STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

September 26, 2019
10:00 a.m.

New York State Department of Public Service Commission Offices
90 Church Street
4th Floor Board Room, NYC

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction **Exhibit # 1**

	Number	Applicant/Facility
1.	182232 C	NYU Winthrop Hospital (Nassau County)
2.	191280 C	Maimonides Medical Center (Kings County)
3.	191344 C	North Central Bronx Hospital (Bronx County)
4.	192002 C	Highland Hospital (Monroe County)
5.	192019 C	Southside Hospital (Suffolk County)
6.	192020 C	Southside Hospital (Suffolk County)

Residential Health Care Facility – Construction **Exhibit # 2**

	Number	Applicant/Facility
1.	191203 C	St. Anns Community (Monroe County)
2.	182120 C	The Plaza Rehab and Nursing Center (Bronx County)

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

Residential Health Care Facilities - Establish/Construct **Exhibit # 3**

	Number	Applicant/Facility
1.	182117 E	TCPRNC LLC d/b/a New Riverdale Nursing Home (Bronx County)
2.	191263 E	Schoellkopf Health Center (Niagara County)
3.	191270 E	Troy Diamond Operations, LLC d/b/a The Diamond Hill Nursing and Rehabilitation Center (Rensselaer County)
4.	192001 E	St. Joseph's Hospital - Skilled Nursing Facility (Chemung County)

Certified Home Health Agencies - Establish/Construct **Exhibit # 4**

	Number	Applicant/Facility
1.	191341 E	Marquis Certified Home Care, LLC (Albany County)

Acute Care Services - Establish/Construct **Exhibit # 5**

	Number	Applicant/Facility
1.	192030 E	Unity Hospital of Rochester (Monroe County)

Ambulatory Surgery Centers - Establish/Construct **Exhibit # 6**

	Number	Applicant/Facility
1.	191137 B	Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center (Broome County)
2.	191164 B	Harlem Road Ventures, LLC t/b/k/a Harlem Ambulatory Surgery Center, LLC (Erie County)
3.	191212 B	Atlantic SC, LLC d/b/a Atlantic Surgery Center (Suffolk County)
4.	191314 B	Staten Island ASC, LLC d/b/a Specialty Surgery Center of Staten Island (Richmond County)

Diagnostic and Treatment Center - Establish/Construct **Exhibit # 7**

	Number	Applicant/Facility
1.	191170 B	AIDS Healthcare Foundation (King County)
2.	191326 B	Sunrise Med Plus, LLC (Suffolk County)
3.	192007 B	Cayuga Community Services (Tompkins County)
4.	192012 B	Hollis AK, LLC d/b/a Hollis Diagnostic & Treatment Center (Queens County)

Dialysis Center - Establish/Construct **Exhibit # 8**

	Number	Applicant/Facility
1.	191284 E	Citadel Renal Center LLC (Bronx County)
2.	191264 E	Freedom Center of Troy, LLC d/b/a Fresenius Kidney Care – Troy (Rensselaer County)
3.	191288 E	Freedom Center of Rockland County, LLC d/b/a Fresenius Kidney Care Valley Cottage (Rockland County)

C. Home Health Agency Licensures **Exhibit # 9**

Changes of Ownership with Consolidation

	Number	Applicant/Facility
1.	191340 E	Marquis Home Care, LLC (Albany County)

Serious Concern/Access

	Number	Applicant/Facility
1.	182282 E	BAYADA Home Health Care, Inc. (Queens County)
2.	191104 E	Intrathecal Care Solutions, LLC d/b/a Advanced Nursing Solutions (Sullivan County)

D. Certificates **Exhibit # 10**

Certificate of Amendment of the Certificate of Incorporation

Applicant

Hemophilia Center of Western New York, Inc.

WMC Health Network – Ulster, Inc.

HealthAlliance, Inc.

Northwest Buffalo Community Health Care Center, Inc.

Public Health and Health Planning Council

Project # 182232-C
NYU Winthrop Hospital

Program: **Hospital**
Purpose: **Construction**
County: **Nassau**
Acknowledged: **December 12, 2018**

Executive Summary

Description
NYU Winthrop Hospital, a 591-bed, voluntary not-for-profit, Article 28 acute care hospital located at 259 First Street, Mineola (Nassau County), requests approval to construct a two-floor vertical addition to their existing New Life Center (NLC) building, located in the north-west corner of the hospital campus, and perform renovations to the directly adjacent North and Potter Pavilions. The New Life Expansion and Renovations Project includes conversion of a variety of beds into 27 Neonatal Intensive Care Unit (NICU) beds, with no net change in the hospital's total bed count. The NLC addition will provide 24 new private Post-Partum rooms on the second floor and 22 new private Medical/Surgical rooms (including seven rooms for Patients of Size) on the third floor. Renovations include cosmetic upgrades of a semi-private Medical/Surgical room on the third floor of the North Pavilion, and the second floor of the Potter Pavilion will be fully renovated to provide care for NICU infants. Seven new Ante-Partum rooms and their associated support spaces will be built on the first floor of the North Pavilion. The rooms will be fully integrated with the rest of the Labor and Delivery Rooms (LDRs) and a new waiting area will be provided for the LDR and Ante-Partum areas. The NLC building construction will include shell space, which will be located on the ground floor.

NYU Langone Hospitals (NYULH) the active parent and co-operator of NYU Winthrop Hospital. A full asset merger of NYU Winthrop Hospital into NYULH has been approved and is pending completion.

OPCHSM Recommendation
Contingent Approval

Need Summary
The addition of 27 NICU beds will be achieved through conversion of beds from other categories. There will be no change to the net number of beds on the operating certificate as a result of this project. The need to increase NICU beds is due to significant increases in neonatal utilization over the past four plus years.

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
The total project cost of $142,110,535 includes the cost of the fit-out space and shell space construction. The project cost is broken down as follows: assigned Article 28 space for $138,024,190 and Non-Article 28 space of $4,086,345. The project cost will be met via equity from the operations of NYU Langone Hospitals. The incremental budget is as follows:

	Year One	Year Three
Revenues	$19,319,000	$20,053,000
Expenses	16,613,000	17,351,000
Gain/(Loss)	$2,706,000	$2,702,000

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2020 and construction must be completed by October 1, 2024, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [DAS]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Construction of a two-floor vertical addition to the existing New Life Center (located in the north-west corner of NYU Winthrop Hospital's campus) and renovations of the North and Potter Pavilions (which are directly adjacent) will expand and consolidate floorspaces, improve throughput and provide a higher level of comfort to patients. There will be no change to the net number of beds on the operating certificate:

Category	Current	Change	Final
Coronary Care	20		20
Intensive Care	36		36
Maternity	63	-4	59
Medical/Surgical	415	-9	406
Neonatal Continuing Care	7	-7	0
Neonatal Intensive Care	6	+27	33
Neonatal Intermediate Care	14	-7	7
Pediatric	22		22
Pediatric ICU	8		8
Total Beds	591	0	591

Need Analysis

NYUWH has experienced year-over-year increases in High-Risk Neonate discharges resulting in operating above 100% NICU capacity at times to accommodate the increased volume. Operating above capacity has result in NICU patients being cared for in scatter locations (outside of the NICU). Certifying additional NICU beds and constructing certified space within the unit will eliminate the need to relocate to scatter locations.

