

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, 4th 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

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

Acute Care Services – Construction

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
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

<u>Number</u>	<u>Applicant/Facility</u>
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

<u>Number</u>	<u>Applicant/Facility</u>
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.

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

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
Expenses						
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:

2017 – Current Year	NYU Langone	NYU Winthrop	Combined
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

Combined	Current Year	Year One
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

Combined (by Payor)	Current Year	Year One
<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.

Attachments

- 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:

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

Thomas J. Tisch	Jan T. Vilcek, MD, PhD
Bradley J. Wechsler	Anthony Welters, Esq.

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

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

CHHA Quality of Patient Care Star Ratings as of November 28, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
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>Gary F. Brudnicki – Director Senior EVP, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Mitchell C. Hochberg – Director President, Lightstone</p>
<p>Michael D. Israel – Director President & CEO, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Zubeen P. Shroff – Director Managing Director, Galen Partners</p>
<p>Julie A. Switzer, Esq. – Director EVP & General Counsel, Westchester Medical Center Health Network <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Mark S. Tulis, Esq. – 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.

CHHA Quality of Patient Care Star Ratings as of January 2, 2019	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
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:

Table with 2 columns: Member Name and Percentage. Includes Elderwood Certified Home Health Agency, LLC, 2700 North Forest Road Operating Holdco, LLC (100%), Warren Cole (50%), and 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:

Table with 2 columns: Category and Amount. Includes Revenues (\$1,462,238), Expenses (\$1,138,025), and 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.

CHHA Quality of Patient Care Star Ratings as of January 14, 2019	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
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.

Attachments

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:

Member Name	Current Membership Interest	Proposed Membership Interest
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%
*David Pula, MD	----	4.340%
*Ryan Wilkins, MD	----	4.340%
*Daniel Leberer, MD	----	4.340%
Total	100%	100%

****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
Totals		44,522	45,652

(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%
Total	4,415	100%	4,648	100%

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

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

Member Name	Interest
OrthoNY ASC Holdings, LLC <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	52%
AENT ASC Holdings, LLC <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	28%
St. Peter's Hospital of the City of Albany <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	20%
Total	100%

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 automatic 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 2nd 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:

2nd 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				
Cost/Procedure		4,415		4,648
		\$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 (2015-1st 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.



Project # 182205-B
Wehrle Drive ASC

Program: Diagnostic and Treatment Center County: Erie
Purpose: Establishment and Construction Acknowledged: November 5, 2018

Executive Summary

Description

Wehrle Drive ASC, LLC, 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 at 50 George Karl Boulevard, Amherst (Erie County). The FASC will be housed in a 27,546-square foot, one-story building to be constructed by a developer. There is no relationship between the developer and the proposed operator. The applicant will lease the entire building from Wehrle Neuro1, LLC via an arm's length lease arrangement. The FASC will initially provide neurosurgery and pain management services. The Center will consist of four operating rooms (ORs), two procedure suites, pre-op/recovery areas, and related support space. Initially, only two of the ORs will be equipped and utilized leaving the remaining two for future needs.

Ownership of the operations is as follows:

Table with 2 columns: Members, %
Proposed Operator: Wehrle Drive ASC, LLC
Members: Douglas Moreland, M.D. (12.5%), Elad Levy, M.D. (12.5%), John Pollina, Jr., M.D. (12.5%), Michael Stoffman, M.D. (12.5%), John Fahrbach, M.D. (12.5%), Jafar Siddiqui, M.D. (12.5%), Andrea Wong, M, D. (12.5%), Michael Courneyea (12.5%), Total (100%)

Douglas Moreland, M.D., who is Board-Certified in Neurological Surgery, will be the Center's

Medical Director. The applicant has a Transfer Agreement for backup and emergency services with Kaleida Health's Millard Fillmore Suburban Hospital, which is located four miles (11 minutes travel time) from the proposed Center.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

The number of projected procedures is 6,208 in Year One and 6,586 in Year Three, with Medicaid at 16.20% and Charity Care at 2.00% 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 costs are \$16,815,726 for the building's construction and ASC fit-out. The applicant's portion, \$7,821,055, will be funded via \$2,000,000 in members' equity, a seven-year equipment loan for \$2,182,650 at 5.86%, and a fifteen-year loan for \$3,638,405 at 5.86% interest. The building's shell and a \$50 per square foot allowance for the tenant's improvements, 8,9945,671, will be funded by the landlord via a ten-year loan with a 30-year amortization period and variable interest (during

construction) based on the 30-Day Libor Rate plus 225 basis points, estimated at 4.76% as of December 31, 2018. Upon completion of construction, the ten-year loan will be converted to a fixed-rate interest based upon the five-year United States Treasury Securities (TCM) plus 215 basis points, estimated at 5.04% as of December 31, 2018. During the construction period, repayment terms are interest only for all

loans. Northwest Bank has provided a letter of interest for the respective loans.

The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,293,689	\$6,676,975
Expenses	<u>4,825,917</u>	<u>5,119,167</u>
Gain/(Loss)	\$1,467,772	\$1,557,808

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, 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 project loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of the two executed personal loan commitments, acceptable to the Department of Health. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
6. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
7. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
8. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
9. Submission of a photocopy of the applicant's fully executed lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2019 and construction must be completed by September 30, 2020 presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The 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]
4. 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]
5. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

February 14, 2019

Need Analysis

Analysis

The service area consists of Erie County. The table below shows the number of patient visits for ambulatory surgery centers in Erie County for 2016 and 2017.

ASC Type	Facility Name	Total Patient Visits	
		2016	2017*
Multi	ASC of Western NY	11,515	11,024
Multi	Buffalo Ambulatory Surgery Center	12,300	11,852
Dual	Buffalo Surgery Center, LLC	7,557	13,936
Multi	Center for Ambulatory Surgery, LLC	11,578	11,080
Multi	Endoscopy Center of Western NY	10,427	11,063
Single	Eye Health Associates Inc.	4,181	3,944
Multi	Millard Fillmore Surgery Center, LLC	4,898	4,005
Multi	Southtowns Surgery Center (opened 7/26/16)	346	1,733
Multi	Sterling Surgical Center	5,511	5,783
Multi	WNY Medical Management	1,736	2,132
Total Visits		70,049	76,552

Source: SPARCS, *2017 data is annualized based upon 9 months of information.

From 2016 to 2017, Erie County experienced a 9.3% increase in ambulatory surgery visits. The applicant projects 6,208 procedures in Year One and 6,586 procedures in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	1,006	16.20%	1,067	16.20%
Medicare FFS	931	15.00%	988	15.00%
Medicare MC	1,516	24.42%	1,607	24.41%
Commercial MC	2,147	34.58%	2,278	34.59%
Workers Comp	484	7.80%	514	7.80%
Charity Care	124	2.00%	132	2.00%
Total	6,208	100.0%	6,586	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Blue Cross Blue Shield, Independent Health Association, Fidelis, and YourCare Health Plan. The Center intends to collaborate with Neighborhood Health Center and Jericho Road Community Health Center, both FQHC's, to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Conclusion

This project will provide increased access to freestanding ambulatory surgery services in Erie County.

Program Analysis

Program Description

Proposed Operator	Wehrle Drive ASC, LLC
Doing Business As	Wehrle Drive ASC
Site Address	50 George Karl Boulevard Amherst, NY 14221 (Erie County)
Surgical Specialties	Multi-Specialty
Operating Rooms	4 (Class C)
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8:00 am - 4:30 pm
Staffing (1 st / 3 rd Year)	14.0 FTEs / 14.0 FTEs
Medical Director	Douglas Moreland, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Will be provided by: Kaleida Health/Millard Fillmore Suburban Hospital 4 miles/11 minutes
After-hours access	After-hours access to surgical providers using a call service to provide patients access to an on-call provider for urgent/emergent issues

Character and Competence

The membership of Wehrle Drive ASC, LLC is comprised by seven physicians and a program administrator, as detailed in the chart below:

Member	%
Douglas Moreland, M.D., Medical Director *	12.5%
Elad Levy, M.D.	12.5%
John Pollina, Jr., M.D.	12.5%
Michael Stoffman, M.D. *	12.5%
John Fahrback, M.D.	12.5%
Jafar Siddiqui, M.D.	12.5%
Andrea Wong, M.D.	12.5%
Michael Courneyea *	12.5%
Total	100%

* Managers

A full Character and Competence Review was conducted on all proposed members. Of the seven physician members, five specialize in Neurosurgery (Moreland, Levy, Pollina, Stoffman and Fahrback), one specializes in Physical Medicine and Rehabilitation (Siddiqui), and one specializes in Anesthesiology (Wong). The eighth member, Mr. Courneyea, holds a Master's in Business Administration (MBA) from Niagara University and, since 2013, has served as the Chief Executive Officer of University at Buffalo Neurosurgery, Inc., a physician group consisting of roughly 50 providers and 200 employees in seven locations.

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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Siddiqui disclosed one open malpractice case involving a patient with spina bifida who alleged malpractice related to a fall incurred at home in 2013 several hours after undergoing an epidural steroid injection.

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.

Integration with Community Resources

When a patient presents to the surgery center and a primary care provider has not been identified, the center will refer the patient to their health insurer in an effort to identify an in-network provider. For uninsured patients, the center will collaborate with the Neighborhood Health Center and Jericho Road Community Health Center, organizations that serve a broad geographic area in and around Buffalo. The center also plans to contract with at least two Medicaid managed care plans (i.e., Blue Cross Blue Shield, Independent Health Association, Fidelis, and YourCare Health Plan). Outreach to the underserved will be accomplished through relationships built with local healthcare and social service organizations in the community. The Applicant has expressed a commitment to providing health care services to patients regardless of personal characteristics or their ability to pay and is developing a Financial Assistance Policy that includes a sliding fee scale.

The Applicant plans on using an Electronic Medical Record (EMR) program and is evaluating systems. Once established, they will consider participating in one or more Accountable Care Organizations and intends on integrating into HEALTHeLINK, the Regional Health Information Organization (RHIO) for Western New York.

Conclusion

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

Financial Analysis

Lease Rental Agreement

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

Date:	October 1, 2018
Premises:	27,546 sq. ft. building at 50 George Karl Boulevard, Amherst, NY 14221
Owner/Landlord:	Wehrle Neuro1, LLC
Lessee/Tenant:	Wehrle Drive ASC, LLC
Term:	15 years plus one (1) 3-year renewal term
Payment *:	\$716,250 (\$30.00 per sq. ft.) plus 5% of gross rent as property management fee. 2% increase in years 2-15 and 3% increase in years 16-18
Provisions:	Triple Net

** Per Paragraph 38 of the lease, the applicant will initially use only 23,875 sq. ft. of the total 27,546 rentable sq. ft. The applicant has control of the additional 3,671 sq. ft. but will not pay rent on it until put into use at a future date.*

The applicant has provided an affidavit stating the lease is an arms-length agreement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Total Project Cost and Financing

Total project costs for new construction (landlords and applicants) and the acquisition of moveable equipment is estimated at \$16,815,726 broken down as follows:

New Construction	\$11,666,667
Design Contingency	1,166,667
Construction Contingency	1,166,667
Planning Consultant Fees	10,000
Architect/Engineering Fees	500,000
Movable Equipment	2,182,650
Financing Costs	29,105
CON Application Fee	2,000
CON Processing Fee	<u>91,970</u>
Total Project Cost	\$16,815,726

Project costs are based on a construction start date of September 1, 2019, with a thirteen-month construction period.

The applicant's financing plan appears as follows:

Applicant - Cash Equity (members)	\$2,000,000
Applicant - Equipment loan (5.86% interest, 7-year term) *	2,182,650
Applicant -Bank Loan (5.86% int. 15-year term, self-amortizing) *	3,638,405
Landlord- Bank Loan (5.04% int. 10-year term, 30-year amortization **)	<u>8,994,671</u>
Total	\$16,815,726

* The 5.86% fixed rate of interest is based upon the weekly average yield on the United States Treasury Securities adjusted to maturity, which was 3.36% as of November 9, 2018, plus 250 BP.

** During construction, interest is based upon 30-Day Libor plus 225 basis points, estimated at 4.76% as of December 31, 2018. Upon completion of construction, the remainder of the ten-year loan will be converted to a fix rate interest based upon the five-year United States Treasury Securities (TCM) plus 215 basis points, estimated at 5.04% as of December 31, 2018.

The loans are interest only during construction period. Northwest Bank has provided a letter of interest for all loans.

BFA Attachment A is the members' net worth summaries, which shows sufficient resources overall to meet the equity requirement. Jafar Siddiqui, M.D. and Andrea Wong, M.D. have insufficient liquid resources, however, both have provided a \$375,000 personal loan letter of interest from Northwest Bank with a 5-year term at 5.5% interest to fund their equity requirement.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid - MC	\$790.26	\$795,002	\$790.46	\$843,417
Medicare - FFS	\$843.24	785,054	\$842.98	832,864
Medicare - MC	\$924.31	1,401,247	\$925.07	1,486,584
Commercial - MC	\$1,303.46	2,798,530	\$1,303.32	2,968,960
Workers Comp.	\$1,061.69	<u>513,856</u>	\$1,060.60	<u>545,150</u>
Total Revenues		\$6,293,689		\$6,676,975
<u>Expenses</u>				
Operating	\$482.73	\$2,996,800	\$499.00	\$3,286,386
Capital	<u>\$294.64</u>	<u>\$1,829,117</u>	<u>\$278.28</u>	<u>\$1,832,781</u>
Total Expenses	\$777.37	\$4,825,917	\$777.28	\$5,119,167
Net Income		<u>\$1,467,772</u>		<u>\$1,557,808</u>

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Procedures		6,208		6,586
Cost Per Procedure		\$777.37		\$777.28

Utilization by payor source for years one and three is summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid - MC	1,006	16.20%	1,067	16.20%
Medicare - FFS	931	15.00%	988	15.00%
Medicare – MC	1,516	24.42%	1,607	24.41%
Commercial – MC	2,147	34.58%	2,278	34.59%
Workers Comp.	484	7.80%	514	7.80%
Charity Care	124	2.00%	132	2.00%
Total	6,208	100%	6,586	100%

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

- All managed care rates are based upon conversations with managed care organizations. Medicare fee-for-service rates are based on Ambulatory Patient Group reimbursements rates for the mix of procedures to be performed at the Center. Workers Compensation rates are based upon their fee schedule.
- Expense assumptions are based upon locally competitive wage rates, staffing models, volume, medical supplies, and supporting costs.
- Utilization assumptions are supported by letters from the seven participating physicians based on their current experience. The proposed operator is committed to providing 2% to charity care patients and 16.20% to Medicaid patients.

Capability and Feasibility

Total project costs of \$16,815,726 will be funded by two parties. The applicant's \$7,821,055 portion will be funded via \$2,000,000 in members' equity, a seven-year equipment loan for \$2,182,650, and a fifteen-year loan for \$3,638,405 at stated terms. The building's shell and a \$50 per square feet allowance for tenant's improvements will be funded by the landlord. The landlord's \$8,994,671 portion will be funded via ten-year loan for \$8,994,671 with a 30-year amortization period at the stated terms. During the construction period repayment terms are interest only. Northwest Bank has provided a letter of interest for all loans.

The working capital requirement is estimated at \$853,195 based on two months of third year expenses. The members will provide \$1,000,000 in working capital, approximately \$146,805 more than required. Review of BFA Attachment A and the personal loan documents reveals sufficient resources to meet all equity requirements. BFA Attachment B is Wehrle Drive ASC, LLC's pro forma balance sheet, which shows operations will start with \$3,000,000 in equity.

Wehrle Drive ASC, LLC projects a net operating income of \$1,467,772 and \$1,557,808 in the first and third years of operation, respectively. The budget appears reasonable.

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

Supplemental Information

Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

Millard Fillmore Suburban Hospital -- **Letter of Support**
1540 Maple Road
Amherst, New York 14221

Sisters of Charity Hospital -- **No Objection Letter**
2605 Harlem Road
Cheektowaga, New York 14225

Erie County Medical Center -- **Letter of Support**
462 Grider Street
Buffalo, New York 14215

DOH Comment

In the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

Attachments

BFA Attachment A	Wehrle Drive ASC, LLC members net worth summary
BFA Attachment B	Pro Forma Balance Sheet of Wehrle Drive ASC, LLC
BHFP Attachment	Map



Project # 181059-E
2700 North Forest Road Operating Company, LLC
d/b/a Elderwood at Getzville

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: February 1, 2018

Executive Summary

Description

2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville, a New York limited liability company, requests approval to be established as the new operator of Rosa Coplon Jewish Home and Infirmary (Rosa Coplon), a 180-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 2700 North Forest Road, Getzville (Erie County). Rosa Coplon Jewish Home and Infirmary Inc., a not-for-profit corporation whose sole member is Menorah Campus, Inc., is the current operator and real property owner of the facility. There will be no change in beds or services provided.

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 RHCF's operating interests and real property. The APA includes the sale of the following: Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency; 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 \$18,850,000 is allocated to the sale of the RHCF (\$4,850,000

for the operations and \$14,000,000 for the real property).

PAP is equally owned by Warren Cole and Jeffery Rubin, D.D.S. Upon Public Health and Health Planning Council (PHHPC) approval, PAP will assign its rights under the APA to 2700 North Forest Road Operating Company, LLC (operations) and 2700 North Forest Road, LLC (realty). 2700 North Forest Road, LLC will lease the real property to 2700 North Forest Road Operating Company, LLC. There is a relationship between the proposed operating and realty entities in that they have common membership.

The proposed operator is as follows:

Table with 2 columns: Member Name and Percentage. Row 1: 2700 North Forest Road Operating Company, LLC (100%). Row 2: Members. Row 3: 2700 North Forest Road Operating Holdco, LLC (100%). Row 4: Warren Cole (50%). Row 5: Jeffrey Rubin, D.D.S. (50%).

The seller indicated that rapid changes in the nursing home marketplace have made it difficult for an independent, not-for-profit entity to survive. Many have consolidated with larger operators, including facilities in Rosa Coplon's market. The RHCF has been experiencing losses over prior years, and projections for the future were no better. The Board believes selling the RHCF to a larger operator offers the greatest opportunity to preserve access to nursing home care in the Western NY

community. In the sale process, they sought an operator with a reputation for delivering quality care, and one that had financial and operational resources to invest in and improve the property. They hired a Chicago-based firm with experience brokering nursing home sales to market the facility and received offers from 11 potential buyers. On evaluation of the offers, the Board selected PAP taking into consideration PAP's experience, history and reputation preserving quality nursing home services in the service area, the likelihood of certainty of the transaction given the other facilities operated by PAP in the region, and the overall ability to achieve Rosa Coplon's economic objectives. The sale proceeds will be used to pay amounts owed on the existing mortgage, employee salary and benefit accruals, various accounts payable, NYSDOH cash receipts assessments, other creditors, and closing cost. Any remaining surplus funds will be deposited into a restricted fund at the Foundation for Jewish Philanthropies, for the exclusive purpose of supporting services to the vulnerable and frail elderly in the community.

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

The purchase price for the RHCf operations and real property is \$18,850,000, which will be financed via a loan for the total amount at 6% interest for a ten-year term. Capital Funding, LLC has provided a letter of interest. PAP will assign its rights and title of the RHCf operations and real property to 2700 North Forest Road Operating Company, LLC and 2700 North Forest Road, LLC, respectively, for \$10. There are no project costs associated with this proposal. The proposed budget is as follows:

	<u>First Year</u>	<u>Third Year</u>
Revenues	\$19,499,743	\$19,499,743
Expensed	<u>\$19,049,246</u>	<u>\$19,024,914</u>
Gain/(Loss)	\$450,497	\$474,829

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. at a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of an executed loan agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, 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 the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicant's executed Amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's executed and amended Lease Agreement, acceptable to the Department. (CSL)
10. Submission of the applicant's executed and amended Administrative Services Agreement, acceptable to the Department. [CSL]
11. Submission of the executed Application of Authority to Do Business in the State of New York for the 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. [CSL]
12. Submission of the executed Operating Agreement of 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. (CSL)
13. Submission of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

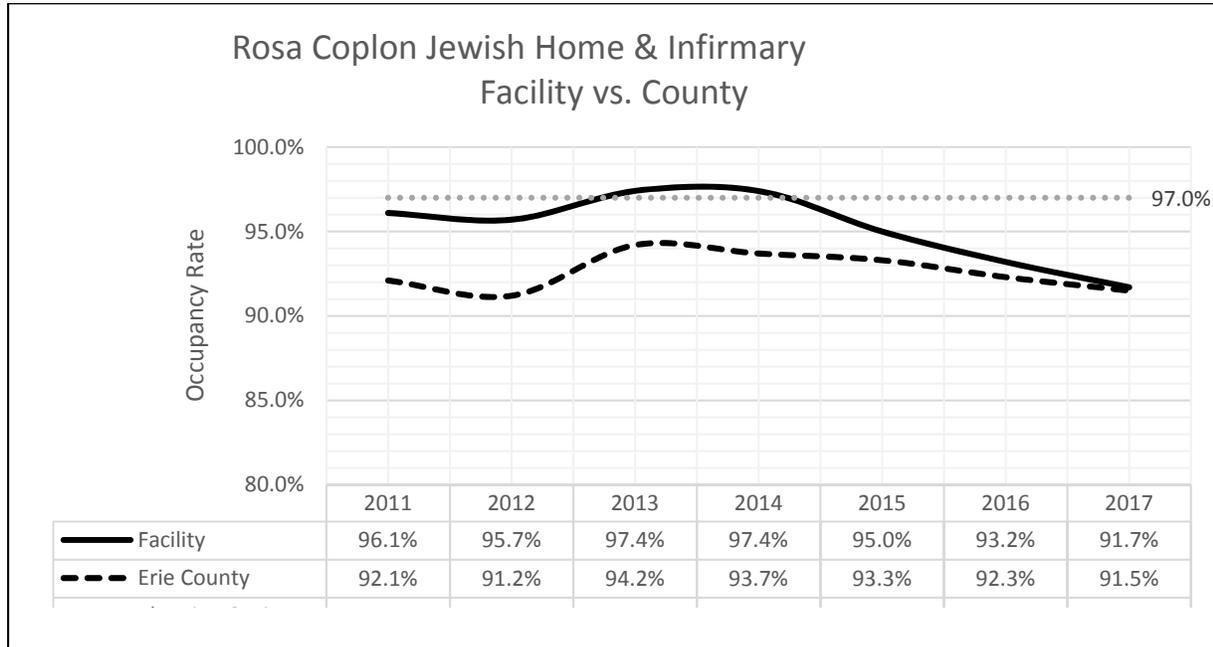
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 14, 2019

Need Analysis

Utilization



Though the RHCf’s occupancy rate declined to 91.71% in 2017, the facility’s average occupancy from 2013-2016 was 95.2%. The applicant indicated that occupancy was 96.1% as of January 31, 2018, and 95.0% as of November 21, 2018, which supports the applicant’s belief that 95% occupancy can be sustained going forward.

