Contingency	344,583	0	344,583
Construction Contingency	172,291	0	172,291
Architect /Engineering Fees	287,000	0	287,000
Construction Manager Fees	213,000	0	213,000
Moveable Equipment	3,889,605	0	3,889,605
Financing Costs	40,000	0	40,000
Interim Interest Expense	110,000	0	110,000
CON Application Fee	2,000	0	2,000
Additional Fees	<u>\$46,763</u>	<u>0</u>	<u>\$46,763</u>
Total Project Cost	\$8,551,067	\$2,972,700	\$11,523,767

Project costs for the fit-out are based on an estimated construction start date of July 1, 2019, and an eight-month construction period. The approved reimbursable project cost is \$8,551,067. Everett Road ASC's financing plan is as follows:

2<sup>nd</sup> Floor Buildout by Tenant Everett Road Ambulatory Center, LLC

Cash Equity	\$1,000,423
Construction Bank Loan (5.45%, 10-yr. term and amortization)	4,050,000
Equipment Bank Loan (5.45%, 7- yr. term and amortization)	<u>3,500,644</u>
Total	\$8,551,067

2nd Floor Shell Construction by Landlord-123 Everett Road Real Estate Group, LLC

Cash Equity	\$2,167,173
Proceeds from Building Construction Bank Loan (\$8,200,000)	<u>805,527</u>
Total	\$2,972,000

**Operating Budget**

The applicant has submitted the first and third year projected operating budgets, in 2019 dollars, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Medicaid MC	\$1,138	\$520,028	\$1,131	\$543,088
Medicare FFS	\$1,407	\$1,378,376	\$1,399	\$1,434,474
Commercial FFS	\$2,612	\$7,134,236	\$2,639	\$7,617,579
Private Pay	\$1,817	\$65,402	\$1,812	\$68,856
All other	\$2,237	<u>\$277,388</u>	\$2,237	<u>\$286,336</u>
Total Revenues		\$9,375,430		\$9,950,333
 <u>Expenses</u>				
Operating	\$1,235	\$5,454,224	\$1,245	\$5,786,168
Capital	<u>\$404</u>	<u>\$1,785,754</u>	<u>\$362</u>	<u>\$1,680,290</u>
Total Expenses	\$1,640	\$7,239,978	\$1,606	\$7,466,458
Net Income		<u>\$2,135,452</u>		<u>\$2,483,875</u>
Utilization		4,415		4,648
Cost/Procedure		\$1,640		\$1,606

Utilization by payor source for year one and three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid MC	457	10.35%	480	10.33%
Medicare FFS	980	22.20%	1,025	22.05%
Commercial FFS	2,731	61.86%	2,887	62.11%
Private Pay	36	0.82%	38	0.82%
Charity Care	87	1.97%	90	1.94%
All other	<u>124</u>	<u>2.80%</u>	<u>128</u>	<u>2.75%</u>
Total	4,415	100%	4,648	100%

Expense and utilization assumptions are based on the historical experience of other ambulatory surgery centers in the geographical area. The applicant provided physician referral letters in support of their utilization projections.

### **Capability and Feasibility**

Total project costs of \$11,523,767 will be met by Everett Road Ambulatory Surgery Center, LLC via equity of \$1,000,423, bank financing of a construction loan of \$4,050,000 at 5.45% with a 10-year term and amortization, and an equipment loan of \$3,500,644 at 5.45% with a 7-year term and amortization. A letter of interest has been provided from Berkshire Bank for the respective loans. The landlord, 123 Everett Road Real Estate Group, LLC, is funding the second-floor shell cost of \$2,972,700 via equity of \$2,167,173 and \$805,527 from the proceeds from their \$8.2 million building construction loan.

The working capital requirement is estimated at \$1,244,409 based on two months of third-year expenses. The applicant will fund \$622,205 via members' equity and finance the \$622,204 balance via a loan at 5.45% interest for a 5-year term (self-amortizing). BFA Attachments A and B are the net worth statements of the proposed members of the applicant (Everett Road Ambulatory Surgery Center LLC), and 2017 certified financial statements and internals as of August 31, 2018 of St. Peter's Hospital, which indicates adequate funds for the equity and working capital contributions. The applicant has provided an affidavit indicating the Schuyler Hills Realty II, LLC has already provided their equity share. BFA Attachment D is the pro forma balance sheet of Everett Road Ambulatory Surgery Center, LLC, which indicates a positive net asset position of \$1,622,003 as of the first day of operation.