Occupancy					
Categories	**Beds**	**2014**	**2015**	**2016**	**2017**
Med/Surg	471	74.8%	72.4%	73.8%	77.2%
Pediatric	30	51.2%	54.5%	57.2%	40.1%
Obstetric	63	66.4%	68.1%	70.9%	57.7%
High-Risk Neonates	27	97.5%	97.8%	99.0%	111.8%
Total	591	74.3%	72.8%	74.4%	75.3%

Source: SPARCS

Currently, due to space limitations, highly acute Ante Partum patients stay within the Labor and Delivery rooms, limiting the number available for deliveries. The new Ante Partum Unit will help alleviate this bottleneck, providing a more comfortable environment for ante partum mothers as well as allowing the LDRs to function at full capacity. The consolidation of all six Obstetric Triage rooms to a central location will help maximize patient throughput and aid in initial patient assessments.

The project also proposes the creation of 22 private rooms, including seven Bariatric rooms, that will be located adjacent to the existing Medical/Surgical Unit with the goal of providing improved patient comfort.

Compliance with Applicable Codes, Rules and Regulations

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

The facility received a citation based on the results of a survey conducted on March 14, 2019. The facility received a deficiency based on the following: Governing Body, Infection Control, and Pharmaceutical Services. Specifically, the facility was chronically above a 100% capacity of the NICU and was using space that had not been approved by the Department to house the additional patients. The facility failed to have additional NICU nursery's that were a minimum of 720 square feet of clear floor space, NICU patients were less than the required four feet apart and medications were left in unsecured areas on the NICU unit.

Prevention Agenda

The two priorities identified by NYU Winthrop Hospital with service areas in Nassau, Suffolk and Queens are Prevent Chronic Diseases and Promote Mental Health and Prevent Substance Abuse. NYU Winthrop is one of the founding members of the Long Island Health Collaborative (LIHC), an extensive workgroup of partners who work together to improve the health of all Long Islanders. The LIHC is also the workgroup for the Long Island Population Health Improvement Program overseen by the Nassau-Suffolk Hospital Council.

Best practice interventions implemented are chronic disease self-care management programs, cancer screening, promoting breast-feeding, tobacco cessation and 5-2-10 Obesity Prevention Program. The need for neonatal intensive care beds was not explicitly identified in the Prevention Agenda plan.

In 2016 the applicant spent $1,210,762 on community health improvement services, representing 1.065% of total operating expenses.

Conclusion

The conversion of beds will right-size the neonatal program and the construction will provide code-compliant space for the service. 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

Total Project Cost and Financing

The total project cost of $142,110,535, which is for new construction and acquisition of moveable equipment, is detailed as follows:

Category	Article 28	Shell Space	Total
New Construction	$64,139,684	$2,916,099	$67,055,783
Renovation & Demolition	22,149,960		22,149,960
Asbestos Abatement/Removal	500,000		500,000
Design Contingency	8,628,964	291,610	8,920,574
Construction Contingency	8,628,964	291,610	8,920,574
Fixed Equipment	1,771,250		1,771,250
Architect/Engineering Fees	7,957,605	198,295	8,155,900
Construction Manager Fees	400,000	83,109	483,109
Other Fees	9,320,742	305,622	9,626,364
Moveable Equipment	8,681,534		8,681,534
Telecommunications	5,088,517		5,088,517
CON Fee	2,000	0	2,000
Additional Processing Fee	754,970	0	754,970
Total Project Cost	$138,024,190	$4,086,345	$142,110,535

Project costs are based on a construction start date of January 1, 2020 and a 57-month construction period. Since there is shell space involved with this application, total reimbursable project costs shall be limited to $138,024,190. The applicant will provide equity via operations from NYU Langone Hospital to fund the project.

Operating Budget

The applicant has submitted an incremental budget, in 2019 dollars, during the first and third years:

	Year One		Year Three	
	Per Disch.	Total	Per Disch.	Total
Revenues				
Medicaid MC	$9,315.00	$2,012,000	$9,453.70	$2,042,000
Medicaid FFS	$9,555.86	$344,000	$9,666.87	$348,000
Medicare FFS	$12,260.71	$3,433,000	$12,339.29	$3,455,000
Medicare MC	$11,375.00	$1,456,000	$11,484.38	$1,470,000
Commercial MC	$19,322.24	$11,812,000	$20,396.07	$12,462,000
Private Pay	$10,100.00	$101,000	$10,600.00	$106,000
Other	$14,636.36	$161,000	$15,454.55	170,000
Total Revenues		$19,319,000		$20,053,000
Expenses				
Operating	$9,273.85	$12,056,000	$9,841.54	$12,794,000
Capital	3,505.38	4,557,000	3,505.38	4,557,000
Total Expenses	$12,779.23	$16,613,000	$13,346.92	$17,351,000
Excess Revenues		$2,706,000		$2,702,000
Discharges		1,300		1,300

Expense and utilization assumptions are based on the hospital's historical experience. The projected reimbursement rates are based on the hospital's historical experience with a slight (conservative) increase for year three.

Utilization by payor source for the incremental discharges are as follows:

Payor	Year One	Year Three
Medicaid MC	7.37%	7.34%
Medicaid FFS	1.73%	1.73%
Medicare FFS	13.03%	13.22%
Medicare MC	8.98%	8.97%
Commercial MC	66.98%	66.84%
Private Pay	0.63%	0.62%
Charity Care	0.51%	0.51%
Other	0.77%	0.77%

Capability and Feasibility

Total project cost of $142,110,535 will be met via operations from NYU Langone Hospitals. The project cost is broken down as follows: Article 28 space for $138,024,190 and shell space for $4,086,345.

Working capital requirements are estimated at $2,891,833 based on two months of third year expenses. NYU Langone Hospitals will provide the equity to meet the working capital requirement. BFA Attachment A is NYULH's 2017 and 2018 certified financial statements as of their fiscal year ending August 31, 2018, which indicate the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of revenues over expenses of $2,706,000 and $2,702,000 during the first and third years, respectively. Revenues are based on the hospital's current reimbursement rates for neonatal services. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position, an average positive net asset position and achieved an average income from operations of $219,863,500 for the period.

BFA Attachment B is NYU Winthrop Hospital's certified financial statements for the year ending August 31, 2018. As shown, the facility had a positive working capital position, a positive net asset position and achieved an income from operations of $61,405,000 for the period shown.