Access

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

Rosa Coplon Jewish Home and Infirmiry’s Medicaid admissions rate was below 75% of the Erie County rate, as indicated in the table below. Therefore, the applicant will be required to improve access to care for Medicaid residents, as well as commit to meeting the County threshold within two years of approval, as outlined in the contingencies.

Percent of New RHCf Admissions that are Medicaid	2015	2016	2017
Erie County 75% Threshold	21.6%	20.6%	21.7%
Rosa Coplon Jewish Home & Infirmiry	0.4%	1.5%	7.9%

The new operators plan to increase Medicaid admissions by taking several steps to strengthen the admissions process at the facility. The facility plans to develop community outreach programs to surrounding hospitals, home health agencies, assisted living facilities, adult care facilities, representatives

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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Alabama

Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
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California

Care Alternatives of California	HOS	06/2008-10/2009
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Connecticut

Danbury Health Care Center	SNF	06/2008-10/2009
Darien Health Care Center	SNF	06/2003- 2007
Golden Hill Health Care Center	SNF	06/2008-10/2009
Long Ridge of Stamford	SNF	06/2008-10/2009
Newington Health Care Center	SNF	06/2008-10/2009
River Glen Health Care Center	SNF	06/2008-10/2009
The Highlands Health Care Center	SNF	06/2008-10/2009
West River Health Care Center	SNF	06/2008-10/2009
Westport Health Care Center	SNF	06/2008-10/2009
Wethersfield Health Care Center	SNF	06/2008-10/2009
Partners Pharmacy of Connecticut	RX	06/2008-10/2009

Kansas

Care Alternatives of Kansas	HOS	06/2008-10/2009
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Maryland

Montgomery Village Health Care Center	SNF	06/2008-10/2009
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Massachusetts

Brookline Health Care Center	SNF	06/2008-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	06/2008-10/2009
Cedar Hill Health Care Center	SNF	06/2008-10/2009
Concord Health Care Center	SNF	06/2008-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	06/2008-10/2009
Holyoke Health Care Center	SNF	06/2008-10/2009
Lexington Health Care Center	SNF	06/2008-10/2009
Lowell Health Care Center	SNF	06/2008-10/2009
Milbury Health Care Center	SNF	06/2008-10/2009
New Bedford Health Care Center	SNF	06/2008-10/2009
Newton Health Care Center	SNF	06/2008-10/2009
Peabody Glen Health Care Center	SNF	06/2008-10/2009
Redstone Health Care Center	SNF	06/2008-10/2009
Weymouth Health Care Center	SNF	06/2008-10/2009
Wilmington Health Care Center	SNF	06/2008-10/2009
Care Alternatives of Massachusetts	HOS	06/2008-10/2009
Partners Pharmacy of Massachusetts	RX	06/2008-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2014- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	06/2008-10/2009
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Missouri

Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Care Alternatives of Missouri	HOS	06/2008-10/2009
Partners Pharmacy of Missouri	RX	06/2008-10/2009

New Jersey

Care One at Dunroven	SNF	06/2008-10/2009
Care One at East Brunswick	SNF	06/2008-10/2009
Care One at Evesham	SNF	06/2008-10/2009
Care One at Ewing	SNF	06/2008-10/2009
Care One at Hamilton	SNF	06/2008-10/2009
Care One at Holmdel	SNF	06/2008-10/2009
Care One at Jackson	SNF	06/2008-10/2009
Care One at King James	SNF	06/2008-10/2009
Care One at Livingston	SNF	06/2008-10/2009
Care One at Madison Avenue	SNF	06/2008-10/2009
Care One at Moorestown	SNF	06/2008-10/2009
Care One at Morris	SNF	06/2008-10/2009
Care One at Pine Rest	SNF	06/2008-10/2009
Care One at Teaneck	SNF	06/2008-10/2009
Care One at The Highlands	SNF	06/2008-10/2009
Care One at Valley	SNF	06/2008-10/2009
Care One at Wall	SNF	06/2008-10/2009
Care One at Wayne	SNF/ALF	06/2008-10/2009
Care One at Wellington	SNF	06/2008-10/2009
Oradell Health Care Center	SNF	06/2008-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2008-10/2009
South Jersey Health Care Center	SNF	06/2008-10/2009
Woodcrest Health Care Center	SNF	06/2008-10/2009
Care One at Livingston Assisted Living	ALF	06/2008-10/2009
Care One at Moorestown	ALF	06/2008-10/2009
Care One at Morris Assisted Living	ALF	06/2008-10/2009
Care One Harmony Village at Moorestown	ALF	06/2008-10/2009
Care One at The Cupola	ALF	06/2008-10/2009
Care One at Evesham Assisted Living	ALF	10/2008-10/2009

Care Alternatives of New Jersey	HOS	06/2008-10/2009
Bergen Care Home Health	HHA	06/2008-10/2009
Bergen Care Personal Touch	HHA	06/2008-10/2009
Care One at Raritan Bay MC	LTA	06/2008-10/2009
Partners Pharmacy of New Jersey	RX	06/2008-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	06/2008-10/2009
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Ohio

Bellbrook Health Care Center	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	06/2008-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	06/2008-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	06/2008-10/2009
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
Care Alternatives of Pennsylvania	HOS	06/2008-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	06/2008-11/2009
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Rhode Island

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

Virginia

Colonial Heights Health Care Center	SNF	06/2008-10/2009
Glenburnie Rehabilitation	SNF	06/2008-10/2009
Hopewell Health Care Center	SNF	06/2008-10/2009
Valley Health Care Center	SNF/ALF	06/2008-10/2009
Westport Health Care Center	SNF	06/2008-10/2009
Care Alternatives of Virginia	HOS	06/2008-10/2009
Partners of Virginia, LLC	RX	06/2008-10/2009

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

Quality Review

Evaluation of the quality of care for facilities currently owned by Mr. Cole and Dr. Rubin is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings. The star rating chart below shows each facility's current rating as well as the ratings at the time of acquisition, unless noted otherwise.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Elderwood of Uihlein at Lake Placid	Current	*	*	***	***
	10/2016	**	**	***	***
Elderwood at Grand Island	Current	**	*	*****	****
	07/2013 Data 09/2013	*****	****	*****	***
Elderwood at Waverly	Current	***	***	****	***
	07/2013 Data 09/2013	****	***	***	****
Elderwood at Hornell	Current	***	**	****	****
	04/2016	**	**	****	***
Elderwood at Liverpool	Current	***	**	*****	***
	07/2013 Data 09/2013	****	****	****	****
Elderwood at Hamburg	Current	****	**	*****	****
	07/2013 Data 09/2013	****	****	****	****
Elderwood at Wheatfield	Current	****	***	**	*****
	07/2013 Data 09/2013	*****	****	*****	****
Elderwood at Cheektowaga	Current	****	***	***	****
	07/2013 Data 09/2013	***	***	***	***
Elderwood at Williamsville	Current	****	****	****	****
	07/2013 Data 09/2013	****	****	****	***
Elderwood at Amherst	Current	*****	****	***	*****
	07/2013 Data 09/2013	*****	*****	*****	***
Elderwood at Lancaster	Current	*****	*****	*****	****
	07/2013 Data 09/2013	***	***	***	***
Elderwood of Lakeside at Brockport	01/2018	*****	***	*****	****
Elderwood at Lockport	01/2018	**	**	***	***
Elderwood at Ticonderoga	04/2018	***	**	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Elderwood at North Creek	01/2018	*****	***	*****	****

RHODE ISLAND

Elderwood of Scallop Shell at Wakefield	Current	*****	*****	*****	****
	12/2010	*****	*****	***	****
Elderwood at Riverside	Current	*****	*****	*****	****
	02/2014	*****	****	***	*****

VERMONT

Elderwood at Burlington	12/2018 Data 11/2018	****	***	***	****
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Data: 12/2018

Note: Greyed out facilities are not applicable due to applicant's recent acquisition.

The applicants have stated that the CMS five-star quality rating system ratings (see below) for nursing facilities with 1 and 2 star overall ratings are attributable to several factors:

- Elderwood of Uihlein at Lake Placid: (1) facility was recently acquired and extensive renovations were required, (2) Administrator left in January 2017.
- Elderwood at Grand Island: (1) A 2016 G level citation reduced the health inspection rating, this impacts the overall rating, the health inspection domain was “froze” for a year, effective November 27, 2017, so the overall rating will not increase until the health inspection domain is updated.

The applicant states that the administrator returned in August 2017 to Elderwood of Uihlein at Lake Placid and instituted a quality assurance system and the administrator at Elderwood at Grand Island initiated changes in leadership.

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.

Program Review

No changes in the program or physical environment are proposed in this application. The applicant will enter an administrative services agreement with Elderwood Administrative Services, LLC, which is jointly owned by Warren Cole and Jeffrey Rubin.

Conclusion

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

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCf operating and realty interests, to be effectuated upon PHHPC approval of this application. The terms are summarized below:

Date:	November 22, 2017
Purchaser:	Post Acute Partners Acquisition, LLC
Seller:	Menorah Campus, Inc.
Assets Transferred:	Inventory; right, title/interest of Seller to all furniture, furnishings, equipment, computers, machinery, mechanical/security systems, vehicles, office equipment; real property records; assumed contracts, all assumed admission agreements; facility licenses; 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 transitioning to the new operator.
Purchase Price: *	\$18,850,000 (operation for \$4,850,000 and real property for \$14,000,000)
Payment of Purchase Price:	\$1,500,000 deposit held in escrow (applicable to the APA in total, which includes acquisitions other than the RHCf) 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 \$18,850,000 is allocated to the sale of the RHCf operations and real property. The purchase price for the RHCf will be met with an \$18,850,000 loan at 6% interest for a ten-year term. Capital Funding, LLC has provided a letter of interest.*

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public

Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 6, 2018, the facility had no outstanding Medicaid overpayment liabilities.

Assignment of Rights

The applicant submitted a draft Assignment of Rights for the assignment of the RHCf’s assets associated with the APA, shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee/Operator:	2700 North Forest Road Operating Company, LLC
Assignee/Real Property:	2700 North Forest Road, LLC
RHCf Operating Assets Transferred:	Assets associated with the operation of the skilled nursing facility of Rosa Coplon Jewish Home and Infirmary, Inc.
Real Estate Assets Transferred:	Assets associated with the real property with respect to the facility located at 2700 North Forest Road, Getzville, NY
Assignment Fee:	\$10

Health Care Facility Lease Agreement

Premises:	80-bed skilled nursing facility located at 2700 North Forest Road, Getzville, NY
Landlord:	2700 North Forest Road, LLC
Tenant:	2700 North Forest Road Operating Company, LLC
Term:	10 years with four (4) extension terms of five (5) years each at tenant’s discretion.
Rent:	An amount not less than the amounts necessary to cover any debt service of the landlord, its affiliates, or parent, and related to the property, estimated at \$2,495,120 per year.
Provisions:	Triple Net

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:	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville
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 with automatic 1-year renewals.
Fee:	\$82,009 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 provided an attestation acknowledging that there are statutory and regulatory requirements that cannot be delegated and that 2700 North Forest Road Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant provided the current year (2017), and first and third year operating budgets after the change in ownership, in 2018/19 dollars, summarized below:

Inpatient Revenue	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid-FFS	\$243.97	\$5,913,111	\$198.08	\$2,964,267	\$198.08	\$2,964,267
Medicaid-MC	\$200.14	\$2,305,614	\$191.12	\$3,488,010	\$191.12	\$3,488,010
Medicare-FFS	\$592.54	\$1,871,849	\$555.05	\$3,646,707	\$555.05	\$3,646,707
Medicare-MC	\$369.59	\$2,332,838	\$0	\$0	\$0	\$0
Commercial-FFS	\$256.04	\$932,484	\$387.22	\$3,816,019	\$387.22	\$3,816,019
Private/Other	\$343.93	\$3,915,686	\$384.47	\$4,911,572	\$384.47	\$4,911,572
Other *		<u>\$86,654</u>		<u>\$604,096</u>		<u>\$604,096</u>
Subtotal Inpatient		\$17,358,236		\$19,430,671		\$19,430,671
Outpatient Rev.		<u>\$56,136</u>		<u>\$69,072</u>		<u>\$69,072</u>
Total Revenue		\$17,414,372		\$19,499,743		\$19,499,743
Inpatient Expense						
Operating	\$293.32	\$17,673,760	\$247.80	\$15,466,249	\$247.41	\$15,441,917
Capital	<u>\$27.55</u>	<u>\$1,660,027</u>	<u>\$56.41</u>	<u>\$3,520,686</u>	<u>56.41</u>	<u>\$3,520,686</u>
Subtotal Inpatient	\$320.87	\$19,333,787	\$304.21	\$18,986,935	\$303.82	\$18,962,603
Outpatient Exp.		<u>\$119,469</u>		<u>\$62,311</u>		<u>\$62,311</u>
Total Expense		\$19,453,256		\$19,049,246		\$19,024,914
Net Income/(Loss)		<u>(\$2,038,884)</u>		<u>\$450,497</u>		<u>\$474,829</u>
Patient Days		60,255		62,415		62,415
Occupancy		91.71%		95.00%		95.00%

* Other revenue includes: NYS Cash Receipts Assessment of \$510,414 (discretely identified) in years one and three, with the remaining \$93,682 attributable to TV Rental, Medical Records, Barber & Beauty, Cafeteria, Guest Meals, Misc. Revenue, and Meals on Wheels.

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the applicant's experience operating other NYS RHCs. Medicaid revenue is based on the facility's July 1, 2017 Medicaid rate. All other rates are based on the facility's current rates of payment by payor.
- Outpatient Clinic relates to the provision of therapy services, which are part of the overall operations of the nursing home.
- Staff reductions are anticipated for the following categories: LPNs (6.34 FTEs), Aides/Orderlies (1.29 FTEs), Housekeeping/Food (7.55 FTEs), Clinic (0.35 FTEs). Staff increases are budgeted for the following: RNs (6.32 FTEs), Social Workers/Psychologists (3.01 FTEs), PT/OT/Speech Therapists and Assistants (8.15 FTEs), Clerical and Other Administrative (4.58 FTEs), Management and Supervision (1.79 FTEs).
- Expenses are based on current operations, the experience of applicant members and adjusted for anticipated increases related to rent, medical supply and utilities costs. Operating expenses were adjusted down to reflect decreases in wages and benefits cost for FTE reductions, professional fees, purchased services and interest expense.
- Breakeven utilization is projected at approximately 93.08% for Year One.

- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current</u>	<u>Years One & Three</u>
Medicaid-FFS	40.22%	23.98%
Medicaid-MC	19.12%	29.24%
Medicare FFS	5.24%	10.53%
Medicare MC	10.48%	0.00%
Commercial	6.04%	15.79%
Private Pay/Other	<u>18.90%</u>	<u>20.46%</u>
Total	100%	100%

Capability and Feasibility

PAP will acquire the RHCf operating interest and real property for \$18,850,000. The purchase price will be met with an \$18,850,000 loan from Capital Funding, LLC at the above stated terms. PAP will assign its rights and title to the RHCf operations and real property to 2700 North Forest Road Operating Company, LLC and 2700 North Forest Road, LLC, respectively, for \$10. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$3,174,874 based on two months of first year expenses. The applicant will finance \$1,587,437 via a working capital loan for a five-year term at 4% interest. Capital Funding, LLC has provided a letter of interest. The remaining \$1,587,437 will be provided via equity from the personal resources of the proposed members of PAP. BFA attachment A, the proposed members' net worth, shows sufficient resources to meet all equity requirements.

The submitted budget projects a net income of \$450,497 and \$474,829 for the first and third years, respectively. BFA attachment H is a sensitized budget based on the current year occupancy and the proposed rates by payor with Medicare Managed Care held to current year rate as utilization under this payor is not anticipated going forward. Based on the sensitized budget, the operation would experience a net loss of \$1,463,404 and \$1,439,071 for the first and third years, respectively. Though the RHCf's occupancy rate declined to 91.71% in 2017, the facility's average occupancy from 2013-2016 was 95.2%. The applicant indicated that occupancy was 96.1% as of January 31, 2018, and 95.0% as of November 21, 2018, which supports the applicant's belief that 95% occupancy can be sustained going forward.

BFA attachment D is 2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville's pro forma balance sheet, which shows the operating entity will start with \$1,587,437 in equity. BFA attachment E presents 2700 North Forest Road, LLC pro forma balance sheet, which shows the realty entity will start with \$0 in equity.

BFA attachment F is Rosa Coplon Jewish Home and Infirmary's 2015-2017 certified and their internal financial statements as of September 30, 2018. As shown, the facility generated both average negative working capital and net asset positions and had an average net loss of \$1,260,839 for the period 2015-2016. In 2017, the facility had a negative working capital position, a negative net asset position and generated a loss of \$2,038,884. In 2018 the facility had a positive working capital position (resulting from the reclassification of a "Due to Parent/Subsidiary/Affiliate" liability from current to long-term liability status), a negative net asset position, and generated a net loss of \$1,201,591. The losses were due to Rosa Coplon's expense structure primarily related to higher staffing due to campus shared services and contracted third party labor cost allocations, transaction related fees such as legal and professional fees, nursing agency staffing, and corporate overhead. To generate positive income going forward, PAP intends to remove agency and contract labor costs by bringing staffing in-house (including dietary, housekeeping and maintenance), eliminate corporate overhead by utilizing PAP's existing management company to provide corporate level services, and remove one-time and non-recurring transactional expenses (e.g., professional and legal fees will be eliminated and general liability insurance will be transitioned to PAP's corporate-wide plan).

The 2015-2017 negative working capital positions and the negative net asset positions for all periods shown were caused by a "Due to Parent/Subsidiary/Affiliate" liability related to servicing corporate-wide debt and funding operating shortfalls at other facilities on the campus. The liability grew to \$17.3 as of September 2018 and was reclassified as a long-term liability. This liability will not be acquired by PAP

upon change of ownership. PAP will fund cash on the balance sheet at closing, which will result in a positive net asset position.

BFA attachment G, a financial summary of affiliated RHCs, shows the facilities maintained positive net income from operations for 2015 through September 30, 2018, except for the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) demonstrates average negative working capital for the period shown but has achieved a positive working capital position for the period January 1, 2018 through September 30, 2018. The applicant attributes the negative working capital to the timing of short-term working capital needs due to the timing of payroll and collections. The facility had a nominal loss for the period shown, attributed to increased prescription drug costs. The applicant anticipates improved results by calendar year end.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) showed an average negative working capital as of September 30, 2018. The applicant attributes the negative working capital to the timing of short-term working capital needs due to the timing of payroll and collections. While Elderwood at Cheektowaga demonstrates positive operating income through September 30, 2018, the facility experienced a net loss in 2015, which was attributed to a lower than normal census.
- Elderwood at Wheatfield (2600 Niagara Falls Boulevard Operating Company, LLC) shows average positive net income, a negative net asset position and negative working capital. Working capital and Net assets were negative from reclassifying the mortgage from long term to current.
- Elderwood of Uihlein at Lake Placid (185 Old Military Road Operating Company, LLC) shows positive net assets, negative working capital and net income positions. The facility was acquired in late 2016. There are extensive plans to renovate the facility and improve operations. The facility experienced a loss in 2017 and 2018 due to the construction timing and time to ramp up short-term to achieve a higher quality census.
- Elderwood at Hornell (1 Bethesda Drive Operating Company, LLC) shows average positive net income and net asset positions and a negative working capital position for 2017 through September 30, 2018. The negative working capital was due to the temporary shut-down of the sub-acute unit in early 2017 due to a leaking roof, which resulted in lower than expected occupancy. The January 1, 2018 through September 30, 2018 negative working capital position is related to the timing of short-term needs, such as the timing of when payroll is paid and insurance payments received.

The applicant notes the facilities have access to revolving credit lines that cover temporary negative working capital balances.

Financial statements for Elderwood of Lakeside at Brockport, Elderwood at Lockport, Elderwood at Ticonderoga and Elderwood at North Creek were not evaluated as the applicant was not established as the operator of the facilities until 2017 or later.

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, members of Post Acute Partners Acquisition, LLC
BFA attachment B	Organizational Chart
BFA attachment C	Real Property Members of 2700 North Forest Road, LLC
BFA attachment D	Pro Forma Balance Sheet, 2700 North Forest Road Operating Company, LLC
BFA attachment E	Pro Forma Balance Sheet, 2700 North Forest Road, LLC
BFA attachment F	Financial Summary, 2015-9/30/2018 Rosa Coplon Jewish Home and Infirmary
BFA attachment G	Financial Summary, 2015-9/30/2018 affiliated nursing home facilities
BFA attachment H	Sensitized Years One and Three Budget



Project # 181390-E
Warren Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Warren
Acknowledged: June 1, 2018

Executive Summary

Description

Warren Operations Associates LLC d/b/a Warren Center for Rehabilitation and Nursing, a New York limited liability company that operates the 80-bed, proprietary, Article 28 residential health care facility (RHCF) located at 42 Gurney Lane, Queensbury (Warren County), requests approval to transfer 51% ownership interest in the company from one existing member to one new member. The current members of Warren Operations Associates LLC are David Greenberg (95%) and Shira Greenberg (5%). Upon approval of this application, David Greenberg will transfer 51% of his ownership interest to new member Kenneth Rozenberg. There will be no change in beds or services provided, and the lease agreement and consulting services agreement will remain unchanged. The realty will also remain unchanged.

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

Table with 2 columns: Member Name, Percentage. Rows: Kenneth Rozenberg (51%), David Greenberg (44%), Shira Greenberg (5%).

Kenneth Rozenberg has ownership interest in numerous New York State RHCFS. BFA Attachment E provides a financial summary of his affiliated RHCFS, and BFA Attachment F provides a listing of his recently acquired nursing homes and pending RHCF acquisitions.