The submitted budget projects net income of \$2,135,452 and \$2,483,875 in the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

BFA Attachment B is the latest 2018 periodic internal financial statements of St. Peter's Hospital, which shows the entity has a positive working capital position and a positive net asset position, and achieved an operating income of \$8,269,000 through August 31, 2018.

BFA Attachment C is the 2016 and 2017 certified financial statements of St. Peter's Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2016 through 2017. Also, the hospital achieved an average operating income of \$12,400,500 from 2016 through 2017.

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

## **Attachments**

BFA Attachment A	Net worth summary statement of the members of Everett Road Ambulatory Surgery Center LLC and the landlord 123 Everett Road Real Estate Group, LLC
BFA Attachment B	2018 internal financial statements of St. Peters Hospital
BFA Attachment C	2016 and 2017 certified financial statements of St. Peters Hospital
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Proposed members of AENT ASC Holdings LLC.
BFA Attachment F	Proposed members of Ortho NY ASC Holdings, LLC.
BFA Attachment G	Organization Charts AENT ASC Holdings, LLC & ORTHO NY ASC Holdings, LLC
BPNR Attachment A	Map



Project # 182183-C
Endoscopy Center of Niagara, LLC

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Niagara
Acknowledged: October 18, 2018

Executive Summary

Description

Endoscopy Center of Niagara, LLC (The Center), a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 6930 Williams Road, Niagara Falls (Niagara County), requests approval for indefinite life. The DTC was approved by the Public Health and Health Planning Council (PHHPC) under CON 121140 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. PHHPC approval was for a conditional five-year limited life and the Center began operations effective February 24, 2014. The applicant notified the Department before their limited life expiration requesting indefinite life status. The applicant is not proposing to add or change any services, or expand or renovate the facility.

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAHHC) and provides gastroenterology surgical services utilizing two (2) procedure rooms. Yogesh Maheshwari, MD. is the Medical Director and will continue in this capacity after approval of this application. The FASC has a transfer and affiliation agreement with Niagara Falls Memorial Medical Center and Kaleida Health for backup services as needed.

OPCHSM Recommendation

Approval

Need Summary

The Center has made reasonable efforts to serve the under-insured population of Niagara County. Data submission by the applicant, a condition of CON 121140, has been completed. Based on CON 121140, Endoscopy Center of Niagara projected 4,850 procedures in Year One and 5,153 procedures in Year Three, with Medicaid procedures projected at 4.83% and Charity Care projected at 2.0% for Year Three. The total number of procedures was 4,072 in Year One (2015-1st full year) and 5,079 in Year Three (2017). Actual Medicaid in Year Three (2017) was 7.80% and Charity Care was 0.06%.

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.

Table with 2 columns: Budget, Year One. Rows: Revenues (\$4,295,140), Expenses (\$2,629,470), Net Income (\$1,665,670).

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

### **Council Action Date**

February 14, 2019

## Need Analysis

### Analysis

The primary service area is Niagara County. The table below provides information on projections and utilization by procedures for Year One (2015-1<sup>st</sup> full year) and Year Three (2017) based on CON 121140.

	Year 1 (2015)		Year 3 (2017)	
	Projected	Actual	Projected	Actual
Total	4,850	4,072	5,153	5,079

The table below provides Year Three utilization, projections and actual, by payor, for CON 121140, and projections for Year One following approval.

Payor	CON 121140 Projected Year 3 (2017)	CON 121140 Actual Year 3 (2017)	CON 182183 Projections Year 1
Medicaid FFS/MC	4.83%	7.80%	7.76%
Medicare FFS/ MC	39.24%	32.53%	32.37%
Commercial FFS/MC	53.93%	58.59%	58.34%
Private Pay	0.00%	0.06%	0.06%
Charity Care	2.00%	0.06%	0.51%
Other	0.00%	0.96%	0.96%
Total	100.0%	100.00%	100.00%

The Center's efforts to provide services to the underinsured of Niagara County include the following:

- Medicaid Managed Care contracts with BCBS, Fidelis, Independent Health, MVP, UHC, and Univera;
- Referral agreements with all four FQHCs in Niagara County and The NYS Cancer Services program. These organizations have provided a total of 77 patient referrals to the center from January 2016 through September 2018;
- Participation in annual events and health fairs to educate the public on colon cancer screenings.

Based upon data from the American Community Survey, the uninsured represented just 3.5% of Niagara County's estimated population of 209,820 in 2016. The number of Medicaid enrollees for 2016 was estimated at 17.2% of Niagara County's population. The center's Medicaid Utilization has been around 8% each year of operation. The applicant noted that hospitals and FQHCs now have patient navigators whose job it is to secure health insurance for patients who arrive at their location needing care.