Attachments

BFA Attachment A	August 31, 2018 and August 31, 2017 certified financial statements of NYU Langone Hospitals
BFA Attachment B	August 31, 2018 certified financial statement of NYU Winthrop Hospital

Public Health and Health Planning Council

Project # 191280-C
Maimonides Medical Center

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

County: **Kings**
Acknowledged: **May 29, 2019**

Executive Summary

Description
Maimonides Medical Center (MMC), a 711-bed, voluntary, Article 28 acute care hospital located at 4802 Tenth Avenue, Brooklyn (Kings County), requests approval to certify an Off-Campus Emergency Department (OCED) to be located at 9036 7th Avenue in Brooklyn, and to perform associated renovations. The proposed location is approximately 2.2 miles from MMC and is the site of the former Victory Memorial Hospital (Victory) that closed in June 2008. Following Victory's closure, University Hospital of Brooklyn opened outpatient clinics, including an urgent care center, at the Victory site. Upon approval of this application, the urgent care services will cease operation and the space will be converted to the MMC OCED. SUNY Downstate will continue to offer its other certified outpatient services at the location.

The building is owned by Sunset LG Realty LLC, a Borough Park real estate firm, and leased in its entirety to Northwell Health, Inc., which in turn sub-leases to University Hospital of Brooklyn. Upon approval of this project, MMC will lease the space for the OCED from Northwell and perform the fit-out of the leasehold improvements. The lease will be arm's length as the entities are not corporately related and share no governing authority. However, MMC and Northwell have a clinical collaboration agreement entered into in 2015 to help MMC expand its clinical footprint and improve its clinical and financial condition.

OPCHSM Recommendation
Contingent Approval

Need Summary
MMC's ED, which is 2.2 miles from the proposed OCED, is operating at capacity and the certification of an off-campus ED will help alleviate some of the volume and reduce wait times.

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

Financial Summary
Total project cost of $18,609,873 will be financed via $1,860,988 equity, a $9,565,885 bank loan for construction at 4.5% interest for a 10-year term and 25-year amortization period, and a $7,183,000 equipment loan at 4.9% interest for a seven-year term. The applicant indicated that the $6,950,434 balloon payment of will be paid via operations if refinancing is not available. The projected budget is as follows:

	Year One	Year Three
Revenues	$19,613,952	$23,295,657
Expenses	$15,788,921	$17,973,774
Gain/(Loss)	$3,825,031	$5,321,883

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a detailed plan, acceptable to the Bureau of Emergency Medical Services, which clarifies:
   a. How Maimonides Medical Center plans to ensure that only BLS patients are transported by ambulance to the Maimonides Medical Center Off Campus Emergency Department.
   b. The provision for on/off line medical control, communication systems, regional protocol issues and public education.
   c. That if EMS is transporting a critically ill or injured patient, Maimonides Medical Center Off Campus Emergency Department shall not be considered the closest Emergency Department, and that site shall be bypassed for the next closest appropriate hospital-based emergency department.
   d. That if a patient requiring resuscitation presents to the Off-Campus Emergency Department, the site shall have appropriate staffing, training, equipment, and medication to provide care and transport that patient by ambulance to another health care facility.
   e. That transportation of patients from the Off-Campus Emergency Department by ambulance shall not be provided by accessing the 911 system.
   f. The names of the ambulance services with which Maimonides Medical Center Off Campus Emergency Department will be contracting. How timely transport of patients shall be accomplished for patients who present to the ED at this site but are, in need of admission, or a higher level of care and a definition of “timely” in this context. [HSP]
3. Submission of an executed bank loan commitment for construction costs, acceptable to the Department of Health. [BFA]
4. Submission of an executed bank loan commitment for the equipment, acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [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. Construction must start on or before January 1, 2020 and construction must be completed by June 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]

3. Compliance with 10 NYCRR 405.19 (Emergency Services), as well as additional Part 405 sections, including those for the governing body, quality assurance, and medical records. [HSP]
4. Compliance with applicable CMS Conditions of Participation (CoPs), including those for governing body, medical staff, nursing staff, laboratory services, quality assurance, medical records, infection control. [HSP]
5. Full integration of all operations with the Maimonides Memorial Center Off Campus Emergency Department 's main site. Medical staff of the freestanding ED should be part of the single medical staff of Maimonides Memorial Center Victory Off Campus Department Hospital. [HSP]

Council Action Date
October 10, 2019

Need and Program Analysis

Project Description

The new site will be located at the site of the now-closed Victory Memorial Hospital, (Victory), approximately 2.2 miles from the MMC campus. An urgent care center has been operating at the site and will close upon approval of the OCED.

The goals of the project include: decompressing the overcrowding of MMC's Emergency Department now and during the multi-year construction period of the approved MMC renovation and expansion project; supporting long term rightsizing of the integrated Emergency Department services; improving population health for the 490,000 Southwest Brooklyn residents; and assisting MMC's operating margin.

The new OCED will consist of:

- 15 treatment bays
- 5 waiting positions
- 2 intake/triage positions
- 1 resuscitation room
- 1 decontamination room
- 1 x-ray room
- 1 CT scanner room

This project is a companion of CON 181016 which consists of capital improvements, plus the expansion and modernization of the adult and pediatric services of the Emergency Department (ED), as well as upgrades and renovations to Interventional Cardiology, Neonatal Intensive Care Unit (NICU) and Surgical Services.

Utilization

Since the 2008 closure of Victory Memorial Hospital, the number of emergency department visits at Maimonides has grown by almost 100%. The service area has approximately 490,000 residents with an projected population growth of 3% by 2021. The applicant expects to treat these visits through the certification of the OCED

Off Campus ED Projected Visits	
First Year	Third Year
16,159	19,245

Year	**Maimonides ED Visits**	**Maimonides Visits per Bay**
2018	121,251	1,555
2017	107,347	1,376
2016	107,869	1,383
2015	91,775	1,177
2014	104,926	1,345
2013	108,803	1,395
2012	115,542	1,481
2011	116,093	1,488
2010	89,851	1,152
2009	90,309	1,158
2008	74,234	952
2007	63,422	813

Source: SPARCS

Current Compliance

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 Division of Certification and Surveillance, 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

Maimonides has chosen to focus on the following Prevention Agenda Priorities:

- Prevent Chronic Diseases with a focus on diabetes and obesity in Hispanic Community to address the existing disparity
- Promote Healthy Women, Infants and Children
- Promote Mental Health and Prevent Substance Abuse

Maimonides describes a number of interventions to address the three identified Prevention Agenda Priorities. They were determined based on institutional capacity, community partner input and impact and measurability. Prevention of Chronic Diseases will focus on screening for lung and colon cancer and implementation of a diabetes initiative targeting the Hispanic community. The applicant will pursue baby-friendly practice and hospital designations. Increasing access to mental health services for schools and primary care practices are interventions designed to address the Promote Mental Health and Prevent Substance Abuse priority. To measure the progress of their interventions, the applicant will track frequency, participation, and where possible measures of comprehension, awareness, attitudes and behavior change.