OPCHSM Recommendation

Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

The individual background review indicates the proposed member has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The applicant will purchase 51% membership interest at \$10 for the assignment. The Year One budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues (\$7,731,810), Expenses (7,685,111), Gain/(Loss) (\$46,699).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

February 14, 2019

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Warren Center for Rehabilitation and Nursing	Same
Address	42 Gurney Lane Queensbury NY 12804	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Voluntary	Same
Operator	Warren Operations Associates, LLC	Same
	David Greenberg 95%	David Greenberg 44%
	Shira Greenberg 5%	Shira Greenberg 5%
		*Kenneth Rozenberg 51%
		* <i>Managing member</i>

Character and Competence – Assessment

Experience

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He is employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998, and the CEO of Centers Health Care since 2005. Mr. Rozenberg discloses the following health facility interests:

Wartburg Lutheran Home for the Aging (Acquired as receiver)	06/2008 to 05/2011
Wartburg Nursing Home (Acquired as receiver)	06/2008 to 05/2011
Stonehedge Health and Rehabilitation Center – Rome	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Rome	05/2011 to 03/2017
Stonehedge Health and Rehabilitation Center – Chittenango	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to 07/2017
Holliswood Care Center	11/2010 to 04/2013
Waterfront Health Care Center (Acquired as receiver)	08/2011 to 12/2012
Ellicott Center for Rehabilitation and Nursing	12/2012 to present
Williamsbridge Manor	11/1996 to present
Bronx Center for Rehabilitation & Health Care	10/1997 to present
University Nursing Home	08/2001 to present
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016
Brooklyn Center for Rehabilitation and Healthcare	05/2007 to present
Cooperstown Center for Rehabilitation and Nursing	01/2018 to present
The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	04/2013 to present
Corning Center for Rehabilitation and Healthcare	07/2013 to present
Washington Center for Rehabilitation and Healthcare	02/2014 to present
Essex Center for Rehabilitation and Healthcare	03/2014 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
Daughters of Jacob Nursing Home (Acquired as receiver)	08/2013 to 09/2015
Triboro Center for Rehabilitation and Nursing	09/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to 09/2017

Granville Center for Rehabilitation and Nursing	10/2017 to present
Delaware Nursing & Rehabilitation (Acquired as receiver)	06/2014 to 12/2015
Buffalo Center for Rehabilitation and Nursing (12/2015 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to 03/2016
Beth Abraham Center for Rehabilitation and Nursing	03/2017 to present
Martine Center for Rehabilitation and Nursing	03/2017 to present
Far Rockaway Center for Rehabilitation and Nursing	04/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Carthage Center for Rehabilitation and Nursing	09/2017 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present
New Paltz Center for Rehabilitation and Nursing	09/2017 to present
Glens Falls Center for Rehabilitation and Nursing	09/2017 to present
Utica Center for Rehabilitation and Nursing	01/2018 to present
 <u>Rhode Island Nursing Homes</u>	
Bannister Center for Rehabilitation and Health Care	02/2016 to present
Park View Center for Rehabilitation and Healthcare	05/2016 to 07/2018
Kingston Center for Rehabilitation and Nursing	10/2016 to present
Oak Hill Center for Rehabilitation and Healthcare	07/2017 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Healthy Living (MLTC)	01/2013 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Argyle Center for Independent Living (60%)	02/2014 to present
 <u>Certified Home Health Agencies</u>	
Centers Home Health Revival-Bronx	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present
 <u>Approved but not yet completed acquisitions</u>	
Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending
 <u>Healthcare consulting companies</u>	
Centers Health Care	Centers Medical Supply
Centers Skilled Nursing	Centers Business Office
Centers Managed Care	Centers Care Management
Centers Home Care	Centers Urgent Care
Centers Care Solutions	Center for Allied Health Education

Quality Review

Evaluation of the quality of care for facilities currently owned by Mr. Rozenberg (proposed new member of Warren Center) is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Fulton Center for Rehabilitation and Healthcare	Current	*	*	****	***
	04/2012 Data 08/2012	**	*	**	****
Corning Center for Rehabilitation and Healthcare	Current	*	*	**	***
	07/2013 Data 09/2013	**	*	***	****
Ellicott Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2012	**	*	**	****
Buffalo Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2015	*	*	****	**
Richmond Ctr for Rehab and Specialty Healthcare	Current	**	*	*****	****
	04/2012 Data 06/2012	****	****	***	****
Washington Center for Rehab and Healthcare	Current	**	*	****	****
	02/2014	**	*	***	****
Steuben Center for Rehabilitation and Healthcare	Current	**	**	****	**
	07/2014	*	*	***	***
Essex Center for Rehabilitation and Healthcare	Current	***	**	*****	***
	03/2014	**	**	****	**
Holliswood Ctr for Rehabilitation and Healthcare	Current	***	***	*****	*
	11/2010	*****	*****	*****	*
Bronx Center for Rehabilitation & Health Care	Current	***	**	*****	**
	10/1997 Data 12/2009	**	***	****	*
Triboro Center for Rehabilitation and Nursing	Current	***	**	*****	***
	08/2013	**	***	****	*
Beth Abraham Center for Rehabilitation and Nursing	Current	***	**	*****	**
	03/2017	****	****	*****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Far Rockaway Center for Rehabilitation and Nursing	Current	***	**	*****	**
	04/2017	*	*	***	**
Carthage Center for Rehabilitation and Nursing	Current	***	**	*****	**
	09/2017 Data 01/2018	**	**	****	***
Glens Falls Center for Rehabilitation and Nursing	Current	***	**	*****	***
	09/2017	*	**	****	*
Williamsbridge Manor for Rehabilitation and Nursing	Current	****	***	*****	**
	11/1996 Data 12/2009	*	**	**	*
Brooklyn Center for Rehab and Residential Health Care	Current	****	****	*****	*
	05/2007 Data 05/2009	**	***	***	*
Bushwick Center for Rehabilitation and Health Care	Current	*****	***	*****	****
	05/2011	**	*	*****	***
Troy Center for Rehabilitation and Nursing	Current	****	***	****	***
	09/2017	****	***	****	****
Schenectady Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	***	***	*****	*
Slate Valley Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	*	*	**	**
New Paltz Center for Rehabilitation and Nursing	Current	****	***	****	****
	09/2017	***	***	****	***
University Center for Rehabilitation and Nursing	Current	*****	*****	*****	**
	08/2001	*****	*****	*****	**
Boro Park Center for Rehabilitation and Healthcare	Current	*****	*****	*****	***
	05/2011	*****	*****	*****	***
Hope Center for H I V and Nursing Care	Current	*****	****	*****	***
	04/2015	*****	*****	*****	***
Martine Center for Rehabilitation and Nursing	Current	*****	*****	*****	***
	03/2017	*****	*****	*****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Onondaga Center for Rehabilitation and Nursing	Current	**	*	***	****
	09/2017	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	***
	12/2014	*	*	***	***
Cooperstown Center for Rehabilitation and Nursing	Current	*	*	***	***
	Date 09/2017	*	*	***	*
Oneida Center for Rehabilitation and Nursing	01/2018	**	*	****	****

Rhode Island

Bannister Center for Rehabilitation and Health Care	Current	*	*	***	***
	02/2016	*	*	****	*
Kingston Center for Rehabilitation and Health Care	Current	**	*	****	****
	10/2016	**	**	**	***
Oak Hill Health & Rehabilitation Center	Current	**	*	**	****
	07/2017	*	*	*	*****

Data date: 12/2018

Notes: Greyed out facility reflects recent acquisition.

Special Focus Facilities

Cooperstown Center for Rehabilitation and Nursing was designated a special focus facility (SFF) on 11/29/2016 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 25 months, was last surveyed 8/22/2018, and is listed as having shown improvement. In February 2017 the previous owner hired Centers Health Care to provide consulting services. Mr. Rozenberg acquired ownership in January 2018 and implemented the following measures to improve the facility: hired an experienced DON; provided Centers Health Care clinical and operational support; and improved staffing recruitment.

Oak Hill Center for Rehabilitation (Rhode Island) was designated a SFF in June 2017 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 18 months, was last surveyed 6/18/2018, and is listed as having not shown improvement. Mr. Rozenberg acquired ownership in July 2017.

Granville Center for Rehabilitation and Nursing recently graduated from being designated a Special Focus Facility. The issues surrounding its designation as a SFF predated the ownership disclosed in the CON.

Low CMS Overall Star Ratings (1 or 2 stars)

The applicant has stated that the CMS five-star quality rating system ratings for nursing facilities with 1 and 2 star overall ratings are attributable to several factors, including:

- (1) The proposed member has a minority ownership in the Rhode Island nursing homes and states that he does not have any control over the day-to-day operations.
- (2) The proposed member states that some of the facilities, Granville Center, Onondaga Center, Oneida Center, and Cooperstown Center, were recently acquired and the ratings reflect prior operator performance. However, it should be noted that Mr. Rozenberg acquired a 9% membership interest in the predecessor operator of Granville Center prior to becoming an 85% member in the current operator.
- (3) The applicant encountered other factors, including a lack of qualified staff in geographic location proximate to some of the facilities.

The applicant states that while overall star ratings are low, quality measure ratings are not, and that the overall rating does not accurately reflect quality of care. The applicant also indicates that “investments” have been made in facility clinical staff, and that Mr. Rozenberg’s Centers Health Care company has provided clinical “investments” in these facilities as well.

Enforcement History

Bannister Center for Rehabilitation and Healthcare (Rhode Island):

- A federal CMP of \$13,627 was assessed for July 19, 2017 survey findings.

Oak Hill Center for Rehabilitation and Health Care (Rhode Island) - Special Focus Facility:

- An Immediate Jeopardy and Substandard Quality of Care finding was issued on December 29, 2017.
 - A federal CMP of \$144,978 was assessed for December 29, 2017 survey findings.
- A Substandard Quality of Care finding was issued on January 11, 2018.

Bronx Center for Rehabilitation and Health Care:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-18-039 issued September 17, 2018 for surveillance findings on June 14, 2018. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents’ Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 issued March 9, 2016 for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern, 415.26 Administration and 415.27(a-c) Administration: Quality Assessment and Assurance.

Cooperstown Center for Rehabilitation and Nursing, Special Focus Facility:

- A federal CMP of \$21,459 was assessed for August 22, 2017 survey findings.

Fulton Center for Rehabilitation and Healthcare:

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

Northwoods Rehabilitation and Nursing Center at Moravia:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

New Paltz Center for Rehabilitation and Nursing:

- A federal CMP of \$6,845 was assessed for January 29, 2018 survey findings.

Onondaga Center for Rehabilitation and Nursing:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH 18-025 issued on June 28, 2018 for surveillance findings on February 9, 2018. Deficiencies were found under 415.12(c)(1)(2), Quality of Care: Pressure Sores 415.12(j) Quality of Care Hydration and 415.12(m)(2) Quality of Care: Medication Error
 - A federal CMP of \$26,393 was assessed for February 9, 2018 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH 18-046 issued on November 23, 2018 for surveillance findings on August 3, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$ 2,000 pursuant to Stipulation and Order NH 18-047 issued on November 23, 2018 for surveillance findings on August 31, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care(h)(1): Accidents

Richmond Center for Rehabilitation and Specialty Healthcare:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-201 issued October 24, 2016 for surveillance findings on April 27, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 27, 2012 survey findings.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-17-051 issued September 11, 2017 for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility incurred a Civil Monetary Penalty of \$7,803.25 from 06/09/2017 to 06/09/2017.

The Grand Rehabilitation and Nursing at Chittenango:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

The Grand Rehabilitation and Nursing at Rome:

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

Washington Center for Rehabilitation and Healthcare:

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

Waterfront Center for Rehabilitation and Healthcare:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
 - A federal CMP of \$11,053 was assessed for May 11, 2017 survey findings.

Williamsbridge Manor Nursing Home:

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

Alpine Home Health Care

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

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

Project Review

No changes in the program or physical environment are proposed in this application. The facility contracts for administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services with Centers Health Care, Inc. Kenneth Rozenberg is CEO and 50% owner of Centers Health Care. Centers Health Care utilizes a regional office type approach with central corporate and local resources in order to provide services and clinical staff to their clients.

Conclusion

No changes in the program or physical environment are proposed in this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Assignment of Membership Interests Agreement

The applicant has submitted an executed Assignment of Membership Interests Agreement::

Date:	May 9, 2018
Company:	Warren Operations Associates LLC
Assignor:	David Greenberg
Assignee:	Kenneth Rozenberg
Assignment:	51% of all the issued and outstanding membership and ownership interests in Warren Operations Associates LLC, free and clear of all liens and encumbrances.
Assignment Price:	\$10

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of the liability and responsibility. As of September 14, 2018, there are no outstanding Medicaid liabilities or assessments.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total (2017)</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$454.54	\$40,909	\$454.54	\$40,909
Medicaid FFS	\$207.92	2,719,977	\$221.98	2,916,595
Medicaid MC	\$371.12	43,050	\$371.12	43,792
Medicare FFS	\$505.66	1,385,006	\$505.66	1,390,565
Medicare MC	\$385.77	923,544	\$385.77	927,777
Private Pay	\$371.07	994,084	\$371.07	998,549
Medicaid (MLTC)	\$206.67	1,407,199	\$206.67	1,413,623
Other Revenue		<u>1,995</u>		<u>0</u>
Total Revenue		\$7,515,764		\$7,731,810
<u>Expenses</u>				
Operating	\$243.71	\$6,801,802	\$242.64	\$6,801,802
Capital	<u>21.78</u>	<u>607,887</u>	<u>31.50</u>	<u>883,309</u>
Total	\$265.49	\$7,409,689	\$274.14	\$7,685,111
Net Income		<u>\$106,075</u>		<u>\$46,699</u>

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total (2017)</u>	<u>Per Diem</u>	<u>Total</u>
Patient Days		27,909		28,033
Occupancy		95.58%		96.0%

The following is noted with respect to the submitted budget:

- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate.
- The Private Pay, Medicare, Medicaid Managed Care, MLTC and commercial rates are based on the facility's actual 2017 rates.
- The current year reflects the facility's 2017 revenues and expenses.
- Breakeven utilization in the first year is projected at 95.42% or 27,864 patient days.
- Utilization by payor source for the current and first year is as follows:

<u>Payor</u>	<u>Current & Year One</u>
Medicaid FFS	46.87%
Medicaid MC	0.42%
Medicare FFS	9.81%
Medicare MC	8.58%
Medicaid(MLTC)	24.40%
Commercial FFS	0.32%
Private Pay	9.60%

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 51% membership interest at \$10 for the assignment. The working capital requirement of \$1,280,852, based on two months of the first year's expenses, will be satisfied from existing facility funds and proposed members' equity. BFA Attachment C shows that as of June 30, 2018, cash plus accounts receivables totals \$2,028,061, minus accounts payable and accrued expenses of \$1,625,976 results in \$402,085 available to cover working capital needs. The remaining \$878,767 will be provided from proposed members' equity. Kenneth Rozenberg has sufficient equity to meet the equity requirements for this project as shown on BFA Attachment A.

BFA Attachment D shows the pro forma balance sheet as of the first day of operation, which indicates a positive equity position of \$1,700,340.

The submitted budget indicates a net income of \$46,699 for the first year subsequent to the change in membership interest. The budget appears reasonable.

BFA Attachment B provides a financial summary of Warren Center for Rehabilitation and Nursing for 2015 through 2017. The facility had a positive equity position and a negative working capital position in 2017, which was due to accrued payroll. Also, the facility had a net operating income of \$104,081 for 2017. BFA Attachment C is a financial summary of Warren Center for Rehabilitation and Nursing as of June 30, 2018, which shows the facility had a positive equity position, working capital position and a net operating income of \$192,775.

BFA Attachment E is the financial summary of the affiliated RHCs, which indicates the facilities maintained a positive income from operations for the periods shown except for Waterfront Center for Rehab that had a 2017 net operating loss due to prior year negative rate adjustments.

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

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	2015-2017 Financial Summary – Warren Center for Rehabilitation and Nursing
BFA Attachment C	Warren Center for Rehabilitation and Nursing as of June 30, 2018
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary - Affiliated RHCs
BFA Attachment F	Summary of Kenneth Rozenberg's newly acquired RHCs



Project # 182218-E
Westgate Operations Associates, LLC d/b/a Rochester Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: November 7, 2018

Executive Summary

Description

Westgate Operations Associates, LLC d/b/a Rochester Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Creekview Nursing and Rehabilitation Center (Creekview), a 124-bed, proprietary, Article 28 residential health care facility (RHCF) located at 525 Beahan Road, Rochester (Monroe County). Westgate Nursing Home, Inc. is the current operator of the RHCF. Westgate Building, LLC, whose sole member is Philip Friedman, is the real property owner. There will be no change in beds or services provided.

On October 15, 2018, Westgate Nursing Home, Inc. entered into an Asset Purchase Agreement (APA) with Westgate Operations Associates, LLC for the sale and acquisition of the operating interests in the RHCF for a purchase price of \$1,000,000. Concurrently, Westgate Realty Associates, LLC, whose members are Daryl Hagler and Jonathan Hagler, entered into a Real Property Purchase Agreement (RPPA) with Westgate Building, LLC for the sale and acquisition of the RHCF's real property for a purchase price of \$9,000,000. The APA and RPPA will close simultaneously upon Public Health and Health Planning Council (PHHPC) approval of this application. The applicant will lease the premises from Westgate Realty Associates, LLC for site control of the facility. The managing member of the applicant has submitted an affidavit acknowledging that there is a relationship between Westgate Operations Associates, LLC and Westgate Realty Associates, LLC in that the members of each

entity have previous business relationships involving real estate transactions of other nursing homes.

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

Table with 2 columns: Members, Ownership Percentage. Includes Westgate Nursing Home, Inc., Dennis J. Christiano, Sr. (91%), and David Guinta (9%).

Table with 2 columns: Members, Ownership Percentage. Includes Westgate Operations Associates, LLC, Kenneth Rozenberg (70%), Amir Abramchik (5%), Aaron Gittleson (5%), Nathan Goldman (5%), David Greenberg (5%), Maxwell Mase (5%), and Yisroel Wolff (5%).

The proposed members have ownership interest in various New York State (NYS) RHCFs. BFA Attachments D is the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes.

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

No changes in the program or physical environment are proposed in this application. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCf operations is \$1,000,000 and will be funded via members' equity of \$250,000 and a bank loan for \$750,000 at 5% interest for a ten-year term

and 25-year amortization period. Greystone has provided a letter of interest for the loan at the stated terms. The purchase price for the RHCf realty is \$9,000,000 and will be funded via members' equity of \$750,000 and a bank loan for \$8,250,000 at 5% interest for a ten-year term and 25-year amortization period. Greystone has provided a letter of interest for the realty loan at the stated terms.

The projected budget is as follows:

Revenues	\$10,440,801
Expenses	<u>9,552,945</u>
Gain/(Loss)	\$887,856

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
2. Submission of an executed bank loan commitment for the operations, acceptable to the Department of Health. (BFA)
3. Submission of an executed bank loan commitment for the real estate, acceptable to the Department of Health. (BFA)
4. Submission of an executed Lease Agreement, acceptable to the Department of Health. (BFA)
5. Submission of an executed Consulting Service Agreement, acceptable to the Department of Health. (BFA)
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
7. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement and affidavit, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed Land Sale Contract, acceptable to the Department. [CSL]

Approval conditional upon:

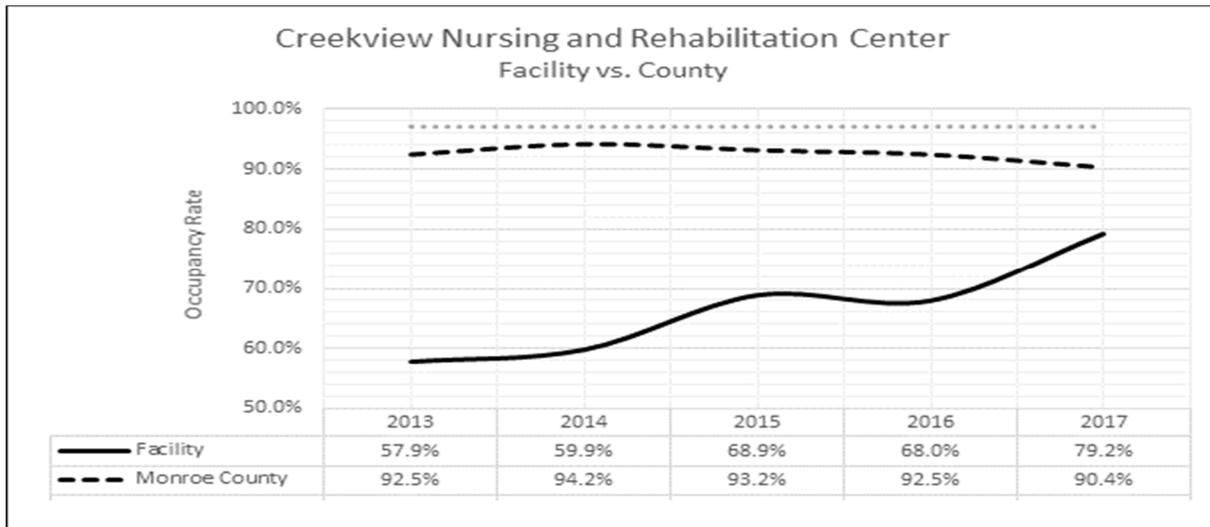
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 14, 2019

Need Analysis

Utilization



Creekview Nursing and Rehabilitation Center's utilization was 79.2% in 2017. Based upon weekly census data, current occupancy, as of December 26, 2018 is 91.9% for the facility and 88.7% for Monroe County. During 2018, the occupancy remained between 70% and 75% through the month of October. Since the beginning of November, the occupancy has improved, rising to 85.5% for November and 90.3% for the month of December. The applicant states that the lower rate of occupancy is attributable to a lack of engaged leadership at all levels and operational deficiencies within the facility.

The applicant intends to improve occupancy in the following ways:

- strengthen relationships with hospital discharge planners and referral sources;
- staff training, development and support;
- acceptance of clinically complex residents;
- implementation of staff recruitment and retention initiatives;
- development of a dedicated short-term rehabilitation unit;
- engagement in community outreach;
- implementation of the following new programs to serve a more diverse resident population: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy, and complex clinical care.

Access

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

Creekview Nursing and Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Monroe County rate, as demonstrated in the table below.