### Conclusion

The Center's Medicaid utilization has been approximately 8% each year of its existence which is above the original combined Medicaid and Charity Care projections of 6.8%. The center's outreach efforts resulting in referral agreements with the regional FQHCs and their Medicaid utilization indicate reasonable efforts are being made to provide service to the under-insured in Niagara County.

## Program Analysis

### Program Description

The Center provides gastroenterological surgical services utilizing two procedure rooms and is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). Hours of operation are Monday through Friday from 7:00 am to 6:00 pm with hours extended as necessary to accommodate patient need. The Center is not proposing any additional services at this time.

### 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) results, and their first and third year operating budgets, in 2019 dollars, as shown below:

	<u>Current 2017</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$618.48	\$236,259	\$811.31	\$316,410	\$812.44	\$322,540
Medicaid MC	\$634.07	8,877	\$828.28	11,596	\$807.20	12,108
Medicare FFS	\$618.68	652,711	\$812.28	874,016	\$812.34	891,133
Medicare MC	\$619.01	369,551	\$812.42	494,763	\$812.42	504,510
Commercial FFS	\$618.78	1,841,496	\$813.85	2,470,855	\$814.10	2,519,639
Private Pay	\$689.67	2,069	\$891.07	2,673	\$895.10	2,685
All other	\$605.51	<u>31,477</u>	\$834.75	<u>41,737</u>	\$833.82	<u>42,525</u>
Total Revenues		\$3,142,440		\$4,212,050		\$4,295,140
 <u>Expenses</u>						
Operating	\$341.37	\$1,733,825	\$416.70	\$2,168,502	\$411.61	\$2,184,000
Capital	<u>84.33</u>	<u>428,337</u>	<u>83.96</u>	<u>436,904</u>	<u>83.96</u>	<u>445,470</u>
Total Expenses	\$425.71	\$2,162,162	\$500.65	\$2,605,406	\$495.57	\$2,629,470
 Net Income		<u>\$980,278</u>		<u>\$1,606,644</u>		<u>\$1,665,670</u>
Procedures		5,079		5,204		5,306



Anesthesia income is included in Years One and Three as the Center began providing anesthesia services directly in 2018. Prior to 2018, the Center utilized conscious sedation, which is a mild form of sedation that was administered by the Center's physicians and nurses. Due to patient preference and comfort, the Center began providing deeper sedation during certain procedures beginning in 2018, which requires the services of an anesthesiologist. There are no salaried anesthesiologists employed by the Center. The Center utilizes a third-party anesthesia provider (Purchased Services) for this service.

Utilization by payor source related to the submitted operating budget is as follows:

<u>Payor</u>	<u>Current Year</u>		<u>Years One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid FFS	382	7.52%	390	7.49%	397	7.48%
Medicaid MC	14	.28%	14	.27%	15	.28%
Medicare FFS	1,055	20.78%	1,076	20.68%	1,097	20.67%
Medicare MC	597	11.75%	609	11.70%	621	11.70%
Commercial FFS	2,976	58.59%	3,036	58.34%	3,095	58.34%
Private Pay	3	.06%	3	.06%	3	.06%
Charity Care	3	.06%	26	.50%	27	.51%
All other	49	.96%	50	.96%	51	.96%
Total	5,079	100%	5,204	100%	5,306	100%

Utilization and expense assumptions are based on the historical experience of the Center. Commercial revenues are based on the Center's recent renegotiation of several commercial payor agreements. Medicare revenues are based on the Medicare allowable rate.

### **Capability and Feasibility**

There are no project costs associated with this application. The submitted budgets indicate a net income of \$1,606,644 and \$1,665,670 in the first and third years. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2017 certified financial statements of Endoscopy Center of Niagara. As shown, the entity had a positive working capital position and a positive net asset position in 2017. Also, the entity achieved a net income of \$980,278 in 2017.

BFA Attachment C is the internal financial statements of Endoscopy Center of Niagara as of May 31, 2018. As shown, the entity had a positive working capital position and a positive net asset position through the period and achieved a net income of \$400,157 through May 31, 2018.

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

## **Attachments**

- BFA Attachment A Current and original ownership of Endoscopy Center of Niagara
- BFA Attachment B 2017 certified financial statements of Endoscopy Center of Niagara
- BFA Attachment C May 31, 2018 internal financial statements of Endoscopy Center of Niagara.