In 2017 the applicant spent $3,708,358 on community health improvement services, representing 0.309% of total operating expenses.

Conclusion

Approval of this project will help alleviate ED congestion at MMC and improve patient wait times.
Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft sublease rental agreement for the site, which is summarized below:

Premises:	Approximately 15,000 sq. ft. in the cellar level of the building located at 9036 7th Ave., Brooklyn, NY (Site is on a corner sometimes referred to as 699 92nd St., Brooklyn, NY)
Sublessor:	Northwell Healthcare, Inc.
Sublessee:	Maimonides Medical Center
Term:	Initial term commencing with CON approval and ending on June 30, 2032
Rental:	7/1/2019-6/30/2020: $608,700 annually ($40.58 per sq. ft.) with a 2.5% annual increase.
Provisions:	The sublessee shall be responsible for real estate taxes, maintenance and utilities.

The master landlord (property owner of the Victory building) is Sunset LG Realty LLC. The applicant has indicated that the master landlord and the sublessee are not related.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $18,609,873, further broken down as follows:

Renovations and Demolition	$8,500,000
Design Contingency	850,000
Construction Contingency	850,000
Architect/Engineering Fees	680,000
Construction Manager Fees	188,000
Moveable Equipment	7,183,000
Financing Costs	95,659
Interim Interest Expense	159,431
CON Fees	2,000
Additional Processing Fee	101,783
Total Project Cost	$18,609,873

Project costs are based on a construction start date of January 2020, and a six-month construction period.

The applicant's financing plan appears as follows:

Equity (Operations)	$1,860,988
Bank Loan (4.5% for a 10-year term, 25-year amortization)	9,565,885
Equipment Loan (4.9% for a 7-year term)	7,183,000

The applicant has indicated that the balloon payment of $6,950,434 will be paid off from operations if refinancing is not available. BFA Attachment A indicates sufficient resources for the equity contribution.

Operating Budget

The applicant has submitted an incremental operating budget, in 2019 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
Revenues (Inpatient)	Per Discharge	Total	Per Discharge	Total
Medicaid FFS	$14,779.05	$1,123,208	$14,785.22	$1,330,670
Medicaid MC	$11,730.02	$2,521,954	$11,732.19	$3,003,440
Medicare FFS	$16,346.68	$1,193,308	$16,349.56	$1,422,412
Medicare MC	$17,179.52	$532,565	$17,187.92	$618,765
Commercial FFS	$21,951.30	$1,887,812	$18,659.70	$2,239,164
Commercial MC	$22,244.29	$2,268,918	$22,244.29	$2,669,315
Other *	$12,986.07	$986,941	$12,897.36	$1,173,660
Total Inpatient Revenues		$10,514,706		$12,457,426
Expenses (Inpatient)	Per Discharge	Total	Per Discharge	Total
Operating	$980.00	$680,120	$980.00	$806,540
Capital	0.00	0	0.00	0
Total Inpatient Expenses	$980.00	$680,120	$980.00	$806,540
Inpatient Gain/(Loss)		$9,834,586		$11,650,886

	Year One		Year Three	
Revenues (Outpatient)	Per Visit	Total	Per Visit	Total
Medicaid FFS	$324.85	$209,528	$324.96	$249,573
Medicaid MC	$290.46	$1,771,830	$290.50	$2,110,448
Medicare FFS	$627.94	$985,231	$627.89	1,173,521
Medicare MC	$551.71	$493,232	$552.16	$587,496
Commercial FFS	$1,051.01	$2,098,867	$1,051.00	$2,500,340
Commercial MC	$919.70	$2,178,762	$919.49	$2,594,800
Other *	$769.38	$1,361,796	$1,448.26	$1,622,053
Total Outpatient Revenues		$9,099,246		$10,838,231
Expenses (Outpatient)	Per Visit	Total	Per Visit	Total
Operating	$742.19	$11,993,000	$736.30	$14,170,000
Capital	192.82	3,115,801	155.75	2,997,314
Total Outpatient Expenses	$935.01	$15,108,801	$892.04	$17,167,314
Outpatient Gain/(Loss)		($6,009,555)		($6,329,083)
Total Gain/(Loss)		$3,825,031		$5,321,803
Incremental Discharges		694		823
Incremental Visits		16,159		19,245

** Other payors consist of Health Exchange Plan, No Fault Insurance, Self-Pay and Workers Compensation.*

Utilization broken down by payor source for inpatient and outpatient services during the first and third years is as follows:

	Inpatient		Outpatient	
Payor	Year One	Year Three	Year One	Year Three
Medicaid FFS	10.95%	10.94%	4.00%	3.99%
Medicaid MC	30.98%	31.11%	37.75%	37.75%
Medicare FFS	10.52%	10.57%	9.71%	9.71%
Medicare MC	4.47%	4.37%	5.53%	5.53%
Commercial FFS	12.39%	12.39%	12.36%	12.36%
Commercial MC	14.70%	14.58%	14.66%	14.66%
Other	10.95%	11.06%	10.95%	11.02%
Charity Care	5.04%	4.98%	5.04%	4.98%

The following is noted with respect to the submitted budget:

- The incremental inpatient discharges are the result of patients initially seen at the OCED that require admission to MMC's main site as inpatients. The related incremental inpatient revenue reflects these admissions/discharges and is based on MMC's historic average revenue per discharge of $15,000.
- The admission rate projected from the OCED is conservative at 4%. This compares with the 12% actual admission rate at the main MMC ED.
- All revenue, expense and utilization assumptions are based on the historical experience of the hospital.

Capability and Feasibility

Project costs of $18,609,873 will be met via $1,860,988 equity derived from operations, a $9,565,585 bank loan at 4.5% interest for a 10-year term and 25-year amortization period, and a $7,183,000 equipment loan at 4.9% interest for a seven-year term. BFA Attachment A is the 2017 and 2018 certified financial statements of Maimonides Medical Center, which indicates the availability of sufficient funds for the equity contribution. The applicant has indicated that the balloon payment of $6,950,434 will be met from operations if refinancing is not available.

The submitted budget indicates an excess of revenues over expenses of $3,825,032 and $5,321,803 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for inpatient and outpatient services. The submitted budget appears reasonable.

As shown on BFA Attachment A, MMC had an average positive working capital position of $213,031,000 and an average positive net asset position of $332,000,000 from 2017 through 2018. Also, the hospital achieved an average operating excess of revenues over expenses of $18,341,500 from 2017 through 2018.