Percent of New RHCFC Admissions that are Medicaid	2015	2016	2017
Monroe County 75% Threshold	10.7%	12.3%	11.3%
Creekview Nursing and Rehabilitation Center	55.7%	62.4%	41.2%

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Creekview Nursing and Rehab Center	Rochester Center for Rehabilitation and Nursing
Address	525 Beahan Rd Rochester, NY, 14624	Same
RHCFC Capacity	124	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Same
Operator	Westgate Nursing Home Inc.	Westgate Operations Associates, LLC *Kenneth Rozenberg 70% Amir Abramchik 5% Maxwell Mase 5% Aaron Gittleson 5% Nathan Goldman 5% David Greenberg 5% Yisroel Wolff 5% *managing member

Character and Competence – Assessment

Experience

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He is employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998, and the CEO of Centers Health Care since 2005. Mr. Rozenberg discloses the following health facility interests:

Wartburg Lutheran Home for the Aging (Acquired as receiver)	06/2008 to 05/2011
Wartburg Nursing Home (Acquired as receiver)	06/2008 to 05/2011
Stonehedge Health and Rehabilitation Center – Rome	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Rome	05/2011 to 03/2017
Stonehedge Health and Rehabilitation Center – Chittenango	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to 07/2017
Holliswood Care Center	11/2010 to 04/2013
Waterfront Health Care Center (Acquired as receiver)	08/2011 to 12/2012
Ellicott Center for Rehabilitation and Nursing	12/2012 to present
Williamsbridge Manor	11/1996 to present
Bronx Center for Rehabilitation & Health Care	10/1997 to present
University Nursing Home	08/2001 to present
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016
Brooklyn Center for Rehabilitation and Healthcare	05/2007 to present

Cooperstown Center for Rehabilitation and Nursing	01/2018 to present
The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	04/2013 to present
Corning Center for Rehabilitation and Healthcare	07/2013 to present
Washington Center for Rehabilitation and Healthcare	02/2014 to present
Essex Center for Rehabilitation and Healthcare	03/2014 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
Daughters of Jacob Nursing Home (Acquired as receiver)	08/2013 to 09/2015
Triboro Center for Rehabilitation and Nursing	09/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to 09/2017
Granville Center for Rehabilitation and Nursing	10/2017 to present
Delaware Nursing & Rehabilitation (Acquired as receiver)	06/2014 to 12/2015
Buffalo Center for Rehabilitation and Nursing (12/2015 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to 03/2016
Beth Abraham Center for Rehabilitation and Nursing	03/2017 to present
Martine Center for Rehabilitation and Nursing	03/2017 to present
Far Rockaway Center for Rehabilitation and Nursing	04/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Carthage Center for Rehabilitation and Nursing	09/2017 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present
New Paltz Center for Rehabilitation and Nursing	09/2017 to present
Glens Falls Center for Rehabilitation and Nursing	09/2017 to present
Utica Center for Rehabilitation and Nursing	01/2018 to present
 <u>Rhode Island Nursing Homes</u>	
Bannister Center for Rehabilitation and Health Care	02/2016 to present
Park View Center for Rehabilitation and Healthcare	05/2016 to 07/2018
Kingston Center for Rehabilitation and Nursing	10/2016 to present
Oak Hill Center for Rehabilitation and Healthcare	07/2017 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Healthy Living (MLTC)	01/2013 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Argyle Center for Independent Living (60%)	02/2014 to present
 <u>Certified Home Health Agencies</u>	
Centers Home Health Revival-Bronx	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present

Approved but not yet completed acquisitions

Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending

Healthcare consulting companies

Centers Health Care
Centers Skilled Nursing
Centers Managed Care
Centers Home Care
Centers Care Solutions
Centers Medical Supply
Centers Business Office
Centers Care Management
Centers Urgent Care
Center for Allied Health Education

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

Chittenango Center for Rehabilitation and Health Care	05/2011 to 07/2016
Rome Center for Rehabilitation and Health Care	05/2011 to 08/2016
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

Aaron Gittleson is the Finance Director at Centers Health Care since 2011. Mr. Gittleson discloses no ownership interests.

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is an administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

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

Corning Center for Rehabilitation and Health Care	06/2013 to present
Steuben Center for Rehabilitation and Health Care	07/2014 to present
Warren Center for Rehabilitation and Nursing	01/2016 to present

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010. Mr. Wolff was the CEO of HBS Professional Services a Health Care Recruitment business from 10/2004 to 05/2010. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

Quality Review

Evaluation of the quality of care for facilities currently owned by the proposed members is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Fulton Center for Rehabilitation and Healthcare	Current	*	*	****	***
	04/2012 Data 08/2012	**	*	**	****
Corning Center for Rehabilitation and Healthcare	Current	*	*	**	***
	07/2013 Data 09/2013	**	*	***	****
Ellicott Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2012	**	*	**	****
Buffalo Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2015	*	*	****	**
Richmond Ctr for Rehab and Specialty Healthcare	Current	**	*	*****	****
	04/2012 Data 06/2012	****	****	***	****
Washington Center for Rehab and Healthcare	Current	**	*	****	****
	02/2014	**	*	***	****
Steuben Center for Rehabilitation and Healthcare	Current	**	**	****	**
	07/2014	*	*	***	***
Essex Center for Rehabilitation and Healthcare	Current	***	**	*****	***
	03/2014	**	**	****	**
Holliswood Ctr for Rehabilitation and Healthcare	Current	***	***	*****	*
	11/2010	*****	*****	*****	*
Bronx Center for Rehabilitation & Health Care	Current	***	**	*****	**
	10/1997 Data 12/2009	**	***	****	*
Triboro Center for Rehabilitation and Nursing	Current	***	**	*****	***
	08/2013	**	***	****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Beth Abraham Center for Rehabilitation and Nursing	Current	***	**	*****	**
	03/2017	****	****	*****	*
Far Rockaway Center for Rehabilitation and Nursing	Current	***	**	*****	**
	04/2017	*	*	***	**
Carthage Center for Rehabilitation and Nursing	Current	***	**	*****	**
	09/2017 Data 01/2018	**	**	****	***
Glens Falls Center for Rehabilitation and Nursing	Current	***	**	*****	***
	09/2017	*	**	****	*
Williamsbridge Manor for Rehabilitation and Nursing	Current	****	***	*****	**
	11/1996 Data 12/2009	*	**	**	*
Brooklyn Center for Rehab and Residential Health Care	Current	****	****	*****	*
	05/2007 Data 05/2009	**	***	***	*
Bushwick Center for Rehabilitation and Health Care	Current	*****	***	*****	****
	05/2011	**	*	*****	***
Troy Center for Rehabilitation and Nursing	Current	****	***	****	***
	09/2017	****	***	****	****
Schenectady Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	***	***	*****	*
Slate Valley Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	*	*	**	**
New Paltz Center for Rehabilitation and Nursing	Current	****	***	****	****
	09/2017	***	***	****	***
University Center for Rehabilitation and Nursing	Current	*****	*****	*****	**
	08/2001	*****	*****	*****	**
Boro Park Center for Rehabilitation and Healthcare	Current	*****	*****	*****	***
	05/2011	*****	*****	*****	***
Hope Center for H I V and Nursing Care	Current	*****	****	*****	***
	04/2015	*****	*****	*****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Martine Center for Rehabilitation and Nursing	Current	*****	*****	*****	***
	03/2017	*****	*****	*****	*
Onondaga Center for Rehabilitation and Nursing	Current	**	*	***	****
	09/2017	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	***
	12/2014	*	*	***	***
Cooperstown Center for Rehabilitation and Nursing	Current	*	*	***	***
	Data 09/2017	*	*	***	*
Ontario Center for Rehabilitation and Healthcare	Current	*	*	***	**
	11/2014	****	***	****	*****
Warren Center for Rehabilitation and Nursing	Current	**	**	**	***
	01/2016	****	***	**	****
Oneida Center for Rehabilitation and Nursing	01/2018	**	*	****	****

Rhode Island

Bannister Center for Rehabilitation and Health Care	Current	*	*	***	***
	02/2016	*	*	****	*
Kingston Center for Rehabilitation and Health Care	Current	**	*	****	****
	10/2016	**	**	**	***
Oak Hill Health & Rehabilitation Center	Current	**	*	**	****
	07/2017	*	*	*	*****

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Butler Center for Rehabilitation and Health Care	Current	**	*	***	****
	06/2018	**	*	****	****
Kansas Center for Rehabilitation and Healthcare	Current	*	*	*	****
	06/2018	**	*	**	****

KANSAS

Overland Park Center for Rehabilitation and Health Care	Current	****	***	***	****
	06/2018	**	*	***	****

Data date: 12/2018

Notes: Greyed out facility reflects recent acquisition.

Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and

Nursing Kansas City; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park

Special Focus Facilities

Cooperstown Center for Rehabilitation and Nursing was designated a special focus facility (SFF) on 11/29/2016 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 25 months, was last surveyed 8/22/2018, and is listed as having shown improvement. In February 2017 the previous owner hired Centers Health Care to provide consulting services. Mr. Rozenberg acquired ownership in January 2018 and implemented the following measures to improve the facility: hired an experienced DON; provided Centers Health Care clinical and operational support; and improved staffing recruitment.

Oak Hill Center for Rehabilitation (Rhode Island) was designated a SFF in June 2017 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 18 months, was last surveyed 6/18/2018, and is listed as having not shown improvement. Mr. Rozenberg acquired ownership in July 2017.

Granville Center for Rehabilitation and Nursing recently graduated from being designated a Special Focus Facility. The issues surrounding its designation as a SFF predated the ownership disclosed in the CON.

Low CMS Overall Star Ratings (1 or 2 stars)

The applicant has stated that the CMS five-star quality rating system ratings for nursing facilities with 1 and 2 star overall ratings are attributable to several factors, including:

- (1) The proposed members have a minority ownership in some of the out-of-state nursing homes and state they do not have any control over the day-to-day operations.
- (2) The applicant states that some of the facilities, Granville Center, Onondaga Center, Oneida Center, and Cooperstown Center, were recently acquired and the ratings reflect prior operator performance. However, it should be noted that Mr. Rozenberg acquired a 9% membership interest in the predecessor operator of Granville Center prior to becoming an 85% member in the current operator.
- (3) The applicant encountered other factors, including a lack of qualified staff in geographic location proximate to some of the facilities.

The applicant states that while overall star ratings are low, quality measure ratings are not, and that the overall rating does not accurately reflect quality of care. The applicant also indicates that “investments” have been made in facility clinical staff, and that Mr. Rozenberg’s Centers Health Care company has provided clinical “investments” in these facilities as well.

Enforcement History

Bannister Center for Rehabilitation and Healthcare (Rhode Island):

- A federal CMP of \$13,627 was assessed for July 19, 2017 survey findings.

Oak Hill Center for Rehabilitation and Health Care (Rhode Island) - Special Focus Facility:

- An Immediate Jeopardy and Substandard Quality of Care finding was issued on December 29, 2017.
 - A federal CMP of \$144,978 was assessed for December 29, 2017 survey findings.
- A Substandard Quality of Care finding was issued on January 11, 2018.

Bronx Center for Rehabilitation and Health Care:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-18-039 issued September 17, 2018 for surveillance findings on June 14, 2018. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 issued March 9, 2016 for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern, 415.26 Administration and 415.27(a-c) Administration: Quality Assessment and Assurance.

Cooperstown Center for Rehabilitation and Nursing, Special Focus Facility:

- A federal CMP of \$21,459 was assessed for August 22, 2017 survey findings.

Fulton Center for Rehabilitation and Healthcare:

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

Northwoods Rehabilitation and Nursing Center at Moravia:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

New Paltz Center for Rehabilitation and Nursing:

- A federal CMP of \$6,845 was assessed for January 29, 2018 survey findings.

Onondaga Center for Rehabilitation and Nursing:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH 18-025 issued on June 28, 2018 for surveillance findings on February 9, 2018. Deficiencies were found under 415.12(c)(1)(2), Quality of Care: Pressure Sores 415.12(j) Quality of Care Hydration and 415.12(m)(2) Quality of Care: Medication Error
 - A federal CMP of \$26,393 was assessed for February 9, 2018 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH 18-046 issued on November 23, 2018 for surveillance findings on August 3, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$ 2,000 pursuant to Stipulation and Order NH 18-047 issued on November 23, 2018 for surveillance findings on August 31, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care(h)(1): Accidents

Richmond Center for Rehabilitation and Specialty Healthcare:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-201 issued October 24, 2016 for surveillance findings on April 27, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 27, 2012 survey findings.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-17-051 issued September 11, 2017 for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility incurred a Civil Monetary Penalty of \$7,803.25 from 06/09/2017 to 06/09/2017.

The Grand Rehabilitation and Nursing at Chittenango:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

The Grand Rehabilitation and Nursing at Rome:

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

Washington Center for Rehabilitation and Healthcare:

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

Waterfront Center for Rehabilitation and Healthcare:

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

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
 - A federal CMP of \$11,053 was assessed for May 11, 2017 survey findings.

Williamsbridge Manor Nursing Home:

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

Warren Center for Rehabilitation and Nursing:

- A federal CMP of \$7,803 was assessed for December 11, 2017 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-007 issued February 21, 2018. Multiple Deficiencies found

Ontario Center for Rehabilitation and Healthcare:

- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-16-093 issued January 13, 2016. Multiple Deficiencies found

Alpine Home Health Care

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

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

Project Review

No changes in the program or physical environment are proposed in this application. The facility will contract for administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services with Centers Health Care, Inc. Kenneth Rozenberg is CEO and 50% owner of Centers Health Care. Centers Health Care utilizes a regional office type approach with central corporate and local resources in order to provide services and clinical staff to their clients.

Conclusion

No changes in the program or physical environment are proposed in this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCf's operating interests:

Date:	October 15, 2018
Seller:	Westgate Nursing Home, Inc
Buyer:	Westgate Operations Associates, LLC
Assets Acquired (Operations):	All assets of every kind, character and description, whether tangible, intangible, real or personal, owned by the Seller and used in connection with the operation of the Facility, including, but not limited to, all rights, title and interest in and to all Tangible Personal Property and Intangible Personal Property used in operation of the Facility.
Excluded Assets (Operations):	The furniture, furnishings and office equipment of Dennis J. Christiano, Sr. located in his office at 525 Beahan Road, Rochester, New York 14624, and the tractor with pull behind mower.
Assumed Liabilities:	None [#]
Purchase Price:	\$1,000,000 (subject to adjustments, see # below)
Payment of the Purchase Price:	\$1,000,000 due at closing.

Per Article 2.1 of the APA, the agreed upon purchase price shall be paid by the Buyer's assumption at closing, subject to adjustments and credits due the Buyer under the APA, of specific liabilities solely attributable to those specific Medicaid audit and unpaid cash receipts assessment liabilities, up to an aggregate total amount assumed for all such liabilities of \$1,000,000. No other amounts or liabilities or obligations of the Seller shall be assumed by or be the obligation of the Buyer. The Buyer shall be responsible for and shall have the authority to negotiate the final payment terms under the settlement amounts owed in connection with such liabilities assumed by the Buyer. If the aggregate total settlement amount exceeds \$1,000,000 (or such lesser amount due to adjustments and credits due the Buyer under the APA), the Buyer will not be required to pay or assume such excess and such excess shall be paid by the Seller, or as otherwise agreed upon between the Seller and Westgate NY Management LLC.

The applicant's financing plan is as follows:

Equity	\$250,000
Mortgage (5% interest, 10-year term, 25-year amortization)	<u>\$750,000</u>
Total	<u>\$1,000,000</u>

Greystone has provided a letter of interest for the loan at the stated terms. Mr. Rozenberg has provided an affidavit attesting to fund the balloon payment if acceptable refinancing is not available when the loan becomes due after the ten-year period. BFA Attachment A indicates sufficient resources to fund the balloon payment.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of January 3, 2019, the facility had an outstanding Medicaid liability in the amount of \$4,578,376.

Sale of Real Property Agreement

The applicant submitted a draft RPPA to acquire the RHCF real property, as summarized below:

Date:	October 15, 2018
Seller:	Westgate Building, LLC
Buyer:	Westgate Realty Associates, LLC
Assets Acquired (Real Estate):	All seller's right, title and interest in and to the Real Property (land, buildings and improvements) located at 525 Beahan Road, Rochester, NY (Monroe County).
Excluded Assets (Real Estate):	N/A
Purchase Price:	\$9,000,000
Payment of the Purchase Price:	\$750,000 deposited and held in escrow; \$8,250,000 due at closing.

The realty financing plan is as follows:

Equity (paid)	\$750,000
Mortgage (5% interest, 10-year term, 25-year amortization)	<u>\$8,250,000</u>
Total	\$9,000,000

A bank letter of interest at the stated terms has been provided. Daryl Hagler, who is the majority owner and managing member of the real estate entity, has submitted an affidavit attesting to fund the balloon payment if acceptable refinancing is not be available. To assure that purchase of the premises is fully funded, Mr. Hagler has also submitted an affidavit attesting to contribute equity disproportionate to his ownership interest to cover any realty member's equity shortfall. BFA Attachment A includes the net worth statement of Daryl Hagler, which reveals sufficient resources for the stated levels of equity and to fund the balloon payment.

The RPPA provides that the purchase price is subject to the following: The Buyer shall only assume or payoff certain debts owed by the Seller (detailed in BFA Attachment E) for which the Buyer shall receive a dollar for dollar credit against the price equal to the aggregate amount existing as of the date thereof of such debt. The Buyer shall also receive a credit against the price for any other matters set forth in this Agreement for which Buyer is entitled to a credit.

Lease Rental Agreement

Premises:	A 124-bed nursing home located at 525 Beahan Road, Rochester, NY (Monroe County)
Lessor:	Westgate Realty Associates, LLC
Lessee:	Westgate Operations Associates, LLC
Term:	10-year term (Lease expires at the end of the month in which the 10 th anniversary of the date of commencement of the Lease occurs, unless sooner terminated).
Rental:	\$800,000 per year
Provisions:	Lessee shall pay, as additional rent before any fine, penalty, interest or cost may be added for nonpayment thereof, all taxes, assessments, water/sewer rents, rates and charges, charges for public utilities, excises, levies, license/permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCFs. Westgate Realty Associates, LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Consulting Service Agreement

Contractor:	Centers for Care, LLC d/b/a Centers Health Care (CHC)
Facility/Operator:	Rochester Center for Rehabilitation and Nursing
Administrative Services:	Oversight of all functions related to Accounts Receivables, Accounts Payables and Payroll; coordinate billing & collections systems; assure personnel are up-to-date on licensure requirements; assistance with the following: updating policy and procedure manual, regulatory monitoring, compliance/quality assurance, on-going education, ensuring staff follows procedures and regulatory requirements, training curriculum, accounting, budgeting, developing reports, audits, purchasing, pharmacy assistance, and clinical consulting services.
Term:	One Year with automatic one-year renewals.
Startup Fee:	-0-
Administrative Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the services. Common costs, including, but not limited to, utilities, rent, and the salaries of the Corporate Compliance Liaison, shall be allocated to each facility, including the facility that is the subject of this Agreement, that CHC provides the Services to in proportion to each facility's bed count. CHC has no intention of profiting from this agreement.

CHC also provides consulting services to the other RHCs owned and operated by Kenneth Rozenberg. Mr. Rozenberg is affiliated with CHC in that he has an ownership interest in the company. The draft Consulting Service Agreement provides that the established operator retains ultimate authority, responsibility and control in all the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant has submitted the current year (2017) operations and an operating budget, in 2019 dollars, for the first year after the change in operator, summarized below:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$225.22	\$5,378,813	\$186.01	\$5,328,256
Medicaid MC	\$196.22	\$298,058	\$186.01	\$339,096
Medicare FFS	\$310.56	\$554,658	\$620.43	\$1,328,341
Medicare MC	\$352.33	\$406,941	\$419.39	\$580,855
Commercial FFS	\$230.64	\$1,450,746	\$317.50	\$2,394,585
Private Pay/Other	\$539.87	\$328,780	\$357.50	\$261,333
Other	\$211.53	<u>\$129,035</u>	\$285.00	<u>\$208,335</u>
Total Revenues		\$8,547,031		\$10,440,801
<u>Expenses</u>				
Operating	\$240.36	\$8,617,302	\$198.64	\$8,540,943
Capital	\$24.14	\$865,392	\$23.54	\$1,012,002
Total Expenses	\$264.50	<u>\$9,482,694</u>	\$222.17	<u>\$9,552,945</u>
Net Income/(Loss)		(935,663)		887,856
Utilization (Days)		35,852		42,998
Occupancy		79.2%		95.0%

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

- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate plus assessments. The current year Medicare rates (FFS and Managed Care) reflect the actual daily rate experienced by the facility during 2017. The forecasted Year One Medicare rates are based on the facility's actual daily rate experience for 2018. The Private Pay rates were based on the current operator's average rates for 2017.
- The facility's projected utilization for Year One is 95% occupancy. It is noted that utilization for the past four years (2014-2017) has averaged around 69%. The applicant anticipates increased utilization by implementing a number of measures.
- The breakeven utilization is projected at 86.9% in the first year.
- Utilization by payor source for the current year (2017) and the first year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	66.62%	66.62%
Medicaid MC	4.24%	4.24%
Medicare FFS	4.98%	4.98%
Medicare MC	3.22%	3.22%
Commercial FFS	17.54%	17.54%
Commercial MC	0.00%	0.00%
Private Pay/Other	1.70%	1.70%
Other	1.70%	1.70%

Capability and Feasibility

The purchase price for the RHCF operations is \$1,000,000 and will be financed via members' equity of \$250,000 and a \$750,000 bank loan at 5% interest for a ten-year term and 25-year amortization period. The purchase price for the RHCF realty is \$9,000,000 and will be financed via members' equity of \$750,000 and a \$8,250,000 bank loan at 5% interest for a ten-year term and 25-year amortization period. Greystone has provided a letter of interest for the respective loans at the stated terms. Mr. Rozenberg and Mr. Hagler have each provided an affidavit attesting to fund the balloon payment on their respective loan if acceptable refinancing terms are not available when the balloon payment become due.

The working capital requirement is estimated at \$1,592,158 based on two months of first year expenses, to be funded with a \$796,079 working capital loan at 5% interest with a 5-year term and 5-year payout, and proposed member's equity of \$796,079. Greystone has submitted a letter of interest for the loan. Kenneth Rozenberg has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects net income from operations of \$887,856 in the first year. The budget appears reasonable.

BFA Attachment B is the pro forma balance sheet of Rochester Center for Rehabilitation and Nursing, which indicates positive members' equity of \$776,130.

BFA Attachment C, the Financial Summary of Creekview Nursing and Rehabilitation Center, indicates that for the 2016 – 2017 certified period, the facility had average negative working capital of \$3,728,936, an average negative equity position of \$8,208,942, and average net losses of \$1,224,499. As of September 30, 2018, the facility experienced increasing negative working capital (\$13.78 million) and shows a loss of close to \$2 million. Facility occupancy has been low (79.2% in 2017, average rate of 69% for 2014-2017), which has contributed to the facility's poor financial performance. The applicant plans to increase occupancy by accepting more clinically complex residents and implementing the above stated measures. The applicant intends to reduce expenses by analyzing staff expenses and re-working staff schedules to keep overtime expenses down, re-negotiating vendor contracts, and reducing bad debt expenses through an accounts receivable collection plan.

BFA Attachment D provides the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes. As shown, all facilities had average positive net income and average positive net asset positions from 2014 through December 31, 2017. Warren Center Rehabilitation had a loss of \$2.4 million in 2015 when the facility was operated by the County of Warren.

Mr. Greenberg acquired 95% ownership interest in the RHCf effective January 1, 2016. The facility's operations have since improved showing positive income for operations by 2017. Also, all facilities achieved an average positive working capital position except for the following: Brooklyn Center, University Nursing Home, Bushwick Center for Rehabilitation, Williamsbridge Manor, Warren Center for Rehabilitation and Richmond Center for Rehabilitation. The applicant indicated that the average negative working capital positions are attributable to accrued payroll and the continued positive net from operations of each facility enables the operator to satisfy all current obligations as they become due. During 2017 Brooklyn Center, University Nursing Home and Bushwick Center for Rehabilitation showed improvement in working capital position compared to the previous two years.

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

Attachments

BFA Attachment A	Westgate Operations Associates, LLC – Proposed Members Net Worth
BFA Attachment B	Westgate Realty Associates, LLC – Proposed Members Net Worth
BFA Attachment C	Westgate Operations Associates, LLC – Pro Forma Balance Sheet
BFA Attachment D	Creekview Nursing and Rehabilitation Center – Financial Summary 2015-2017
BFA Attachment E	Proposed Member's – Affiliated RHCf Financial Summary 2015-2017
FLHSA	RPPA Exhibit B – Debts
	Recommendation Memo

Application Number: 182015
Name of Agency: Lincare of New York, Inc.
Address: Albany
County: Albany
Structure: For-Profit Corporation

Description of Project

The applicant requests approval for an Asset Purchase of Anthem Health Services, Inc., a licensed home care services agency under Article 36 of the Public Health Law. The applicant seeks to operate the LHCSA business through its wholly-owned subsidiary; Lincare of New York, Inc. Lincare of New York, Inc., a business corporation, is currently approved as an operator of three LHCSAs (9338L002, 9338L003 and 9388L004). The applicant will merge the operations of Anthem Health Services, Inc. into their LHCSA.

Anthem Health Services, Inc. was previously approved as a home care services agency by the Public Health Council at its May 19, 1995 meeting and subsequently licensed 9721L001 effective July 06, 1995. Lincare Inc. acquired the assets of Anthem Health Services Inc. on September 12, 2013, and seeks to operate the LHCSA business through its wholly-owned subsidiary Lincare of New York, Inc.

The applicant authorized 100 shares of stock which are owned as follows:
Lincare Inc. – 100 shares

The Board of Directors of Lincare of New York, Inc. comprises the following individuals:
Crispin Teufel, CPA – Director
CEO, CFO, Secretary, Treasurer, Lincare, Inc.
Gregory G. McCarthy – Director
COO, Lincare, Inc.

Lincare Inc. authorized 1,000 shares of common stock and 1,000 shares of preferred stock, which are owned as follows:
Lincare Holdings Inc. – 500 Shares of Common Stock
500 Shares of Common Stock Unissued
1,000 Shares of Preferred Stock Unissued

500 shares of common stock and 1,000 shares of preferred stock remain unissued

Lincare Inc. d/b/a Anthem Health Services and Lincare Holdings, Inc. have mirror Board of Directors. The Board of Directors of Lincare Inc. d/b/a Anthem Health Services and Lincare Holdings, Inc. comprises the following individuals:
Crispin Teufel, CPA – Director
(Previously Disclosed)
Gregory G. McCarthy – Director
(Previously Disclosed)

Jens Luehring – Director
President, Chief Executive Officer, Chief
Financial Officer, Linde North America, Inc.

The Lincare Holdings Inc. has authorized 51,000 shares of stock which are owned as follows:
Linde North America Holdings Ltd – 50,100 Shares
900 Shares Unissued

An attestation was submitted by the applicant indicating that the none of the following entities, which either directly or indirectly own Linde North American Holdings, Ltd., has any direct control over the healthcare operations of Lincare of New York, Inc.: Linde PLC, Linde Holding GmbH, Linde Intermediate Holding AG, Linde AG, Linde UK Holdings Ltd., Commercium Immobilien and Beteiligungs – GmbH, The BOC Group Limited, Medispeed, Linde Canada Holdings Limited, BOC Holdings, Linde North American, Inc. and Linde Delaware Investments, Inc.

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

The applicant proposes to continue to serve (9338L002) the residents of the following counties from an office located at 8181 Seneca Tpk, Ste 2, Clinton, New York 13323.

- Broome
- Cayuga
- Chenango
- Cortland
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- St Lawrence
- Tioga
- Tompkins

The applicant proposes to continue to serve (9338L003) the residents of the following counties from an office located at 922 Spencer St., Syracuse, New York 13204.

- Cayuga
- Cortland
- Madison
- Onondaga
- Oswego
- Tompkins

The applicant proposes to continue to serve (9338L004) the residents of the following counties from an office located at 1160 Pittsford-Victor Road, Bldg K, Fl 1, Pittsford, New York 14534.

- Chemung
- Genesee
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Stueben
- Wayne
- Yates

The applicant proposes to serve the residents of the following counties from an office located at 57 Karner Road, Suite B, Albany, New York 12205.

- Albany
- Clinton
- Columbia
- Delaware
- Essex
- Franklin
- Fulton
- Greene
- Hamilton
- Montgomery
- Otsego
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Warren
- Washington
- Ulster

The applicant proposes to provide the following health care service:

- Nursing
- Durable Medical Supplies and Equipment

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

OPCHSM Recommendation: Contingent Approval

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

Application Number: 181303
Name of Agency: 2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville
Address: Getzville
County: Erie
Structure: Limited Liability Company

Description of Project

2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Menorah Campus Adult Home, Inc. was previously approved by the Public Health Council at its November 19, 1993 meeting and subsequently assigned license number 9460L001 effective March 1, 1994. The applicant is requesting approval to establish 2680 North Forest Road Operating Company, LLC as the new operator. This LHCSA will be associated with an Assisted Living Program to be operated by 2680 North Forest Road Operating Company, LLC. The LHCSA and the ALP will have identical ownership.

The single member of 2680 North Forest Road Operating Company, 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 will be restricted to serving the residents of the associated Assisted Living Program in 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
- Homemaker
- Housekeeper

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.

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

OPCHSM Recommendation

Approval, conditional upon:

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

Application Number: 182165
Name of Agency: Park Beach Assisted Living, LLC
Address: Rockaway Park
County: Queens
Structure: Limited Liability Company

Description of Project:

Park Beach Assisted Living, LLC, a proposed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Park Beach Assisted Living, LLC will be associated with the Assisted Living Program, Park Beach Assisted Living, LLC. The ownership of the LHCSA and the ALP are identical. The proposed members of Park Beach Assisted Living, LLC comprise of the following individuals:

- **Michael Silberberg**, JD Manager – **90%**
Managing Member, Berkley Properties LLC
Affiliations:
 - Parkway Healthcare LLC (New Jersey, 1/1/2004 – Present)
- **Hinda Burstein**, Administrator – **10%**
Administrator, Park Inn HFA

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

A seven-year review of the operations Parkway Healthcare LLC was performed as part of this review. The New Jersey Department of Health indicates no issues with the licenses of the healthcare facility/agency or healthcare professionals associated with this application.

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Queens county from an office located at 115-02 Ocean Promenade, Rockaway Park, New York 11694.

The applicant proposes to provide the following health care services:

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

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

OPCHSM Recommendation

Approval Contingent Upon:

1. Submission of a Certificate of Doing Business Under an Assumed Name, acceptable to the Department. [CHA]
2. Submission of a photocopy of the applicant's amended executed and completed Articles of Organization, acceptable to the Department. [CSL]

Approval Conditional Upon:

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

Application Number: 182187
Name of Agency: Danforth Assisted Living Program LLC
d/b/a Danforth Home Care Services Agency
Address: Hoosick Falls
County: Rensselaer
Structure: Limited Liability Company

Description of Project:

Danforth Assisted Living Program LLC d/b/a Danforth Home Care Services Agency, a limited liability company, requests approval for a change of ownership under Article 36 of the Public Health Law.

Glenn Mazula d/b/a Danforth Home Care Service Agency was previously approved by the Public Health Council on January 21, 2000, and subsequently assigned license number 0815L001, effective February 4, 2000. At that time Glenn Mazula was the sole proprietor of Danforth Home Care Service Agency.

This LHCSA is associated with the Assisted Living Program (ALP) change of ownership for Danforth Adult Care Center. The membership of the ALP and the LHCSA is identical.

The membership of Danforth Assisted Living Program LLC d/b/a Danforth Home Care Services Agency comprises the following individuals:

- **Jasna E. Chapman**, Member– 50%
Accountant, Glenn Mazula d/b/a Danforth Adult Care Center
- **Heather Merrills**, Member– 50%
Administrator, Glenn Mazula d/b/a Danforth Adult Care Center

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

The applicant proposes to serve the residents of Rensselaer county from an office located at 19 Danforth Street, Hoosick Falls, New York 12090.

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care Aide

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

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

OPCHSM Recommendation: Contingent Approval with Condition

Contingencies:

1. Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department. [LTC]

Conditions:

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



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: December 12, 2018

Subject: Certificate of Dissolution of Community Care Organization, Inc.

Community Care Organization, Inc. (CCO) closed operations and surrendered its Article 36 license on August 17, 2018. As such, they are requesting a formal dissolution. CCO does not have any assets or liabilities.

Pursuant to §1002 (c) of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the Certificate of Incorporation, the Plan of Dissolution and the Proposed Certificate of Dissolution.

Attachments

BY-LAWS
OF
COMMUNITY CARE ORGANIZATION, INC.

ARTICLE I
NAME, SEAL AND OFFICES

Section 1. Name. The name of this corporation shall be Community Care Organization, Inc. (the "Corporation").

Section 2. Seal. The Board of Directors of the Corporation (the "Board") may, at its pleasure, obtain a seal for the Corporation which may be in whatever form is desired by the Board.

Section 3. Offices. The Corporation may have offices in such places as the Board may from time to time determine or the purposes of the Corporation may require.

ARTICLE II
MEMBERSHIP

Section 1. Qualification. The Members of the Corporation shall be those individuals who serve as members of the Board of Directors of the Corporation.

Section 2. Meetings. There shall be an annual meeting of the Members, which shall be held on such date and at such time and place as are designated by the Chairperson of the sole member. Special meetings of the Members may be called at any time by the Members or by the President of the Corporation or the Secretary upon the written request of a majority of the entire number of directors of the Corporation.

Section 3. Action by the Members Without a Meeting. Whenever under provision of law, the Certificate of Incorporation or these By-Laws, the Members are required or permitted to take action by vote, such action may be taken without a meeting, upon the consent of the Members, which consent shall set forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the Members or the Members' authorized corporate officer, director, employee or agent by signing such consent or causing his signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Members. Consent thus given by the Members shall have the same effect as a unanimous vote of Members, and any certificate with respect to authorization or taking of any such action that is delivered to the Department of State of the State of New York shall recite that the authorization was by unanimous written or electronic consent.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall manage and control the affairs and property of the Corporation. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-Laws, or the laws of the State of New York, shall be and hereby are vested in and shall be exercised by the Board. The Board may, except as otherwise provided by the laws of the State of New York, delegate to committees of its own number, or to officers of the Corporation, such powers as it may see fit.

Section 2. Number and Election; Term of Office; Removal; and Resignation.

a. Number and Election. The Board shall consist of at least three (3) but no more than five (5) directors. The number of directors shall be fixed from time to time by the Members. No decrease in the number of directors shall serve to diminish the term of any director then in office. The directors shall be elected at the annual meeting of the Members. A vacancy on the Board arising at any time and from any cause may be filled by the Members.

b. Qualification. Directors shall be at least eighteen (18) years of age. Directors shall, at all times, be limited to individuals who are either (1) directors of the Lutheran Medical Center Community Foundation, Inc. or NYU Langone Health System (the "System"), (2) officers of Lutheran Medical Center Community Foundation, Inc. or the System, (3) members or employees of Lutheran Medical Center Community Foundation, Inc. or the System, or individuals approved by the System, or (4) a member or staff person of a not-for-profit community based service agency in the System catchment area located in the Borough of Brooklyn, State of New York. However, a majority of the directors must be from categories 1, 2 and 3 noted above. In the event that a director of the Corporation ceases to be a director, officer or employee of Lutheran Medical Center Community Foundation, Inc., the System, or ceases to be a member or staff person of a not-for-profit community based service agency, or approval of the individual by the System is withdrawn, then such termination shall constitute automatic resignation as a director of the Corporation.

c. Term of Office. The terms of office of all directors shall expire at the next annual meeting of the Members following their election and, in any event, each director shall continue in office until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. All directors are eligible for unlimited reelection.

d. Removal. Any director may be removed, with cause, by a majority vote of the directors then in office, provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken. Any director may be removed with or without cause by the Members.

e. Resignation. Any director may resign at any time by giving written notice of such resignation to the Chairperson of the Corporation.

Section 3. Meetings of the Board of Directors. Meetings of the Board of Directors, annual, regular or special, may be held at any place within or without the State of New York as may be fixed by the Board of Directors from time to time or as shall be specified in the respective notice or waivers of notice thereof. The Board of Directors may fix times and places for regular meetings of the Board of Directors and no notice of such meetings need be given. Special meetings of the Board of Directors may be called at any time as determined by the Board of Directors.

Notice of a meeting need not be given to a director or alternate director who submits a waiver of notice, in signed writing, via facsimile with a facsimile signature, or via electronic mail, whether before or after the meeting; who orally waives notice at the meeting; or who attends a meeting, in person or by proxy, without protesting lack of due notice. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board of Directors.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board of

Directors to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 4. Quorum. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business unless a greater proportion is required by applicable law or these By-Laws. As used in these By-Laws, the terms “entire Board” or “entire Board of Directors” shall mean the total number of directors which the Corporation would have if there were no vacancies.

Section 5. Action of the Board. The action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by applicable law or these By-Laws. Any member of the Board may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same time. Any Board action may be taken without a meeting if all members of the Board consent in writing.

Section 6. Adjournment. At any meeting of the Board, whether or not a quorum is present, a majority of the directors present may adjourn the meeting to another time and place without further notice to any absent director. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 7. Organization. At all meetings of the Board, the President of the Corporation, or, in his or her absence, the Vice-President, if one has been elected, shall preside. The Secretary

shall act as secretary at all meetings of the Board. In the absence of the Secretary, the presiding officer shall appoint any person to act as secretary of the meeting.

Section 8. Compensation. Directors shall serve without compensation for their services as such. Directors shall be allowed reimbursement for reasonable expenses, on resolution of the Board. The Board shall have the power, in its sole discretion, to contract with any director for services rendered to the Corporation (not including services rendered in his or her capacity as director) and to pay said director compensation appropriate to the value of such services.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the Corporation shall be the President, one or more Vice-Presidents, as the Board may from time to time deem necessary, the Secretary, the Treasurer, and the Board may by resolution designate and appoint such other officers with powers and duties not inconsistent with these By-Laws as the Board may from time to time determine. Any two or more offices may be held by the same individual, except the offices of President and Secretary. No instrument to be signed by more than one officer may be signed by one person in more than one capacity.

Section 2. Election, Term of Office, Qualifications and Removal. The President, all Vice-Presidents, the Secretary, and the Treasurer shall be elected at the annual meeting of the Board from among the directors of the Corporation. Each shall be elected for a term fixed by the Board, unless otherwise specified in these By-Laws, and each shall serve until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Any officer of the Corporation may be removed, with or without cause, by a vote of a majority of the directors then in office.

Section 3. Vacancies. Any vacancy in any office arising at any time from any cause may be filled for the unexpired term by a majority vote of the directors then in office.

Section 4. President: Powers and Duties. The President shall be the Chief Executive Officer of the Corporation and, subject to the control of the Board, shall have general care, supervision and direction of its affairs. The President shall sign contracts and other instruments in the name of the Corporation when so authorized or directed by the Board. The President shall have such authority, and shall perform all duties, ordinarily required of an officer in like position, and such other authority and duties as may be assigned by the Board.

Section 5. Vice President: Powers and Duties. At the request of the President, or in the event of his or her absence or disability, the Vice-President, if one has been elected, shall perform the duties and exercise the powers of the President and shall have and exercise general charge and supervision of the affairs of the Corporation subject to the control of the Board, and shall have such other powers as the Board may determine and perform such other duties as may be assigned to him or her by the Board.

Section 6. Secretary: Powers and Duties. The Secretary shall have charge of such books, documents and papers as the Board may determine, and shall have custody of the corporate seal, if any then exists. He or she shall attend and keep the minutes of all the meetings of the Board. He or she may affix the corporate seal, if any then exists, when so authorized or ordered by the

Board. The Secretary shall have such authority, and shall perform all duties, ordinarily required of an officer in like position.

Section 7. Treasurer: Powers and Duties. The Treasurer shall receive and have custody of all funds, money, property and securities of the Corporation and shall deposit the same in such depository or depositories as the Board shall designate. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation. The Treasurer shall have such authority, and shall perform such duties, ordinarily required of an officer in like position, and such other authority and duties as may be assigned by the Board. Whenever required by the Board, the Treasurer shall render a statement of his or her accounts. The Treasurer shall at all reasonable times exhibit his or her books and accounts to any officer or director of the Corporation. The Treasurer will annually at a meeting of the Board of Directors present a report showing in appropriate detail the reports required by the New York Not-For-Profit Corporation Law (“N-PCL”) § 172-b. The report shall be filed with the minutes of the meeting of the Board.

Section 8. Chair of the Board of Directors. The Chair of the Board of Directors (if any) shall preside at all meetings of the Members and of the Board of Directors at which the Chair is present and shall perform such other duties as the Board of Directors may designate. In the absence or inability of the President to act, the Chair of the Board of Directors shall perform the duties and may exercise the powers of the President. No employee of the Corporation shall serve as Chair of the Board.

Section 9. Compensation. Officers shall serve without compensation for their services as such. Officers shall be allowed reimbursement for reasonable expenses upon resolution of the

Board. The Board shall have the power, in its sole discretion, to contract with any officer for services rendered to the Corporation (not including services rendered in his or her capacity as director) and to pay said officer compensation appropriate to the value of such services.

ARTICLE V

COMMITTEES

Section 1. Executive Committee and Other Standing Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other Standing Committees to consist of at least three directors. Each member of the Executive Committee and any Standing Committees shall serve at the pleasure of the Board, which shall also have full discretion in determining the number of members of the Executive Committee and Standing Committees. The Executive Committee shall have and may exercise all of the powers and authority of the Board, to the extent allowed by applicable New York law. The Executive Committee shall notify the full Board of any actions it takes or decisions made within a reasonable time thereafter. Standing Committees shall have the powers specifically provided in the resolutions creating them which are not inconsistent with New York law, except that no such committee shall have the authority as to the following matters:

- a. submission to the Members of any action requiring the Members' approval under the N-PCL;
- b. filling vacancies in any committee;
- c. amending or repealing the By-Laws or adoption of new By-Laws; and
- d. amending or repealing any resolution of the Board of Directors which by its terms shall not be so amended or repealed.

Section 2. Committees of the Corporation. The Board may, from time to time and by a majority vote of the directors then in office, appoint committees for any purpose and may delegate to each such committee such powers as the Board may deem appropriate and which are not inconsistent with New York law. In appointing a committee of the Corporation, the Board shall appoint the chair of the committee, shall specify the term of the committee's existence, and shall define the committee's powers and duties. Each committee shall consist of at least one director and shall have the power to further delegate such powers if the Board so provides in appointing the committee. No such committees shall have the authority to bind the Board.

Section 3. Audit Committee. The Board of Directors shall establish an audit committee (the "Audit Committee"), which shall consist of at least three (3) independent directors (as defined in N-PCL § 102), and the President and Chief Executive Officer of the Corporation shall not be an ex officio member of the Audit Committee. The Audit Committee shall have responsibility for the functions set forth under N-PCL § 712-a.

Section 4. Quorum. A majority of all of the members of the Executive Committee, Audit Committee any Standing Committees, or any other committees established by the Board shall constitute a quorum at any meeting thereof.

Section 5. Procedures. Procedures of the Executive Committee, Audit Committee, any Standing Committees, and any other committees shall be governed by rules fixed by the Board. All committee members shall serve at the pleasure of the Board.

ARTICLE VI

AGENTS AND REPRESENTATIVES

The Board may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these By-Laws, and to the extent authorized or permitted by law.

ARTICLE VII

CONTRACTS, LOANS, CHECKS, BANK ACCOUNTS, AND INVESTMENTS

Section 1. Contracts. The Board, except as otherwise provided in these By-Laws, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to a specific instance. Unless authorized by the Board pursuant to this Article VII, Section 1, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily, for any purpose or to any amount.

Section 2. Loans. The Corporation shall not borrow money, whether by issuing notes, bonds or otherwise, except with the approval of the Board.

Section 3. Banks; Checks. The Board shall from time to time and as necessary select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money.

Section 4. Investments. The funds of the Corporation, as directed by the Board, may be retained in whole or in part in cash, or may be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities.

ARTICLE VIII

INDEMNIFICATION

The Corporation shall indemnify each director and each officer in a manner and to the fullest extent now or hereafter permitted by the Not-For-Profit Corporation Law of the State of New York (including the advancement of expenses).

ARTICLE IX

FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

ARTICLE X

AMENDMENTS

The Members shall have the sole power to make, alter, amend and repeal the By-Laws of the Corporation.

ARTICLE XI

CONFLICTS OF INTEREST

Section 1. Policy and Procedures. The Board of Directors shall adopt and maintain a conflict of interest policy (the "COI Policy") that complies with applicable New York State law and Internal Revenue Service requirements for Section 501(c)(3) organizations, and that adheres to requirements of N-PCL §§ 715-a–715-b, prohibiting transactions that create conflicts of

interest on the part of directors, officers and an employee of the Corporation with substantial influence over the affairs of the Corporation and who is notified of such status by the Corporation (“key employees”), with the interests of the Corporation and the fiduciary and corporate responsibilities of the directors, officers, and key employees. The COI Policy shall be reviewed at least every three (3) years and updated to reflect evolving practices and law in the area.