Attachments

BFA Attachment A	2017 and 2018 certified financial statements of Maimonides Medical Center

Public Health and Health Planning Council

Project # 191344-C
North Central Bronx Hospital

Program: **Hospital**
Purpose: **Construction**
County: **Bronx**
Acknowledged: **July 3, 2019**

Executive Summary

Description

Jacobi Medical Center (Jacobi), a 457-bed, Article 28 hospital located at 1400 Pelham Parkway in the Bronx, requests approval to certify North Central Bronx Hospital (NCB), a 213-bed, Article 28 hospital located at 3424 Kossuth Avenue & 210th Street in the Bronx, as a division. Jacobi is a teaching hospital affiliated with the Albert Einstein College of Medicine (AECOM). NCB, located approximately 4 miles from Jacobi, is also a teaching site of AECOM. Both Bronx County hospitals are public municipality facilities operated by The New York City Health and Hospitals Corporation (NYC H+H), a public benefit corporation created by the NY State Legislature in 1969 that operates the largest municipal healthcare system in the United States. There will be no change in either authorized services or the number or type of beds at the respective hospitals as a result of approval of this project. Jacobi's operating certificate will be the survivor and NCB will surrender its operating certificate upon approval to be added as a division of Jacobi.

Jacobi and NCB are two of 11 acute care hospitals operated by NYC H+H, which provides a total of 4,752 beds across New York City. NCB is the smallest of the hospitals, as measured by bed count. In addition to the 11 acute care hospitals, NYC H+H operates five long term care facilities, six diagnostic and treatment centers, multiple hospital-based and neighborhood clinics, a certified home health agency, and a prepaid health service provider.

The purpose of this transaction is to create a coordinated and integrated system aimed at improving quality, increasing access, and lowering health care costs in the communities served by Jacobi and NCB. The hospitals are currently separately licensed, and this transaction is expected to result in substantial operating efficiencies including: easier transfer of patients between the two facilities, consolidating staff credentialing to save duplicative work, consolidating reporting and governance, creating opportunities for the strategic allocation of resources, creating a shared leadership structure, and facilitating standardization of equipment, procedures, and practices.

Jacobi and NCB work closely together and share a common medical affiliate, Physician Affiliated Group of New York, P.C., which is a large multispecialty physician group that the two hospitals operate independently. Currently, a medical provider credentialed at one facility has no standing in the other facility unless and until he/she initiates the process to be fully credentialled at the second facility. With both hospitals operating under the same operating certificate, medical providers credentialed at one facility will be credentialed at the other and patients going from one facility to the other will no longer need to be formally discharged from the first facility before being admitted to the second.

OPCHSM Recommendation

Contingent Approval

Need Summary

There are no changes to beds or services as a 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 projected budget is as follows:

	Year One	Year Three
Revenues	$444,224,361	$445,142,825
Expenses	901,792,256	905,658,464
Gain/(Loss)	($457,567,895)	($460,515,639)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]

Approval conditional upon:

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

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

The purpose of this project is to further create a coordinated, integrated administrative and operational system with the goal of improving quality, increasing access, and lowering the costs of health care in the communities served by Jacobi and NCB.

There will be no change in either authorized services or the number or type of beds as a result of approval of this project.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

The applicant states that the purpose of this CON to bring together these two facilities will enhance coordination of efforts toward promoting the Prevention Agenda Priorities to: Prevent Chronic Disease through obesity prevention initiatives and tobacco cessation and treatment programs; and Prevent Communicable Diseases by addressing HIV/AIDS prevention and treatment and general immunization enhancement programs.

Both hospitals have multiple strategies to address these Prevention Agenda priorities, most often deployed through integration with the general medical programs and primary care visits.
As New York City Health & Hospitals facilities, the applicants collaborate closely with the New York City Department of Health and Mental Health to promote the Prevention Agenda Priorities.
The applicant provides examples of internal tracking to measure the performance and progress of their interventions, such as:

- For HIV prevention and treatment, viral load suppression and percentage of patients receiving care;
- For diabetes prevention and treatment, percentage of patients being screened, beginning treatment and A1C improvement.

As a public hospital, Jacobi Medical Center is not obligated to report community benefit spending.

Conclusion

There will be no change to beds or services as a result of this application. 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 the current year operations (2018), and their operating budget for year one and year three after the establishment of NCB as a division of Jacobi, in 2019 dollars, as summarized below:

Current Year	Jacobi	North Central	Combined
Revenues			
Medicaid FFS	$61,818,458	$15,619,319	$77,437,777
Medicaid MC	$127,697,729	$40,601,306	$168,299,035
Medicare FFS	$56,064,984	$11,345,260	$67,410,244
Medicare MC	$60,326,540	$14,623,784	$74,950,324
Commercial FFS	$24,943,559	$5,801,977	$30,745,536
Commercial MC	$9,138,641	$3,071,243	$12,209,884
Other	$11,469,513	$783,573	$12,253,086
Total Revenues	$351,459,424	$91,846,462	$443,305,886
Expenses			
Operating	$649,243,000	$198,119,000	$847,362,000
Capital	45,366,000	5,188,000	$50,554,000
Total Expenses	$694,609,000	$203,307,000	$897,916,000
Excess of Revenues	($343,149,576)	($111,460,538)	($454,610,114)
Discharges	20,436	8,073	28,509
Outpatient Visits	390,339	203,412	593,751

Combined	Current Combined	Year One Combined	Year Three Combined
Revenues			
Medicaid FFS	$77,437,777	$77,593,979	$77,750,173
Medicaid MC	$168,299,035	$168,705,048	$169,111,061
Medicare FFS	$67,410,244	$67,523,697	$67,637,149
Medicare MC	$74,950,324	$75,096,562	$75,242,799
Commercial FFS	$30,745,536	$30,803,556	$30,861,576
Commercial MC	$12,209,884	$12,240,597	$12,271,309
Other	$12,253,086	$12,260,922	$12,268,758
Total Revenues	$443,305,886	$444,224,361	$445,142,825
Expenses			
Operating	$847,362,000	$851,324,380	$855,286,760
Capital	50,554,000	50,467,876	50,371,704
Total Expenses	$897,916,000	$901,792,256	$905,658,464
Excess of Revenues	($454,610,114)	($457,567,895)	($460,515,639)
Discharges	28,509	28,590	28,670
Outpatient Visits	593,751	595,785	597,819

New York City Health and Hospitals Corporation (NYC H+H) is a discretely presented Component Unit of The City of New York and its financial statements are included in The City's Comprehensive Annual Financial Report. NYC H+H operates on a July 1 to June 30 fiscal year.