* * * *

Amended: January 1, 2016

**CERTIFICATE OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

Pursuant to § 1003 of the Not-for-Profit Corporation

I, Bret Rudy, MD, President of Community Care Organization, hereby certify:

1. The name of the corporation is Community Care Organization, Inc. (the "Corporation").
2. The Corporation was incorporated pursuant to New York Not-for-Profit Corporation Law on November 20, 1989.
3. The names and addresses of the directors and officers of the Corporation are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Bret Rudy, MD	President	315 7 th Avenue, NY, NY 10001
Daniel Widawsky	Treasurer	88 Lexington Avenue, NY, NY 10016
Richard Donoghue	Secretary	7604 Charles Place Drive, Kernersville, NC 27284

4. Dissolution of the Corporation was authorized by unanimous written consent of the Board of Directors.
5. The Corporation elects to dissolve.
6. At the time of dissolution, the Corporation is a charitable corporation.
7. The Corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.
8. When the Board of Directors of the Corporation approved the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.
9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Community Care Organization, Inc. this _____ day of _____, 2018.

Bret Rudy, MD
President

CERTIFICATE OF DISSOLUTION
OF
COMMUNITY CARE ORGANIZATION, INC.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

Filed by: Sheila Eisenberg, Esq.
Senior Counsel (Corporate)
NYU Langone Health
1 Park Avenue, 3rd fl.
New York, NY 10016

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF COMMUNITY CARE ORGANIZATION, INC.**

THE UNDERSIGNED, constituting all of the members of the Board of Directors (the "Board") of Community Care Organization, Inc. (the "Corporation"), do hereby adopt, consent to, confirm, approve and ratify the following resolutions in lieu of a meeting of the Board of Directors pursuant to Section 708(b) of the New York State Not-for-Profit Corporation Law:

WHEREAS, the Corporation closed the support services agency it operated as Lutheran Care at Home on August 17, 2018 in accordance with a closure plan approved by the New York State Department of Health; and

WHEREAS, as the Corporation has no intention of resuming operations, the Board of Directors has determined that it is in the best interest of the Corporation to dissolve.

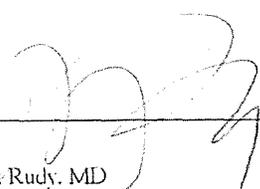
NOW, THEREFORE, BE IT:

RESOLVED, that the Board hereby authorizes and directs that Corporation be dissolved in accordance with the Plan of Dissolution attached hereto, which Plan of Dissolution is hereby approved; and it is further

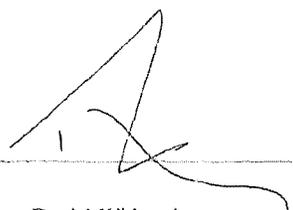
RESOLVED, that the President and the Treasurer of the Corporation (each, an "Authorized Officer") are each authorized to take any and all such actions that such Authorized Officer deems necessary, appropriate or advisable to effect the dissolution, including, without limitation, preparing and submitting any and all governmental, regulatory, judicial and/or third party filings necessary to obtain consents or approvals required to consummate the dissolution, including filing with the New York Secretary of State a Certificate of Dissolution.

RESOLVED, that this Written Consent may be executed in counterparts.

IN WITNESS WHEREOF, the undersigned directors have executed this Consent as of November 16, 2018.



Bret Rudy, MD



Daniel Widawsky



Richard Donoghue

**PLAN OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

Under Section 1001 of the New York Not-For-Profit Corporation Law

The Board of Directors of Community Care Organization, Inc. (the "Corporation") does hereby resolve that the Corporation be dissolved, and hereby authorize this Plan of Dissolution, pursuant to a Unanimous Written Consent dated November 15, 2018, wherein they adopted the following Plan of Dissolution:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is required of the New York State Department of Health, whose approval is attached hereto.
3. The Corporation has no assets or liabilities.
4. Within two hundred seventy days after the date on which the York State Office of the Attorney General approves the Plan of Dissolution, the Corporation shall carry out the Plan.

CERTIFICATION

I, Richard Donoghue, Secretary of Community Care Organization, Inc., hereby certify under penalties for perjury that the Plan of Dissolution was duly submitted and authorized by a unanimous vote of the Board of Directors.


Secretary

Dated: 11/19, 2018

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

December 7, 2018

Sheila M. Eisenberg
Senior Counsel (Corporate)
NYU Langone Health
New York, NY 10016

Re: Certificate of Dissolution of Community Care Organization, Inc.

Dear Ms. Eisenberg:

I have received your letter dated December 6, 2018, regarding the Certificate of Dissolution of Community Care Organization, Inc. for approval under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl.

**PLAN OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

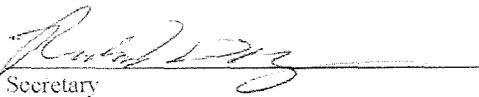
Under Section 1001 of the New York Not-For-Profit Corporation Law

The Board of Directors of Community Care Organization, Inc. (the "Corporation") does hereby resolve that the Corporation be dissolved, and hereby authorize this Plan of Dissolution, pursuant to a Unanimous Written Consent dated November 15, 2018, wherein they adopted the following Plan of Dissolution:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is required of the New York State Department of Health, whose approval is attached hereto.
3. The Corporation has no assets or liabilities.
4. Within two hundred seventy days after the date on which the York State Office of the Attorney General approves the Plan of Dissolution, the Corporation shall carry out the Plan.

CERTIFICATION

I, Richard Donoghue, Secretary of Community Care Organization, Inc., hereby certify under penalties for perjury that the Plan of Dissolution was duly submitted and authorized by a unanimous vote of the Board of Directors.


Secretary

Dated: 11/19, 2018

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 14, 2018.

Whitney Clark

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

CERTIFICATE OF INCORPORATION

OF

IWO

COMMUNITY CARE ORGANIZATION, INC.

APPROVED
AS TO FORM
CLERK *AC*
I.A.S. - 72

PURSUANT TO SECTION 402 OF THE NOT FOR PROFIT CORPORATION LAW

0078266

We, the undersigned, for the purpose of forming a corporation pursuant to NOT-FOR-PROFIT CORPORATION LAW, of the State of New York, hereby certify:

I

The name of the proposed corporation is

COMMUNITY CARE ORGANIZATION, INC.

00123

and is hereinafter referred to as the "Corporation".

II

The purpose for which the Corporation is formed and the business and object to be carried on and promoted by it, are as follows:

0078266

(a) To provide elderly persons, handicapped persons, the ill and convalescent with home health care, housekeeping, food services and eating facilities, and such other support services as may from time to time be necessary to meet their physical needs, to promote their health, happiness and usefulness in longer living, and to promote

their ability to remain in their home or to make a smooth transition to institutional living. The charges for such services are to be predicated upon the provision, maintenance and operation thereof on a non profit basis.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes, and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual.

(c) The corporation is a corporation as defined in the subparagraph (a) (5) of Section 102 of the NOT-FOR-PROFIT CORPORATION LAW. The Corporation is a type B NOT-FOR-PROFIT CORPORATION under section 201 of the NOT-FOR-PROFIT CORPORATION LAW. Pursuant to 404(a) of the NOT-FOR-PROFIT CORPORATION LAW, approval of a justice of the Supreme Court is attached.

III

The Corporation is empowered:

(a) To take and hold, by bequest, devise, grant, gift, purchase, exchange, lease, transfer or any other lawful means, funds and property of every kind and nature, without limitation as to amount or value, except such limitation, if any, as shall be specifically prescribed by law, and to hold, invest, reinvest, assign, loan, administer, use, expend, contribute, convey, sell, mortgage, lease or otherwise dispose of or devote the same or any part thereof, including income or capital, or both, for the advancement,

promotion, fostering or accomplishment of the aforesaid objects and a purposes, or any of them.

(b) To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement or agreements with any Federal, State, City or local municipality or any subdivision thereof, hereinafter referred to as "Governmental Body" and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing governmental grants or subsidy to carry out its purposes. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors, and assignees, so long as a mortgage on the Corporation's property is held by such governmental body.

(c) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation as shall qualify under Section 501 (c) (3) of the Internal Revenue Code: PROVIDED, however, that the Corporation shall

at all times have the power to convey any or all of its property to any governmental body to which it may then be indebted or otherwise obligated, upon approval of a Justice of the Supreme Court of this State of New York.

IV

If the Corporation receives a temporary loan or advance from any Governmental Body, as established by Law, it shall be authorized to enter into an agreement with the Secretary, Commissioner, or other authorized representative of such governmental body, providing for regulation with respect to rents, profits, dividends and disposition of property or franchises.

V

Nothing contained in the Certificate of Incorporation shall authorize the Corporation:

(a) to carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) to carry on any other activity not permitted to be carried on by a corporation exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code as now in effect or hereafter amended or a corporation contributions to which are deductible under Section 170 (c) (2) of the

Internal Revenue Code as now in effect or hereafter amended.

(c) to engage in or include among its purposes, any of the activities mentioned NOT-FOR-PROFIT CORPORATION LAW, Section 404 (b-t).

VI

The office of the Corporation is to be located in the County of Kings.

VII

The duration of the Corporation shall be perpetual.

VIII

By-Laws of the Corporation may be adopted by the Directors at any regular meeting or at any special meeting called for that purpose, so long as they are not inconsistent with the provisions of this Certificate, of any Regulatory Agreement between the Corporation and any Governmental Body, or the By-Laws of the organization. By-Laws adopted by the directors shall not become effective until approved by such Governmental Body where required.

IX

The number of directors of the Corporation shall be not less than three nor more than fifteen and they shall serve without compensation. They shall be elected by the original directors of the Corporation. The original directors (trustees) and the term for which each will serve, are set as follows:

<u>NAME ADDRESS</u>	<u>TERM</u>
Robert J. Walsh 452 - 54th Street Brooklyn, New York 11220	3 years
Ma Maakestad, R.N. 890 Shore Road Brooklyn, New York 11209	3 years
Rev. Norman L. Sindlesperger 882 Schuman Place Baldwin, New York 11510	3 years
Bonnie Klima-Olsen 730 - 67th Street Brooklyn, New York 11228	3 years
Miles Kucker 1845 East 31st Street Brooklyn, New York 11234	3 years

X

Directorship in the Corporation shall, at all times be limited to individuals who are either (1) Directors of the Foundation for Human Ecology, Brooklyn, New York, or Lutheran Medical Center, Brooklyn, New York, (2) Officers of

the Foundation for Human Ecology or Lutheran Medical Center, or (3) Members or Employees of the Foundation for Human Ecology or Lutheran Medical Center, or (4) a Member or Staff person of a not-for-profit community based service agency in the Lutheran Medical Center catchment area located in the Borough of Brooklyn, State of New York. However, a majority of the Board of Directors shall be from categories, 1, 2 and 3 noted above. In the event that a Director of the Corporation ceases to be a Director, Officer or Employee of the Foundation for Human Ecology or Lutheran Medical Center, or ceases to be a Member or Staff person of a Not-For-Profit community based service agency, then, such termination shall constitute automatic resignation as a Director of the Corporation.

The annual meeting shall be held on the 1st day of June of each year or as soon thereafter as the Board of Directors shall determine.

XI

By-Laws of the Corporation may be adopted by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles or of the Regulatory Agreement between the Corporation and any Governmental Body pursuant to Article III hereof.

XII

The names and residences of the subscribers to this Certificate of Incorporation are:

Robert J. Walsh
452 -54th Street
Brooklyn, N.Y. 11220

Miles Kuckèr
1845 - East 31st Street
Brooklyn, N.Y. 11234

Martha Maakestad, R.N.
8901 Shore Road
Brooklyn, N. Y. 11209

Bonnie Klima-Olsen
730 - 67th Street
Brooklyn, New York 11228

Rev. Norman L. Gindlesperger
882 Schuman Place
Baldwin, N. Y. 11510

XIII

All of the subscribers to this Certificate of Incorporation are of full age; all are citizens of the United States, and all of the persons named as a director of the Corporation are citizens of the United States and residents of the State of New York.

XIV

The Secretary of the State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the Corporation is 437 Bay Ridge Parkway, Brooklyn, New York, 11209

IN WITNESS WHEREOF we have made, subscribed and
acknowledged this Certificate of Incorporation, in
triplicate this 9th day of June 1989.

NAME AND ADDRESS

SIGNATURE

Robert J. Walsh
452 - 54th Street
Brooklyn, New York 11220

Robert J. Walsh

Martha Maakestad, R.N.
8901 Shore Road
Brooklyn, New York 11209

Martha Maakestad

Rev. Norman L. Gindlesperger
882 Schuman Place
Baldwin, New York 11510

Norman L. Gindlesperger

Bonnie Klima-Olsen
730 - 67th Street
Brooklyn, New York 11228

Bonnie Klima Olsen

Miles Kucker
1845 East 31st Street
Brooklyn, New York 11234

Miles Kucker

AFFIRMATION OF ATTORNEY

JOSEPH M. SUSSILLO, an attorney duly admitted to practice in the State of New York, under the penalty of perjury affirms:

That he is the attorney for the subscribers to the annexed Certificate of Incorporation of COMMUNITY CARE ORGANIZATION, INC., and

That no previous application for the approval of such Certificate by a Justice of the Supreme Court has ever been made.

DATED:

June 9, 1989

Joseph M. Sussillo
JOSEPH M. SUSSILLO

HON. ELLIOTT GOLDEN

, a Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the foregoing Certificate of Incorporation of COMMUNITY CARE ORGANIZATION, INC. and consent that same be filed.

DATED:

OCT 24 1989

Elliott Golden

June 26, 1989
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ARSAMS, ATTORNEY GEN.
STATE OF NEW YORK

10

Howard Holt
HOWARD HOLT
Associate Attorney

I.A.S.

Supreme Court: Kings County
~~Special Term~~, Part ~~71~~ 72
Brooklyn, New York



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

David Axelrod, M.D.
Commissioner

October 18, 1989

Lawrence A. Kirsch, Esq.
Gerald Weinberg, P.C.
90 State Street
Albany, New York 12207

RE: Certificate of Incorporation of
Community Care Organization, Inc.
Home Care Services Agency Licensure
Application #496

Dear Mr. Kirsch:

This is in response to your recent request for the Department of Health's consent to the filing of the Certificate of Incorporation for the above referenced corporation.

The proposed Certificate of Incorporation of Community Care Organization, Inc., dated June 9, 1989, has been given careful consideration as part of the Department of Health's review of the corporation's application for licensure as a home care services agency pursuant to Article 36 of the Public Health Law.

The proposed language of the corporation's purposes, as set forth in the subject Certificate of Incorporation, includes the following:

"To provide elderly persons, handicapped persons, the ill and convalescent with home health care, housekeeping, food services and eating facilities, and such other support services as may from time to time be necessary to meet their physical needs; to promote their health, happiness and usefulness in longer living, and to promote their ability to remain in their home or to make a smooth transition to institutional living."

The subject Certificate of Incorporation was submitted to the Department in order to comply with the Department's home care services agency licensure regulation at 10 NYCRR §765-1.10. The certificate meets this agency's requirements and we do not object to the original Certificate being filed with the Secretary of State at this time. You may submit this letter together with the executed original Certificate of Incorporation at the time you file such certificate with the Secretary of State.

This letter is not to be construed as an approval of the corporation's home care services agency licensure application nor shall it be construed as granting the corporation the approval to actually operate a home care services agency. The corporation must obtain all required approvals and be issued a home care services agency license by the Department, pursuant to Article 36 of the Public Health Law.

Very truly yours,

Richard N. Coutant

Richard N. Coutant
Attorney

tlh

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on,

at

M.

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209

To

Attorney(s) for

0078266

Index No.

Year 19

-13

COMMUNITY CARE ORGANIZATION, INC.

CERTIFICATE OF INCORPORATION

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address, Telephone
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209
(718) 836-8312 (718) SH-5-5850

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

02 PM '89

I W G

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 20 1989
AMT. OF CHECK \$ 30
FILING FEE \$
TAX \$
COUNTY FEE \$ 30
COPY \$
CERT REFUND \$
SPEC HANDLE \$

FILED

Handwritten signatures and initials

Handwritten initials: CPR

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 14, 2018.

Whitney Clark

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

NCR-26

080606000057

RESTATED CERTIFICATE OF INCORPORATION
OF
COMMUNITY CARE ORGANIZATION, INC.

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

- FIRST: The name of the corporation is Community Care Organization, Inc. (the "Corporation").
- SECOND: The Certificate of Incorporation of the Corporation was filed with the Department of State on November 20, 1989.
- THIRD: The Certificate of Incorporation is amended to effect one or more amendments authorized by the Not-For-Profit Corporation Law. The amendments effected by this Restated Certificate of Incorporation are as follows:
1. Article III (specifying the Corporation's powers) is hereby amended to add a new Subsection (b) to read as follows:

“(b) To do and perform any and all lawful acts and things which may be necessary or proper in connection with its objects and purposes either alone or in association with other corporations, associations, firms, governmental offices or agencies, political divisions or subdivisions, or individuals, all in such manner, except as otherwise provided by law, as in the judgment of the Corporation's directors will promote its objects and purposes.”
 2. Articles IV (authorizing the Corporation to enter into a regulatory agreement if it receives a temporary loan from a governmental body), VII (providing that the duration of the Corporation is to be perpetual), VIII (providing for the adoption of by-laws), X (providing for the qualification of directors of the Corporation and the date of the annual meeting of the Corporation), XI (providing for the adoption of by-laws), XII (naming the subscribers to the certificate of incorporation) and XIII (confirming the age and citizenship of the incorporators and the citizenship of the initial directors) are hereby deleted in their entirety, and the remaining Articles are renumbered accordingly.
 3. Former Article V (specifying the activities that the certificate of incorporation does not authorize the Corporation to undertake), which has been renumbered Article IV, is hereby amended and restated to correct the reference to Section 404 of the Not-For-Profit Corporation Law in subparagraph (c), such that subparagraph (c) shall read in its entirety as follows:

“(c) To engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404 (b-w).”

4. Former Article VI (specifying the location of the Corporation's office), which has been hereby renumbered Article V, is hereby amended and restated in its entirety to read as follows:

"The office of the Corporation is to be located in the City of New York, County of Kings and State of New York.

5. Former Article IX (specifying the number of the Corporation's directors, the manner of their election and the names and addresses of the original directors), which has been hereby renumbered Article VI, is hereby amended and restated in its entirety to read as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen and they shall serve without compensation."

6. Former Article XIV (designating the Secretary of State as the Corporation's agent for service of process and providing a post office address to which the Secretary of State shall mail a copy of any process served), which has been hereby renumbered Article VII, is hereby amended and restated in its entirety to read as follows:

"The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

c/o Lutheran Medical Center
Office of the General Counsel
150 55th Street
Brooklyn, NY 11220"

FOURTH: The text of the Restated Certificate of Incorporation of the Corporation is hereby restated, as amended, to read as follows:

I

The name of the proposed corporation is COMMUNITY CARE ORGANIZATION, INC. and is hereinafter referred to as the "Corporation".

II

The purpose for which the Corporation is formed and the business and object to be carried on and promoted by it, are as follows:

- (a) To provide elderly persons, handicapped persons, the ill and convalescent with care, housekeeping, food services and eating facilities, and such other support services as may from

time to time be necessary to meet their physical needs, to promote their health, happiness and usefulness in longer living, and to promote their ability to remain in their home or to make a smooth transition to institutional living. The charges for such services are to be predicated upon the provision, maintenance and operation thereof on a non profit basis.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual.

(c) The Corporation is a corporation as defined in the subparagraph (a) (5) of section 102 of the NOT-FOR-PROFIT CORPORATION LAW. The Corporation is a type B NOT-FOR-PROFIT CORPORATION under section 201 of the NOT-FOR-PROFIT CORPORATION LAW.

III

The Corporation is empowered:

(a) To take and hold, by bequest, devise, grant, gift, purchase, exchange, lease, transfer or any other lawful means, funds and property of every kind and nature, without limitation as to amount or value, except such limitation, if any, as shall be specifically prescribed by law, and to hold, invest, reinvest, assign, loan, administer, use, expend, contribute, convey, sell, mortgage, lease or otherwise dispose of or devote the same or any part thereof, including income or capital, or both, for the advancement, promotion, fostering or accomplishment of the aforesaid objects and purposes, or any of them.

(b) To do and perform any and all lawful acts and things which may be necessary or proper in connection with its objects and purposes either alone or in association with other corporations, associations, firms, governmental offices or agencies, political divisions or subdivisions, or individuals, all in such manner, except as otherwise provided by law, as in the judgment of the Corporation's directors will promote its objects and purposes.

(c) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation as shall qualify under Section 501 (c) (3) of the Internal Revenue Code; PROVIDED, however, that the Corporation shall at all times have the power to convey any or all of its property to any governmental body to which it may then be indebted or otherwise obligated, upon approval of a Justice of the Supreme Court of this State of New York.

IV

Nothing contained in the Certificate of Incorporation shall authorize the Corporation:

(a) To carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) To carry on any other activity not permitted to be carried on by a corporation exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code as now in effect or hereafter amended or a corporation contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code as now in effect or hereafter amended.

(c) To engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404 (b-w).

V

The office of the Corporation is to be located in the City of New York, County of Kings and State of New York.

VI

The number of directors of the Corporation shall not be less than three nor more than fifteen and they shall serve without compensation.

VII

The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

c/o Lutheran Medical Center
Office of the General Counsel
150 55th Street
Brooklyn, NY 11220

FIFTH: This Restated Certificate of Incorporation was authorized by the unanimous written consent of the members of the Corporation dated as of May 8, 2008.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by
Claudia Caine, its President, this 9th day of May, 2008.


COMMUNITY CARE ORGANIZATION, INC.

Name: Claudia Caine

Title: President

NCR-26

080606000057

RESTATED
CERTIFICATE OF INCORPORATION

OF

COMMUNITY CARE ORGANIZATION, INC.

UNDER SECTION 805 OF THE
NOT-FOR-PROFIT CORPORATION LAW

2008 JUN -6 AM 9:11

RD

icc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUN 06 2008

TAX \$ _____

BY: mmr

Kuniga

mmr

Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036

2008 MAY 15 AM 10:15

Drawdown RECEIVED

-6-

076



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 5, 2018

Jeanne Lee, VP, Senior Care and Home Care
Lutheran Care at Home
5407 Second Avenue
Brooklyn, NY 11220

RE: Closure Plan for Lutheran Care at Home

Dear Ms. Lee,

The New York State Department of Health has reviewed the revised closure plan submitted on February 8, 2018 for Lutheran Care at Home, Operating Certificate # 7001644. The plan satisfactorily meets the criteria set forth by the Department. It assures the appropriate disposition of patients to other care providers.