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

Combined utilization broken down by payor source for inpatient and outpatient services for the first and third years is as follows:

Inpatient	Current	Year One	Year Three
Medicaid FFS	16.46%	16.46%	16.46%
Medicaid MC	43.82%	43.83%	43.85%
Medicare FFS	10.52%	10.51%	10.51%
Medicare MC	13.39%	13.38%	13.38%
Commercial FFS	7.23%	7.23%	7.22%
Commercial MC	2.28%	2.28%	2.28%
Other	1.80%	1.79%	1.78%
Charity Care	4.50%	4.52%	4.52%
	100.00%	100.00%	100.00%

Outpatient	Current	Year One	Year Three
Medicaid FFS	11.16%	11.16%	11.16%
Medicaid MC	37.76%	37.77%	37.80%
Medicare FFS	5.43%	5.42%	5.43%
Medicare MC	14.67%	14.67%	14.68%
Commercial FFS	6.70%	6.70%	6.70%
Commercial MC	6.34%	6.34%	6.34%
Other	2.02%	2.02%	2.01%
Charity Care	15.92%	15.92%	15.88%
	100.00%	100.00%	100.00%

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application.

The submitted budget indicates an excess of expenses over revenues of $457,567,895 and $460,515,639 during the first and third year after the establishment of NCB as a division of Jacobi. The applicant has submitted a letter indicating that the incremental losses will be offset via H+H operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the as of June 30, 2017 through 2018 certified financial statements of New York City Health Hospitals Corporation. As shown, the entity had an average negative working capital position and an average negative net asset position for the period shown. The reason for the average negative net asset position and average negative working capital position are the historical losses the entity incurred. For the period shown, the entity incurred average operating losses of $165,119,000 as it continued to adapt to increasing financial challenges placed on healthcare institutions in the NYC area including: Medicaid and Medicare reimbursement critically to meeting the costs of caring for low income New Yorkers; ability of the City of New York to increase capital reimbursement; and shifting from a fee-for-service payment system to a managed care system inclusive of value-based payment structure. NYC H+H has responded to these challenges by continuing transformation initiatives begun in 2017 to redesign the public health system to build a sustainable organization with a balanced financial plan through fiscal year 2022. Overall, NYC H+H is supported by the City of New York, the State of New York, and the Federal Government through various funding vehicles, and losses are expected to be covered.

The applicant, however, has taken steps to improve operations to reduce losses and continue its transformation effort into a more consolidated entity. NYS H+H realigned the delivery of care to three defined areas: acute care (hospitals), post-acute care (long term care facilities) and ambulatory care services. The realignment of service delivery was intended to enhance and improve efficiencies. This realignment in addition to new initiatives being enacted to create a balanced financial plan through fiscal year 2022 will further stabilize the health system, increase access, and lower the costs of health care in the communities served.

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

Attachments

BFA Attachment A	Pre- and Post-Merger Organizational Chart
BFA Attachment B	Financial Summary - June 30, 2017 through June 30, 2018 certified financial statements of New York City Health Hospitals Corporation

Public Health and Health Planning Council

Project # 192002-C
Highland Hospital

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

County: **Monroe**
Acknowledged: **July 10, 2019**

Executive Summary

Description
Highland Hospital of Rochester, Inc. (Highland), a 261-bed, voluntary not-for-profit, Article 28 hospital located at 1000 South Avenue, Rochester (Monroe County), requests approval to construct a five-story vertical addition to the existing three-story southeast wing of the hospital. The proposed Patient Tower modernization project will add 80,000 GSF to the recently completed new southwest wing. The five levels will house the following:

- 4th Floor: Shell space for future growth
- 5th Floor: 20-bed surgical unit
- 6th Floor: 18-bed surgical unit plus a Physical Therapy Suite
- 7th Floor: 20 bed surgical unit
- 8th Floor: Mechanical Penthouse

The project will add 58 private rooms and convert 58 semi-private to private rooms, with no change to the hospital's current licensed bed total of 261.

Highland is landlocked and has buildings dating back to 1924. Its current semi-private rooms are crowded, outdated and inefficient for optimal patient care (infection control and gender needs) and privacy concerns for patients, family and staff. Upon completion of the project, 97% of Highland's beds will be private, enabling the hospital to keep pace with national standards and local competition offering privacy to patients and family via single bed rooms.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change to the current, licensed bed total of 261 through this project.

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

Financial Summary
Project costs of $69,894,360 includes the cost of Article 28 and shell space construction broken down as follows: Article 28 space for $65,507,965 and shell space for $4,386,395. Project costs will be met via $44,894,360 equity and a $25,000,000 tax-exempt bond (estimated 20-year term at 4% interest). Barclays has provided a letter of interest to underwrite the bond. The projected budget is as follows:

	Year One	Year Three
Revenues	$346,390,233	$346,541,298
Expenses	$321,674,534	$321,691,911
Net Income	$24,715,699	$24,849,387

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed within 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 May 1, 2020 and construction must be completed by June 1, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

The proposed Patient Tower modernization project will add five new floors. Specifically, the project includes:

- Constructing a 4th floor shell space for future growth
- A 5th floor 20-bed surgical unit
- A 6th floor 18-bed surgical unit
- A 7th floor 20-bed surgical unit
- Mechanical penthouse (partially covers top of building)

There will be no change to the hospital's bed total. Staffing is expected to increase as a result of this construction/expansion project by 16.9 FTEs in Year One and by 16.9 FTEs by Year Three

Need Analysis

The project will allow Highland to offer private rooms to 97% of its patients, an increase from the current 52% private rooms. These renovations will improve patient privacy, comfort, and safety thus keeping Highland competitive in the Monroe County market. The shell space of the proposed expansion prepares for further eventual growth.

Highland Hospital Occupancy							
	Beds	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
Med/Surg	232	69.8%	72.6%	73.0%	75.0%	73.3%	74.0%
Obstetric	29	80.8%	76.9%	79.5%	80.6%	78.3%	69.2%
Total	261	73.7%	75.2%	76.4%	78.1%	76.2%	75.3%

Source: SPARCS

Utilization at Highland is steady in the mid-70th percentile for medical surgical beds.
The completion of this project will address the following issues:

- Patient spaces do not meet the expectations of patients, their families, staff and providers.
- Current semi-private rooms are crowded, outdated, and inefficient for optimal patient care and patient privacy.
- Storage space is inadequate.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

Highland Hospital states that the proposed project supports the local Prevention Agenda partnership through participation in the Monroe Community Health Improvement Plan and the associated Community Health Improvement Workgroup. The proposed project does not specifically address the county's outlined priorities, which are Smoking Cessation, Heart Health Management and Prevention, Reduce Unplanned Pregnancy, Screen for Food Insecurity, and Opioid Misuse Prevention.

The interventions to be implemented in support of local Prevention Agenda goals include the provision of long-acting reversible contraception immediately post-partum to all Medicaid insured patients that request it; prevention of opioid misuse through universal substance abuse-screening, an integrated onsite certified alcohol and substance-abuse counselor, an expanded buprenorphine program, and a new collaborative effort with the hospital ED that provides buprenorphine to patients who survive opioid overdose and links them to care at Highland Family Medicine. Besides these new interventions to address opioid misuse, the hospital will continue to provide their current array of services.