The Department approves the implementation of the closure plan toward successful transfer of all patients by May 12, 2018. At that time, you are required to relinquish your operating certificate to the Metropolitan Area Regional Office.

Staff from the Metropolitan Area Regional Office will work with you to monitor activities as the closure plan commences. Please contact Mr. Mikhail Pankov at 212-417-4921, if you have any questions or require assistance during this time. Thank you for your cooperation in ensuring the health and safety of your agency's patients throughout the transition period.

Sincerely,

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

cc: C. Johnson
M. Pankov
M. Hennessey
R. Gray
G. Macko



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 8, 2019

Subject: Proposed Dissolution of The Foundation of NewYork – Presbyterian/
Lawrence Hospital

The Foundation of NewYork – Presbyterian/Lawrence Hospital requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Foundation of NewYork – Presbyterian/Lawrence Hospital was formed with PHHPC approval in 2016 for the sole purpose of supporting the Lawrence Hospital Center and its charitable affiliates through fund-raising and other like charitable activities. With the full asset merger of NewYork – Presbyterian/Lawrence Hospital with and into The New York and Presbyterian Hospital (NY-P Hospital) on April 1, 2018, the corporation has become redundant to NY-P Hospital's Development Committee that supports NY-P Hospital and all its campuses. As such, the corporation now proposes to wind-up and dissolve.

The required documents: a Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the Board of Directors of the corporation and of the corporation's sole member authorizing the dissolution, are included for PHHPC's review. A letter from Anita R. Golbey, Vice President and Deputy General Counsel of NY-P Hospital, counsel to the applicant corporation, explaining the need and desire for the dissolution has been received and is enclosed. Lastly, please note the Verified Petition and Plan of Dissolution indicate that the applicant has never been funded, has never had any assets and, on the date of this application, has no assets or liabilities.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments



Anita R. Golbey, Esq.
Vice President and
Deputy General Counsel

Office of Legal Affairs
New York-Presbyterian Hospital
466 Lexington Avenue, Box 36
New York, NY 10017

TEL 212 746-1387
FAX 212 746-8603
golbeya@nyp.org

December 20, 2018

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: ***Dissolution of The Foundation of New York-Presbyterian/Lawrence Hospital***

Dear Ms. Leonard:

I am writing on behalf of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Corporation"), which is seeking Public Health and Health Planning Council's approval to proceed with a voluntary dissolution. The Corporation has no assets or liabilities.

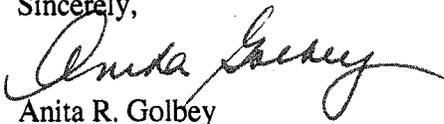
Please see the enclosed supporting documents:

- The Petition proposed to be submitted to the Attorney General in support of the Corporation's application for approval of the Plan of Dissolution
- The proposed Plan of Dissolution
- The proposed Certificate of Dissolution

The reason for the proposed dissolution is set forth in the enclosed Petition. With the full asset merger of New York-Presbyterian/Lawrence Hospital into The New York and Presbyterian Hospital ("NYP Hospital") on April 1, 2018, the Corporation is duplicative of the NYP Hospital's Development Committee that supports NYP Hospital and its campuses. By dissolving this Corporation, we are removing a redundancy.

If the Council should require any additional information, please do not hesitate to contact me by telephone (212) 746-1387 or e-mail golbeya@nyp.org.

Sincerely,



Anita R. Golbey

ARG:jmg
Enclosures

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF
CERTIFICATE OF DISSOLUTION WITHOUT ASSETS**

-----X
In the Matter of the Application of
The Foundation of
NewYork-Presbyterian/Lawrence Hospital
For Approval of Certificate of
Dissolution pursuant to
Section 1002 of the Not-for -Profit
Corporation Law.
-----X

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
44 South Broadway, White Plains, NY 10601

Petitioner, The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") by Karen Westervelt, President of the Corporation, for its Verified Petition, respectfully alleges:

1. The Corporation, whose principal address is located in the county of Westchester, was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 7, 2016. Copies of the Certificate of Incorporation and the complete and current By-laws of the Corporation are attached as Exhibit I.
2. The names, addresses and titles of the Corporation's directors and officers are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Lisa Smith Barr	Director	8 Governors Road Bronxville, NY 10708
Mary Taylor Behrens	Director	303 Pondfield Road Bronxville, NY 10708
Michael Fosina	Director	55 Palmer Avenue Bronxville, NY 10708
Laura Forese, MD	Director	525 East 68 th Street New York, NY 10065

<u>Name</u>	<u>Title</u>	<u>Address</u>
Kimlee Roldan-Sanchez	Director	525 East 68 th Street New York, NY 10065
Karen Westervelt	President	466 Lexington Avenue New York, NY 10017
Gary Zuar	Treasurer	466 Lexington Avenue New York, NY 10017
Mary Braunsdorf	Secretary	525 East 68 th Street New York, NY 10065

3. The purposes for which the Corporation was organized are set forth in its Certificate of Incorporation at paragraph THIRD thereof and are as follows:

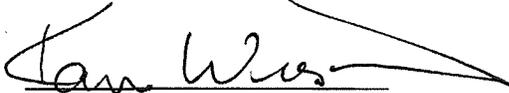
“The Corporation is organized and shall be operated exclusively for the charitable purposes of benefiting and supporting Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital (“NYP/Lawrence Hospital”), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the “Code”), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the “Supported Organizations”), and of improving the public health and well-being of the community in which the Corporation functions, by:

1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively “Funds”) by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and

3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.”
4. The Corporation is a charitable corporation as defined under the Not-for-Profit Corporation Law.
5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit II (the “Plan”).
6. With the full asset merger of NewYork-Presbyterian/Lawrence Hospital with and into The New York and Presbyterian Hospital (“NYP Hospital”) on April 1, 2018, the Corporation has decided to dissolve because it deems its existence to be duplicative of the NYP Hospital’s Development Committee that supports NYP Hospital and its campuses. The Corporation’s dissolution will remove a redundancy.
7. The Board of Directors, by unanimous written consent dated September 26, 2018, adopted the Plan, and authorized the filing of a Certificate of Dissolution. The taking of such actions, certified by the Secretary, is attached as Exhibit III.
8. After the Board of Directors approved the Plan, the sole member received and reviewed it and by unanimous written consent dated December 7, 2018 approved adoption of the Plan. Such approval, certified by the Secretary, is attached as Exhibit IV.
9. The Corporation has no assets or liabilities as of the date hereof. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
10. The Corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.
11. Copies of any governmental approvals to the Plan, including the New York State Public Health and Health Planning Council, are set forth in the Plan and attached to the Certificate of Dissolution.
12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of The Foundation of NewYork-Presbyterian/Lawrence Hospital, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this 17th day of December, 2018, by

A handwritten signature in black ink, appearing to read "Karen Westervelt", written over a horizontal line.

Signature

Karen Westervelt, President

**PLEASE NOTE - THE
SIGNATURE MUST BE
VERIFIED - SEE NEXT PAGE**

12.10.18

Verification and Certification

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

Karen Westervelt, being duly sworn, deposes and says:

I am the President of The Foundation of NewYork-Presbyterian/Lawrence Hospital, the Corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the Corporation's sole member.


Signature

Sworn to before me this
17th day of December, 2018.


Notary Public

DIVYA S. SATYAPRIYA
Notary Public, State of New York
No. 01SA6322997
Qualified in New York County
Commission Expires April 13, 2019

EXHIBIT I

CSC 45
DRAW DOWN

160307000502

CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

Under Section 402 of the
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is The Foundation of New York-Presbyterian/Lawrence Hospital (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (A) The Corporation is organized and shall be operated exclusively for the charitable purposes of benefiting and supporting Lawrence Hospital Center, doing business as New York-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital"), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the "Code"), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the "Supported Organizations"), and of improving the public health and well-being of the community in which the Corporation functions, by:

1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively "Funds") by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and
3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the

NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(B) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (A) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

FOURTH: (A) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to: (i) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (n), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(B) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent

permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYP/Lawrence Hospital and/or one or more subsidiaries or affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYP/Lawrence Hospital, its subsidiaries and/or affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of Westchester within the State of New York.

ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Mary Taylor Behrens	303 Pondfield Road Bronxville, NY 10708
Michael Fosina	55 Palmer Avenue Bronxville, NY 10708
Laura L. Forese	525 East 68 th St. New York, NY 10065
Kimlee Roldan-Sanchez	525 East 68 th St. New York, NY 10065
Lisa A. Smith	8 Governors Road Bronxville, NY 10708

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

The Foundation of New York-Presbyterian/Lawrence Hospital
c/o New York-Presbyterian/Lawrence Hospital
55 Palmer Avenue
Bronxville, New York 10708
Attention: President

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 11th day of September, 2015.

By: 
Name: Kimlee Roldan-Sanchez, Sole Incorporator

Address: 525 East 68th St.
New York, NY 10065



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

REVISED *

February 24, 2016

Kimlee Roldan-Sanchez
Vice President and Chief Administrative Officer
525 East 68th Street, Box 208
New York, New York 10021

Re: Certificate of Incorporation of The Foundation of New York-Presbyterian/Lawrence
Hospital

Dear Ms. Roldan-Sanchez:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 10th day of December, 2015, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Incorporation of The Foundation of New York-Presbyterian/Lawrence Hospital, *dated September 11, 2015.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

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160307000502

CERTIFICATE OF INCORPORATION
OF

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

Under Section 402 of the
New York Not-for-Profit Corporation Law

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1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 07 2016

TAXS _____

BY: McC

West

Filer: Anita Golbey
525 East 68th Street (Box 88)
New York, NY 10065

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**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

These corporate Bylaws of The Foundation of NewYork-Presbyterian/Lawrence Hospital (these "Bylaws"), which are dated as of September 27, 2018 (the "Effective Date"), set out in their entirety the corporate Bylaws of The Foundation of NewYork-Presbyterian/Lawrence Hospital.

Whenever a personal pronoun is used, it should be interpreted to refer to persons of either gender.

**ARTICLE I
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE
CORPORATION**

Section 1. Name

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation" or the "Foundation").

Section 2. Principal Office

The principal office of the Corporation shall be located in the Village of Bronxville, County of Westchester, State of New York.

Section 3. Purposes

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code (the "Code"), and in furtherance thereof, the Foundation shall:

(a) In accordance with applicable law, the Certificate of Incorporation and the provisions of these Bylaws, support, promote and further the charitable activities and purposes of its Member by receiving, maintaining and distributing funds and other assets and administering and applying the income and principal thereof for the charitable purposes of its Member or any subsidiary thereof, and, in furtherance thereof, take and hold by bequest, devise, gift, grant, contribution, purchase, lease or otherwise, any property, real or personal, or any interest therein, and

sell, convey or otherwise dispose of any such property and invest, reinvest or deal with the principal or the income thereof in such manner as will best promote the purposes of the Foundation and its Member;

(b) Promote the Member in the community; and

(c) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the New York Not-for-Profit Corporation Law ("NPCL") in furtherance of accomplishing the foregoing charitable purposes.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

Section 4. Use of Income

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

Section 5. Further Restrictions

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

Section 6. Business Without Profit

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

ARTICLE II
MEMBER

Section 1. Member

The sole member of the Corporation shall be The New York and Presbyterian Hospital d/b/a NewYork-Presbyterian Hospital (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

Section 2. Power and Rights

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);
- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;

(l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;

(m) to appoint and/or remove a Director of the Foundation;

(n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;

(o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and

(p) to approve a liquidation, dissolution, or winding up of the Foundation.

Section 3. Annual Meeting

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

Section 4. Special Meetings

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

Section 5. Notice of Meeting

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

Section 6. Action by the Member

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

Section 7. Quorum

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

Section 8. Action Without a Meeting

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

Section 9. Minutes

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.

Section 10. Termination of Member

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Governance

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

Section 2. Composition of Board of Directors

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member.

(b) The President of the Member shall serve as an ex-officio member of the Board, with vote.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve on the Board of Directors, including as to termination, removal and resignation.

Section 3. Term of Office of Board of Directors

Each Director shall be elected by the Member to a term of office of two (2) years, with the initial term of each Director to begin on the Effective Date. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

Section 4. Qualifications and Nomination

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member..

Section 5. Election of Directors

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

Section 6. Filling of Vacancies

Vacancies occurring on the Board of Directors, for any reason, may only be filled by the Member.

Section 7. Resignation and Removal of Directors

(a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

(b) Any Director may be removed with or without cause by the Member.

(c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

Section 8. Meetings of the Board of Directors

(a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.

(b) Regular business meetings of the Board of Directors shall be held as may be determined by the President or the Board of Directors, at such place within or without the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.

(c) Special Meetings of the Board of Directors may be called at any time by the President or Secretary of the Corporation. A special meeting called by the President shall be held at such time as deemed appropriate by the President. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.

(d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

Section 9. Action Without a Meeting

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee,

including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

Section 10. Minutes of Meetings

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

Section 11. Quorum and Voting Requirements

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants, fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VII of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

Section 13. Policies

Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt such policies as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

**ARTICLE IV
OFFICERS**

Section 1. Officers

(a) The Officers shall include a President (who shall be the Chief Executive Officer), a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. No officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer."

(c) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or

when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(d) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

ARTICLE V INDEMNIFICATION

Section 1. Indemnification

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase "liability and reasonable expenses" shall include, but shall not be limited to, attorneys' fees, reasonable expenses,

amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase "liability and reasonable expenses" shall include attorneys' fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or

by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

Section 2. Insurance

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

Section 3. Right Not Exclusive

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

**ARTICLE VI
FISCAL YEAR**

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

**ARTICLE VII
EFFECT OF AMENDMENT OF BYLAWS**

These Bylaws shall supersede all former Bylaws of the Corporation, which are hereby revoked, canceled and rendered null and void.

**ARTICLE VIII
WRITTEN NOTICE; WAIVER OF NOTICE**

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

**ARTICLE IX
CONSTRUCTION OF BYLAWS**

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

ARTICLE X
AMENDMENTS

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

EXHIBIT II

EXHIBIT II

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of NewYork-
Presbyterian/Lawrence Hospital

December 17, 2018
(Date)

EXHIBIT III

**CERTIFICATE OF THE SECRETARY OF THE
FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

I, Mary Braunsdorf, a member of the Bar of the State of New York, certify that the following is true:

1. I am the duly elected, qualified and acting Secretary of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Foundation"), a corporation duly organized and existing under the laws of the State of New York.
2. On September 26, 2018, the Board of Directors of the Foundation took the following action by unanimous written consent:
 - A. Approved the dissolution of the Foundation pursuant to the Plan of Dissolution, substantially in the form attached as Exhibit A, in accordance with the New York Not-for-Profit Corporation Law ("NPCL"); and
 - B. In connection therewith, authorized and directed the Officers of the Foundation to take all such further action that they deem necessary, appropriate or advisable in order to consummate the Dissolution.

IN WITNESS WHEREOF, I have set my hand on this 17th day of December, 2018.


Mary Braunsdorf

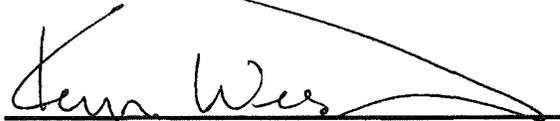
EXHIBIT A

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of NewYork-
Presbyterian/Lawrence Hospital

December 17, 2018
(Date)

EXHIBIT IV

**CERTIFICATE OF THE SECRETARY OF THE
FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

I, Mary Braunsdorf, a member of the Bar of the State of New York, certify that the following is true:

1. I am the duly elected, qualified and acting Secretary of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Foundation"), a corporation duly organized and existing under the laws of the State of New York.
2. On December 7, 2018, the sole member of the Foundation, New York-Presbyterian Hospital, took the following action by unanimous written consent:
 - A. Authorized and approved the dissolution of the Foundation pursuant to the Plan of Dissolution, substantially in the form attached as Exhibit A, in accordance with the New York Not-for-Profit Corporation Law ("NPCL"); and
 - B. In connection therewith, authorized and directed the Officers of the Foundation to take all such further action that they deem necessary, appropriate or advisable in order to consummate the Dissolution.

IN WITNESS WHEREOF, I have set my hand on this 7th day of December, 2018.


Mary Braunsdorf

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of NewYork-
Presbyterian/Lawrence Hospital

December 17, 2018
(Date)



**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed with the Department of State on

March 7, 2016

THIRD: The name and address of each officer and director of the corporation is:

Lisa Smith Barr, 8 Governors Road, Bronxville, NY 10708
Mary Taylor Behrens, 303 Pondfield Road, Bronxville, NY 10708
Michael Fosina, 55 Palmer Avenue, Bronxville, NY 10708
Laura Forese, MD, 525 East 68th Street, New York, NY 10065
Kimlee Roldan-Sanchez, 525 East 68th Street, New York, NY 10065

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.
 no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x 
(Signature)

Karen Westervelt

(Print or Type Name of Signer)

President

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Karen Westervelt
Address: 466 Lexington Avenue, Box 23
City, State and Zip Code: New York, New York 10017

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 11, 2019

Subject: Proposed Dissolution of The Foundation of NewYork – Presbyterian/
Queens

The Foundation of NewYork – Presbyterian/Queens requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Foundation of NewYork – Presbyterian/Queens was formed on February 25, 1987 as BMA Medical Foundation, Inc. for charitable, educational and scientific purposes, including clinical study, research, publication and teaching, and to solicit grants, contracts and funds from various sources, to advance knowledge regarding the prevention and treatment of disease. The applicant's certificate of incorporation was amended twice subsequently and its purposes focused on fund-raising to render assistance and make grants to The New York Hospital Medical Center of Queens. With the full asset merger of NewYork – Presbyterian/Queens with and into The New York and Presbyterian Hospital (NY-P Hospital), the foundation has become redundant to NY-P Hospital's Development Committee that supports NY-P Hospital and all its campuses. As such, the foundation now proposes to wind up and dissolve.

The required documents: a Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the board of directors of the corporation and of the corporation's sole member authorizing the dissolution, are included for PHHPC's review. A letter from William P. Wissemann, Secretary of the applicant corporation, explaining the need and desire for the dissolution, has been received and is enclosed. Please note that, on the date of this application, the applicant has no assets or liabilities.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments.

December 10, 2018

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Coming Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: *Dissolution of The Foundation of NewYork-Presbyterian/Queens*

Dear Ms. Leonard:

The Foundation of NewYork-Presbyterian/Queens (the "Corporation") is seeking Public Health and Health Planning Council's approval to proceed with a voluntary dissolution. The Corporation has no remaining assets or liabilities.

Please see the enclosed supporting documents:

- The Petition proposed to be submitted to the Attorney General in support of our application for approval of the Plan of Dissolution
- The proposed Plan of Dissolution
- The proposed Certificate of Dissolution

The reason for the proposed dissolution is set forth in the enclosed Petition. In brief, the Corporation deems its existence to be duplicative to the Development Committee that supports NewYork-Presbyterian/Queens. By dissolving this Corporation, we are removing a redundancy.

If the Council should require any additional information, please do not hesitate to contact me by telephone (718-670-1044) or e-mail (wpwissem@nyp.org).

Sincerely,



William P. Wissemann

Secretary

Proposed Petition

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF
CERTIFICATE OF DISSOLUTION W/OUT ASSETS**

-----X
In the Matter of the Application of
The Foundation of : VERIFIED PETITION
NewYork-Presbyterian/Queens
For Approval of Certificate of
Dissolution pursuant to :
Section 1002 of the Not-for -Profit
Corporation Law. :
-----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau Transactions Section
28 Liberty Street
New York, NY 10005

Petitioner, The Foundation of NewYork-Presbyterian/Queens by Karen Westervelt, President of the corporation, for its Verified Petition alleges:

1. The Foundation of NewYork-Presbyterian/Queens, whose principal address is located in the county of Queens, was incorporated pursuant to New York's Not-for-Profit Corporation Law on February 25, 1987. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit I.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

Name	Title	Address
Karen Westervelt	Director/President	466 Lexington Ave., New York, NY 11017
Gary J. Zuar	Director/Treasurer	466 Lexington Ave., New York, NY 11017
Jaclyn Mucaria	Director	56-45 Main St., Flushing, NY 11355
William P. Wissemann	Secretary	56-45 Main St., Flushing, NY 11355

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation [or relevant amendment] at paragraph Third thereof and are as follows:

“The purposes for which the Corporation is formed are charitable, educational and scientific in nature and more particularly:

- A. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the NFPCL or any other law of the State of New York, to render assistance and make grants to The New York Hospital Medical Center of Queens (now known as NewYork-Presbyterian/Queens), a New York State not-for-profit corporation.
- B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.
- C. To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.
- D. To borrow money, contract, incur debt, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.
- E. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to prevention and treatment of disease.
- F. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.”

4. The corporation is a charitable corporation.
5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit II (the “Plan”).
6. The corporation is dissolving because the corporation deems its existence to be duplicative to the Development Committee that supports NewYork-Presbyterian/Queens. By dissolving this corporation, we are removing a redundancy. The corporation is not aware of any ongoing or completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years nor has the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.
7. The Board of Directors by unanimous written consent dated October 17, 2018 adopted a

resolution approving the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary, is attached hereto as Exhibit III.

8. After the Board of Directors approved the Plan, the sole member received and reviewed it and adopted a resolution approving the Plan. Such resolution, certified by the Secretary, is attached hereto as Exhibit IV.

9. The corporation has no assets or liabilities as of the date hereof.

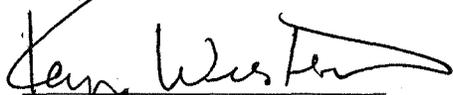
10. The corporation has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, if required.

11. Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.

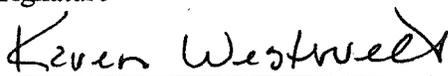
12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of The Foundation of New York-Presbyterian/Queens, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 21st day of DECEMBER, 2018, by



Signature



Karen Westervelt
President

**PLEASE NOTE - THE
SIGNATURE MUST BE
VERIFIED - SEE NEXT
PAGE**

1362L/01-27-87-RAW

CERTIFICATE OF INCORPORATION

OF

BMA MEDICAL FOUNDATION, INC.

(Pursuant to Section 402 of the Not-for-Profit
Corporation Law of The State of New York)

WE, the undersigned, natural persons over the age of
eighteen years, desiring to form a corporation pursuant to the
provisions of the Not-for-Profit Corporation Law of the State
of New York, hereby certify as follows:

FIRST: The name of the corporation is BMA MEDICAL
FOUNDATION, INC. (hereinafter sometimes referred to as the
"Corporation").