Highland Hospital engages with Monroe County Department of Health and community partners on local Prevention Agenda priorities and participates in the Community Health Improvement Workgroup which includes all local hospitals, as well as the local health department, the Finger Lakes Health System Agency, and other local community prevention groups (*not named*). They state that "data on local Prevention Agenda goals is tracked through this Workgroup," but did not identify the metrics used.

Highland Hospital did not report any Community Benefit spending in the Community Health Improvement Services category of its most recent Schedule H form submitted to the IRS.

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

Total Project Cost and Financing

Total project cost for the Article 28 space and 4th floor shell space is estimated at $69,894,360. Total reimbursable costs, based on the Article 28 component, are $65,507,965

	Article 28	Shell Space	Total
New Construction	$42,019,092	$3,564,270	$45,583,362
Renovation and Demolition	$2,766,638	$0	$2,766,638
Asbestos Abatement or Removal	$55,000	$0	$55,000
Design Contingency	$4,331,850	$344,750	$4,676,600
Construction Contingency	$2,165,925	$172,375	$2,338,300
Fixed Equipment	$702,000	$0	$702,000
Planning Consultant Fees	$255,000	$0	$255,000
Architect/Engineering Fees	$2,840,000	$225,000	$3,065,000
Construction Manager Fees	$871,417	$70,000	$941,417
Other Fees (Consultant)	$300,000	$0	$300,000
Moveable Equipment	$5,690,000	$0	$5,690,000
Telecommunications	$490,000	$10,000	$500,000
Financing Costs	$725,000	$0	$725,000
Interim Interest Expense	$1,935,731	$0	$1,935,731
CON Fee	$2000	$0	$2,000
Additional Processing Fee	$358,312	$0	$358,312
Total Project Cost	$65,507,965	$4,386,395	$69,894,360

Project costs are based on a construction start date of May 2020 and a twenty-four-month construction period.

The applicant's financing plan appears as follows:

Equity	$44,894,360
Tax-Exempt Bond (estimated: 4% interest, 20-year term)	$25,000,000
Total	$69,894,360

Barclays has provided a letter on interest to underwrite the bond. The facility intends to seek bond financing in the spring of 2020; therefore, specific terms are not known at this time. Highland Hospital has provided a letter to fund the entire project cost via equity if bond financing is not available. BFA Attachment A indicates sufficient liquid resources to cover the current equity requirement and total project cost should financing not be available.

Operating Budget

The applicant (consolidated entity) submitted the current and the projected first- and third-year operating budgets, in 2019 dollars, summarized below:

	Current Year		Year One		Year Three	
Revenues	Disch.	Total	Disch.	Total	Disch.	Total
Medicaid	$12,155	$53,651,126	$12,183	$54,104,209	$12,186	$54,128,923
Medicare	$12,153	$159,818,981	$12,180	$161,168,651	$12,182	$161,242,269
Commercial	$12,152	$104,277,474	$12,181	$105,158,097	$12,181	$105,206,131
Private Pay/Other	$12,144	$10,201,202	$12,174	$10,287,351	$12,180	$10,292,050
Other Op Rev*		$15,671,925		$15,671,925		$15,671,925
Non-Op Rev		$237,418		$237,418		$237,418
Total Revenue		$343,858,126		$346,390,233		$346,541,298
Expenses						
Operating	$10,909	$294,380,863	$10,908	$296,156,086	$10,908	$296,248,990
Capital	$822	$22,190,335	$940	$25,518,448	$937	$25,442,921
Total Expense	$11,731	$316,571,198	$11,848	$321,674,534	$11,845	$321,691,911
Net Income		$27,286,928		$24,715,699		$24,849,387
Discharges		26,986		27,151		27,160

**Other Operating revenue of $15,671,925 is comprised of income from the coffeehouse, deli, cafeteria, vending machines, gift shop, auxiliary, park, lobby & contract pharmacy and misc.*

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

	Current Year	Years One & Three
Medicaid	16.36%	16.40%
Medicare	48.73%	48.70%
Commercial	31.80%	31.80%
Private Pay/Other	3.11%	3.10%
Total	100.00%	100.00%

Revenue assumptions are based on current average per visit payment rates by payors for hospital services with a slight adjustment for volumes. Expense assumptions are based on historical experience of the facility with a slight adjustment for volumes. The applicant anticipates an increase in utilization based on historical trends and projected incremental inpatient surgical volume. Based on the applicant's assumptions, the budget appears reasonable.

Capability and Feasibility

Total project cost is $69,894,360 consisting of Article 28 space for $65,507,965 and shell space construction for $4,386,395. The project cost will be met via $44,894,360 equity and a $25,000,000 tax-exempt bond (estimated 20-year term at 4% interest). Barclays has provided a letter of interest to underwrite the bond. The facility intends to seek bond financing in the spring of 2020; therefore, specific terms are not known at this time. The facility has provided a letter to fund the entire project cost via equity if bond financing is not available. BFA Attachment A indicates sufficient liquid resources to cover the current equity requirement and total project cost should financing not be available.

There is no working capital need associated with this application, as the facility is a going concern that has been in operation for many years.

The submitted budget indicates net gains of $24,715,699 and $24,849,387 during the first and third years, respectively. Revenues reflect current reimbursement rates for hospital services.

BFA Attachment A is the 2017-2018 certified financial statements of Highland Hospital of Rochester and Subsidiaries. As shown, the entity achieved an average positive working capital position, an average positive net asset position and generated an average net income from operations of $17,348,447 for the period.

Attachments

FLHSA Attachment	Finger Lakes Health Systems Agency Review and Recommendation
BFA Attachment A	2017-2018 Certified Financial Statements of Highland Hospital of Rochester and Subsidiaries

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192019-C
Southside Hospital

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

County: **Suffolk**
Acknowledged: **July 15, 2019**

Executive Summary

Description
Southside Hospital (SSH), a 305-bed, voluntary not-for-profit, Article 28 hospital located at 301 East Main St., Bay Shore (Suffolk County), requests approval to perform renovations to the first floor of the Obstetrics Unit and convert five Neonatal Continuing Care beds into five Neonatal Intermediate Care beds. SSH is currently certified for five Neonatal Continuing Care and six Neonatal Intermediate Care beds. The project will modernize and expand the Labor and Delivery Rooms (LDR), Post Anesthesia Care Unit (PACU), and create an 11-bed Neonatal Intensive Care Unit (NICU).

Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., is the active parent and co-operator of SSH. Northwell Healthcare, Inc. is a comprehensive, integrated health care delivery system comprised of numerous hospitals across the New York metropolitan area as well as physician practices and providers of subacute care including home care, long-term care, and hospice services. SSH is a member of the Northwell Health, Inc. Obligated Group for financing purposes.