SECOND: The Corporation is a corporation as defined
in subparagraph (a)(5) of Section 102 of the Not-for-Profit
Corporation Law of the State of New York and is a type B
corporation as defined in Section 201(b) of said law.

THIRD: The purposes for which the Corporation is
formed are charitable, educational and scientific in nature and

more particularly:

- A. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to the prevention and treatment of disease.
- B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the corporate purposes.
- C. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have the following powers:

- A. To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, in-

cluding shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.

B. To prepare for publication, publish or cause to be published, produce, manufacture, distribute, disseminate, exhibit, show or furnish for exhibition or showing, sponsor or otherwise promote or develop, directly or indirectly, such books, pictures, magazines, papers, pamphlets and other printed matter and such lectures, performances, exhibitions, motion pictures, radio programs, television programs and the like as may be necessary, suitable or convenient for carrying out the lawful purposes of the Corporation.

C. To borrow money, contract debts, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.

D. In addition to the foregoing and in furtherance of its purposes as set forth above, the Corporation shall have all of the powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit grants and contributions for corporate purposes subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

FIFTH: Nothing herein contained shall authorize or be construed as authorizing the Corporation to practice medicine as defined in Article 131 of the Education Law of the State of New York. Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-for-Profit Corporation Law, Section 404 (b-n); (p-s); (u). Nothing herein contained shall authorize the Corporation to operate a hospital or to provide hospital service or health related service as defined in Article 28 of the Public Health Law of the State of New York. Nothing herein shall authorize the Corporation to operate or maintain an institution of higher learning or to grant degrees or to do any other thing for which a license, certification or other similar approval is required under the Education Law of the State of New York.

SIXTH: The Corporation shall be empowered to solicit funds from the public.

SEVENTH: The Corporation is not to be organized for the pecuniary profit of its directors, officers or members nor may it issue stock or deliver dividends. All income and earnings of the Corporation shall be used exclusively for corporate purposes. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any organization or individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed to such organization or organizations organized and operated exclusively for charitable, educational or health care purposes which shall, at that time, qualify as an exempt organ-

ization or exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended ("the Code"). All of the foregoing shall be subject to the approval of a Court of competent jurisdiction.

NINTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propoganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code as amended or the corresponding provision of any future United States Internal Revenue law, during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision) and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

TENTH: In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Code and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to

such tax under Section 4944 of the Code or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal Tax Laws.

ELEVENTH: The principal office of the Corporation shall be located in the County of Queens, State of New York.

~~TWELFTH: The names and resident addresses of the~~
initial directors of the Corporation, all of whom are citizens of the United States and residents of the State of New York are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Joe Dwek, M.D.	182-18 Henley Road Jamaica, New York 11432
Lawrence Faltz, M.D.	29 Maplewood Street Larchmont, New York 10538
Chaim Charytan, M.D.	85 Verdun Avenue New Rochelle, New York 10804

THIRTEENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o Garfunkel, Wild & Travis, P.C., 175 Great Neck Road, Great Neck, New York 11021, Attn: BMA.

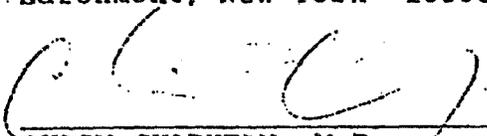
IN WITNESS WHEREOF, the undersigned incorporators
being all of full age and being all citizens of the United
States and residents of the State of New York have signed this
certificate the 3 day of November, 1986 and affirm that
the statements herein are true under the penalty of perjury.



JOE DWEK, MD
182-18 Henry Road
Jamaica, New York 11432



LAWRENCE FALTZ, M.D.
29 Maplewood Street
Larchmont, New York 10538



CHAIM CHARYTAN, M.D.
85 Verdun Avenue
New Rochelle, New York 10804

CONSENT TO INCORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, of the ^{11th} ~~Tenth~~ Judicial District, wherein is located the principal office of the Corporation hereby approves the within Certificate of Incorporation of BMA MEDICAL FOUNDATION, INC. and the filing hereof.

Dated: 2/9 . 1987
JAMAICA . New York

Edwin Kassoff
JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK 11th
~~TENTH~~ JUDICIAL DISTRICT

MON. EDWIN KASSOFF

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Attorney General

Nov. 25, 1986
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ADAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
Associate Attorney

461936

461936

Trans

D. S. C.

STATE OF NEW YORK
DEPARTMENT OF STATE

RECEIVED FEB 25 1987

AMT. OF CHECK
PAYING FEE

\$57
\$50

*James
and
Kathleen
Kupat*

FILED

CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC

FILED

GARFUNKEL, WILD & TRAVIS, P.C.
ATTORNEYS AT LAW
175 GREAT NECK ROAD
GREAT NECK, N. Y. 11021
15161 466-3090

FILED

892594

SUPPLEMENTARY
OFFICE OF THE
EX-TERRITORY OFFICE

87 FFR-6 P3:46

120725000 516

E-12

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

WE, THE UNDERSIGNED, being the President and a Director of BMA Medical Foundation, Inc. hereby certify that:

- FIRST** The name of the Corporation is BMA MEDICAL FOUNDATION, INC.
- SECOND** The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
- THIRD** The Corporation is a corporation as defined in Section 102(a)(5) of the NFPCL. The Corporation is a Type B corporation under Section 201 of the NFPCL shall remain a Type B corporation after this amendment is effectuated.
- FOURTH** Paragraph First of the Certificate of Incorporation relating to Corporation's name is amended and restated, in its entirety, as follows:
- "FIRST: The name of the Corporation is New York Hospital Queens Foundation, Inc."
- FIFTH** Paragraph Third of the Certificate of Incorporation relating to the purposes of the Corporation is amended and restated, in its entirety, as follows:
- "THIRD: The purposes for which the Corporation is formed are charitable, educational and scientific in nature and more particularly:
- A. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the NFPCL or any other law of the State of New York, to render assistance and make grants to The New York Hospital Medical Center of Queens, a New York State not-for-profit corporation.
 - B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.

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- C To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.
- D. To borrow money, contract, incur debt, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.
- E. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to prevention and treatment of disease.
- F. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes."

SIXTH The third sentence of Paragraph Fifth of the Certificate of Incorporation relating unauthorized activities is amended and restated, in its entirety, as follows:

"Nothing in the Certificate of Incorporation shall authorize the Corporation to either: (i) establish, operate, or maintain a hospital, or to provide hospital services or health related services or to operate a home care services agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law of the State of New York, as amended; or (ii) establish, operate, construct, lease or maintain an adult home, enriched housing program, or residence for adults, as provided by Article 7 of the Social Services Law of the State of New York, as amended, or otherwise raise or obtain any funds, contributions or grants from any source for any such purpose."

SEVENTH Paragraph Eighth of the Certificate of Incorporation relating to the dissolution of the Corporation is amended and restated, in its entirety, as follows:

"**EIGHTH:** In the event of dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed to The New York Hospital Medical Center of Queens to be used for substantially similar purposes, subject to the approval of a court of competent jurisdiction upon application of the Corporation's Board of Directors, provided that no such distribution shall be made to The New York Hospital Medical Center of Queens unless The New York Hospital Medical Center of Queens shall at that time qualify as an organization described in Section 501(c)(3) of the Code. Any of such assets not so distributed shall be distributed to such other charitable and educational organizations as shall

qualify under Section 501(c)(3) of the Code, subject to the approval of a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation."

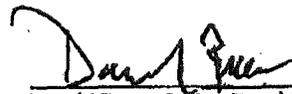
EIGHTH Paragraph Thirteenth of the Certification of Incorporation relating to service of process on the Corporation is amended and restated, in its entirety, as follows:

"**THIRTEENTH:** The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355."

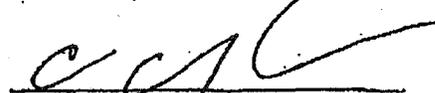
NINTH The amendment was authorized by the unanimous written consent of the members of the Board of Directors, as prior to the amendment, the Corporation had no members.

TENTH The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355.

IN WITNESS WHEREOF, we have signed this certificate on November __, 2011, and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by us and are true and correct.



David Rose, MD - President



Chaim Charytan, MD - Director



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, 6th Floor
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

February 21, 2012

Lara Jean Ancona
Garfunkel, Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: Certificate of Amendment of the Certificate of Incorporation of BMA Medical
Foundation, Inc.

Dear Ms. Ancona:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 2nd day of February 2, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc, dated November 8, 2011.

Sincerely,

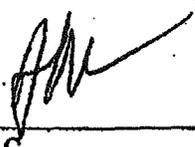
A handwritten signature in black ink that reads "Colleen M. Frost".

Colleen M. Frost
Executive Secretary

lcf

I, HON. HOWARD G. LANE, a Justice of the Supreme Court of the State of
New York for the 11th Judicial District do hereby approve of the foregoing
Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc. and
consent that the same be filed.

Date: JUL 12 2010



J.S.C.

HON. HOWARD G. LANE

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner
ASSISTANT ATTORNEY GENERAL DATE
June 25, 2010 Laura Werner

120725000 560

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

FILED
2012 JUL 25 PM 12:04

E-12
DRAWDOWN

FILED
2012 JUL 25 PM 11:30

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 25 2012

TAKS _____
BY: par

Queens

(6)

560

FILING RECEIPT

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ENTITY NAME: NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)

COUNTY: QUEE

PURPOSES PROCESS NAME PROVISIONS

=====

FILED:07/25/2012 DURATION:***** CASH#:120725000560 FILM #:120725000516

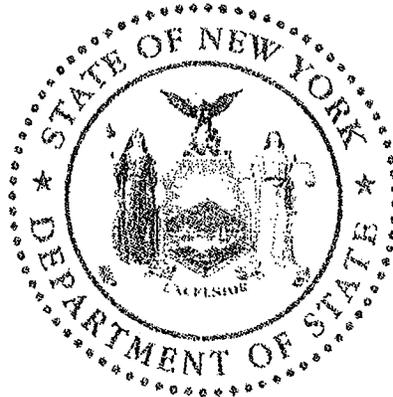
FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

C/O THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS
56-45 MAIN STREET
FLUSHING, NY 11355

REGISTERED AGENT:



=====

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEEs	90.00	PAYMENTS	90.00
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FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	90.00
HANDLING	50.00	OPAL	0.00
		REFUND	0.00

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on July 26, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

160504000

055

CSC 45
Drawdown

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned, Stephen S. Mills, certifies that he is the President of New York Hospital Queens Foundation, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is New York Hospital Queens Foundation, Inc. The name under which the Corporation was formed was BMA MEDICAL FOUNDATION, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Queens."

5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon at a meeting duly held on October 1, 2015 in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Foundation of NewYork-Presbyterian/Queens
c/o NewYork-Presbyterian/Queens
56-45 Main Street
Flushing, New York 11355
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made
herein affirmed as true under penalties of perjury this 7 day of October, 2015.

By: 
Name: Stephen S. Mills
Title: President



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

April 15, 2016

Kimlee Roldan-Sanchez
Vice President and Chief Administrative Officer
New York Presbyterian/Weill Cornell
525 East 68th Street
Box 208
New York, New York 10021

Re: Certificate of Amendment of the Certificate of Incorporation of New York Hospital
Queens Foundation, Inc.

Dear Ms. Roldan-Sanchez:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 14th day of April, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation, Inc., dated October 7, 2015.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen M. Leonard'.

Colleen M. Leonard
Executive Secretary

/cl

CSC 45
DRAW DOWN

055

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

RECEIVED
2016 MAY -3 PM 3:03

Filed by:
New York-Presbyterian/Queens
56-45 Main Street
Flushing, NY 11355

Carl Rd 121022ASC

ba

RECEIVED
2016 APR 29 PM 12:06

Plus

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 04 2016

TAX \$

BY:

[Signature]

(4)

057

FILING RECEIPT

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ENTITY NAME: THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS NAME

COUNTY: QUEE

=====

FILED:05/04/2016 DURATION:***** CASH#:160504000057 FILM #:160504000055

FILER:

NEWYORK-PRESBYTERIAN/QUEENS
56-45 MAIN STREET

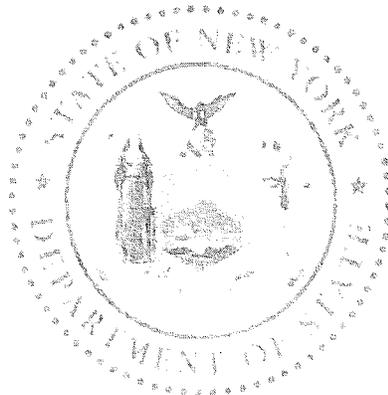
FLUSHING, NY 11355

ADDRESS FOR PROCESS:

C/O NEWYORK-PRESBYTERIAN/QUEENS
ATTENTION: PRESIDENT
FLUSHING, NY 11355

56-45 MAIN STREET

REGISTERED AGENT:



=====

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEEs 65.00

FILING 30.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 25.00

PAYMENTS 65.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 65.00
OPAL 0.00
REFUND 0.00

121022AJC

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DOS-1025 (04/2007)

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- New York
Suite 210
1180 Avenue OF the Americas
New York, NY 10036-8401
212-299-5600
212-299-5656 (Fax)

Matter# Not Provided
Project Id :

Order# 121022-5
Order Date 04/28/2016

Entity Name : NEW YORK HOSPITAL QUEENS FOUNDATION, INC.
Jurisdiction : NY-Department of State
Request for : Amendment/Correction/Restated/Designation Filing
File date : 05/04/2016
Result : Filed

Ordered by WILLIAM P. WISSEMAN at NEWYORK-PRESBYTERIAN/QUEENS

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Jason Welch
jwelch1@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 5, 2016.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS**

REVISED AND RESTATED AS OF OCTOBER 17, 2018

Original Version Approved October 1, 2015

Amended: Effective October 17, 2018

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS**

These corporate Bylaws of The Foundation of NewYork-Presbyterian/Queens (these “Bylaws”), which are revised and restated as of October 17, 2018 (the “Effective Date”), amend and restate in their entirety the corporate Bylaws of The Foundation of NewYork-Presbyterian/Queens.

Whenever a personal pronoun is used, it should be interpreted to refer to persons of either gender.

**ARTICLE I
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE
CORPORATION**

Section 1. Name

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Queens (the “Corporation” or the “Foundation”).

Section 2. Principal Office

The principal office of the Corporation shall be located in the County of Queens, State of New York.

Section 3. Purposes

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and in furtherance thereof, the Foundation shall, in accordance with applicable law, the Certificate of Incorporation and the provisions of these ByLaws:

(a) Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the Not-for-Profit Corporation Law of the State of New York (the “NFPCL”) or any other law of the State of New York, render assistance and make grants to NewYork-

Presbyterian/Queens (formerly known as The New York Hospital Medical Center of Queens), a New York State not-for-profit corporation;

(b) Solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.

(c) Solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.

(d) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the NPCL in furtherance of accomplishing the foregoing charitable purposes. This shall include, but not be limited to, promoting the Member in the community and functioning as a liaison between and among the Member, its affiliated organizations and the community.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

Section 4. Use of Income

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

Section 5. Further Restrictions

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

Section 6. Business Without Profit

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

ARTICLE II

MEMBER

Section 1. Member

The sole member of the Corporation shall be NewYork-Presbyterian/Queens (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

Section 2. Power and Rights

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);

- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;
- (l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;
- (m) to appoint and/or remove a Director of the Foundation;
- (n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;
- (o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and
- (p) to approve a liquidation, dissolution, or winding up of the Foundation.

Section 3. Annual Meeting

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

Section 4. Special Meetings

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

Section 5. Notice of Meeting

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

Section 6. Action by the Member

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

Section 7. Quorum

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

Section 8. Action Without a Meeting

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

Section 9. Minutes

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.

Section 10. Termination of Member

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Governance

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

Section 2. Composition of Board of Directors

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member.

(b) The President of the Member shall serve as an ex-officio member of the Board, with vote.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve

on the Board of Directors, including as to termination, removal and resignation.

Section 3. *Term of Office of Board of Directors*

(a) Each Director shall be elected by the Member to a term of office of two (2) years. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

Section 4. *Qualifications and Nomination*

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL.

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member.

Section 5. *Election of Directors*

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

Section 6. *Filling of Vacancies*

Vacancies occurring on the Board of Directors for any reason including newly created positions, may only be filled by the Member.

Section 7. *Resignation and Removal of Directors*

(a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

(b) Any Director may be removed with or without cause by the Member.

(c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

Section 8. *Meetings of the Board of Directors*

(a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.

(b) Regular business meetings of the Board of Directors shall be held as may be determined by the President or the Board of Directors, at such place within or outside the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.

(c) Special Meetings of the Board of Directors may be called at any time by the President or Secretary of the Corporation. A special meeting called by the President shall be held at such time as deemed appropriate by the President. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.

(d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

Section 9. Action Without a Meeting

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee,

including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

Section 10. Minutes of Meetings

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

Section 11. Quorum and Voting Requirements

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VI of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

Section 13. Policies

(a) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (i) a definition of circumstances that constitute a conflict of interest; (ii) procedures for disclosing a conflict of interest to the Committee or the Board of Directors, as applicable; (iii) procedures for disclosing, addressing and documenting “related party transactions” (as defined in the NPCL); and (iv) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

(b) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation’s affairs, and in order to protect and promote the quality and integrity of the Corporation’s pursuits.

**ARTICLE IV
OFFICERS**

Section 1. Officers

(a) The Officers shall include a President (who shall be the Chief Executive Officer), a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. No officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer" .

(c) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(d) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

ARTICLE V [INTENTIONALLY OMITTED]

ARTICLE VI INDEMNIFICATION

Section 1. Indemnification

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any

action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase “liability and reasonable expenses” shall include, but shall not be limited to, attorneys’ fees, reasonable expenses, amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase “liability and reasonable expenses” shall include attorneys’ fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article

VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

Section 2. Insurance

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of

action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

Section 3. Right Not Exclusive

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

**ARTICLE VII
FISCAL YEAR**

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

ARTICLE VIII
WRITTEN NOTICE; WAIVER OF NOTICE

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

ARTICLE IX
CONSTRUCTION OF BYLAWS

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

ARTICLE X
AMENDMENTS

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

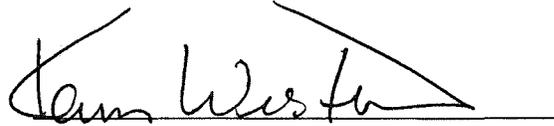
Plan of Dissolution

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
2. The Corporation has no assets or liabilities.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President
12/21/18

(Date)

Plan of Dissolution

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Karen Westervelt
President

12/21/18

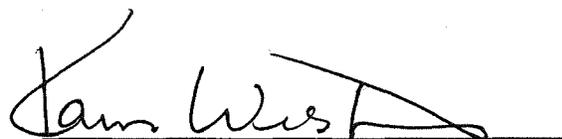
(Date)

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4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18

(Date)

CERTIFICATION

I, William P. Wissemann, Secretary of The Foundation of NewYork-Presbyterian/Queens ("the Corporation"), do hereby certify that the following resolution and action were duly approved by the Board of Directors of the Corporation by unanimous written consent on October 17, 2018:

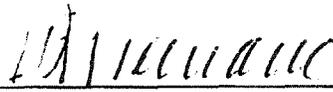
RESOLUTION

WHEREAS, it is the desire of The Foundation of NewYork-Presbyterian/Queens ("the Corporation") to dissolve the Corporation,

NOW, THEREFORE, BE IT RESOLVED that the Plan of Dissolution attached hereto as Exhibit A be approved, and

FURTHER RESOLVED that the officers of the Corporation are authorized to take all such further action that they deem necessary, appropriate or advisable in furtherance hereof.

This consent may be executed in counterparts.



William P. Wissemann
Secretary

CERTIFICATION

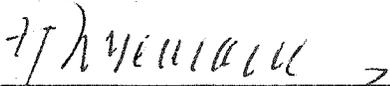
I, William P. Wissemann, Secretary of NewYork-Presbyterian/Queens, the sole Member ("the Member") of The Foundation of NewYork-Presbyterian/Queens ("the Corporation"), do hereby certify that the following resolution and action were duly approved by the sole Member of the Corporation in accordance with the bylaws of the sole Member on October 17, 2018:

RESOLUTION

WHEREAS, the Board of Directors of The Foundation of NewYork-Presbyterian/Queens ("the Corporation") has approved the Plan of Dissolution for the Corporation,

NOW, THEREFORE, BE IT RESOLVED that NewYork-Presbyterian/Queens, the sole Member of the Corporation, approves the Plan of Dissolution attached hereto as Exhibit A, and

FURTHER RESOLVED that the officers of the Corporation are authorized to take all such further action that they deem necessary, appropriate or advisable in furtherance hereof.



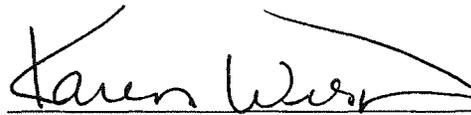
William P. Wissemann
Secretary

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
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 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18

(Date)

Certificate of Dissolution



CERTIFICATE OF DISSOLUTION
OF

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

If the name of the corporation has been changed, the name under which it was formed is
BMA MEDICAL FOUNDATION, INC.

SECOND: The certificate of incorporation was filed with the Department of State on
FEBRUARY 25, 1987

THIRD: The name and address of each officer and director of the corporation is:

GARY J. ZUAR, 466 LEXINGTON AVENUE, NEW YORK, NY 11017
KAREN WESTERVELT, 466 LEXINGTON AVENUE, NEW YORK, NY 11017
JACLYN MUCARIA, 56-45 MAIN STREET, FLUSHING, NY 11355
WILLIAM P. WISSEMAN, 56-45 MAIN STREET, FLUSHING, NEW YORK 11355

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and
Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation
holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.
 no assets which are legally required to be used for a particular purpose.

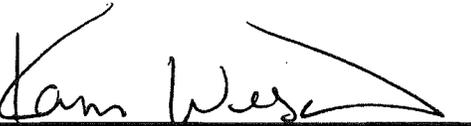
SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x 
(Signature)

KAREN WESTERVELT

(Print or Type Name of Signer)

PRESIDENT

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: KAREN WESTERVELT

Address: 466 LEXINGTON AVENUE

City, State and Zip Code: NEW YORK, NY 11017

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **\$30**, made payable to the Department of State.

For DOS Use Only