Concurrently under review is CON 192020 in which the applicant is seeking approval to modernize and expand the Maternity Nursing Unit on the current second floor of the East Building into the adjacent Center and North Buildings, as well as to certify ten additional maternity beds.

OPCHSM Recommendation
Contingent Approval

Need Summary
The service area is Suffolk County with a local population demonstrating high concentrations of poverty, comorbidities related to higher maternal age, and chronic disease displayed in minority populations. Planned and emergency Obstetric C-Sections are expected to increase 25% in the next three years with normal deliveries increasing 36%. The applicant will address this growth by converting five neonatal continuing care beds to five neonatal intermediate care beds and adding new ORs dedicated to C-sections.

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

Financial Summary

Total project cost of $43,689,101 will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($39,320,190 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing.

Enterprise	(In Thousands)	
Inpatient Budget	Year One	Year Three
Revenues	$384,454	$390,347
Expenses	306,667	309,601
Net Income	$77,787	$80,746

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]

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 January 7, 2020 and construction must be completed by September 13, 2021, 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. This project is approved to be initially funded with Northwell Health Obligated Group equity with the prospect that the project will be 90% financed as part of a future tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Southside Hospital (SSH), a 305-bed tertiary teaching hospital and member hospital of Northwell Health, located at 301 East Main Street in Bay Shore (Suffolk County) seeks approval to modernize and expand their Labor and Delivery, Neonatal Intensive Care Unit, and Post Anesthesia Care Unit by expanding the current first floor of the Obstetrics Unit within the East Building and the Wrap Around Building. Specifically, this project includes:

- Creation of an eleven (11) bed Neonatal Intensive Care Unit (NICU);
- Creation of five (5) future NICU rooms (that will be fitted out a later time with a separate CON application):
- Expand the Cesarean Section (C-section) surgical suite by creating two (2) operating rooms;
- A dedicated eight (8) bed Post Anesthesia Care Unit;
- A dedicated Triage room will be created at the entrance of the Labor and Delivery Suite;
- Two (2) Labor and Deliver Rooms (which will also be fitted out at a later time with a separate CON);
- A relocation of the women's entrance to the Labor and Delivery Suite from a dedicated small entrance to a prominent entrance on the south of the building; and
- Converting their existing five (5) continuing care NICU beds to intermediate care NICU beds.

Analysis

The service area is Suffolk County with a local population demonstrating high concentrations of poverty, the comorbidities related to higher maternal age, and chronic disease displayed in minority populations. Planned and emergency Obstetric C-Sections are expected to increase 25% in the next three years with normal deliveries increasing 36%. The applicant will address this growth by converting 5 neonatal continuing care beds to 5 neonatal intermediate care beds and adding 2 new ORs dedicated to C-sections.

Bed Type	Current Beds	Bed Change	Beds Upon Completion
Coronary Care	10		10
Intensive Care	26		26
Maternity	29		29
Medical / Surgical	223		223
Neonatal Continuing Care	5	-5	0
Neonatal Intermediate Care	6	+5	11
Pediatric	6		6
Total	305		305

Currently obstetric patients are redirected to general operating rooms, not typically adapted to the surgical needs of maternity patients, when scheduled and emergency C- sections overlap in the existing two ORs. The facility reports this occurs approximately once monthly, but the frequency is increasing. The facility plans to add two surgical ORs which will be exclusively dedicated to C- sections. Initially, one of the additional ORs will be reserved for emergencies. Three ORs are required to maintain an annual 85% utilization rate of 600 cases per OR. One operating room will be used only for emergencies.

Southside Obstetrics Projected Values, Source: Applicant			
	Current Year	Projected 1st Year	Projected 3rd Year
Obstetrics	2,761	3,387	3,674
Deliveries Only	2,574	2,977	3,500
C- Sections Only	1,207	1,397	1,515
C - Section Rate	46.9%	46.9%	46.9%

Birth Data and Assessment of Impact on Perinatal Designation

Southside Hospital is currently a Level II Perinatal Center in Suffolk County, affiliated with North Shore University Hospital's Regional Perinatal Center. Based on 2018 data (most recent available), monthly utilization rates of the 11-bed NICU range between approximately 35% - 80% (average 54%).
The proposed project would **not** have an impact on the hospital's current level of perinatal designation.

It should be noted that Paragraph 708.2(b)(6) of 10 NYCRR, which divides the NICU beds into subcategories, was repealed in the early 2000's.

Staffing is expected to increase as a result of this construction/expansion project by 33.3 FTEs in Year One of the completed project and by 35.4 FTEs by Year Three of the completed project.

Compliance with Applicable Codes, Rules and Regulations

- The Department issued a Stipulation and Order (S&O) on November 21, 2016 and fined Long Island Jewish Medical Center-Northwell $4,000 based on findings from an allegation survey that was completed on July 11, 2016. Deficient practice was cited in the area of: Infection Control. Specifically, the facility failed to follow acceptable standards of practice of Infection Control in the Surgical Area during observation, in regard to the use of proper attire and exposure of hair during procedures.

Prevention Agenda

Citing data from the Prevention Agenda Dashboard, Southside Hospital identified a persistence of higher-risk deliveries in Suffolk County and an ongoing need to make maternal and infant health services accessible to minority populations. Their application states that the proposed project will advance the *Promote Healthy Women, Infants and Children* priority area of the *Prevention Agenda 2019-2024* by enhancing the availability of acute maternal care services and providing greater opportunities for health care providers to educate and guide women and future mothers in preparation for a healthy pregnancy. Their application also states that since the proposed project is planned to be located in a racially and ethnically diverse community, it would advance the Prevention Agenda goal of reducing disparities in maternal outcomes by providing locally accessible high-quality maternal care.

Southside Hospital points out four interventions that the Northwell health system is participating in to advance the Promote Healthy Women, Infants and Children priority area:

1. Women's Heart Health Program
2. WomenHeart: The National Coalition for Women with Heart Disease
3. Go Red for Women
4. Safe Kids New York

Local community partners that Southside Hospital engages in its Prevention Agenda efforts include the Long Island Health Collaborative, and the Community Outreach and Health Education Council (COHEC).

To measure the performance and progress of their interventions, the Prevention Agenda Dashboard indicators that Southside Hospital tracks include:

- Adolescent pregnancy: Ratio of Black non-Hispanics to White non-Hispanics
- Adolescent pregnancy: Ratio of Hispanics to White non-Hispanics
- Maternal mortality rate per 100,000 live births
- Percentage of live births that occur within 24 months of a previous pregnancy
- Percentage of premature births: Ratio of Hispanics to White non-Hispanics
- Percentage of premature births: Ratio of Medicaid births to non-Medicaid births
- Percentage of preterm births
- Percentage of women (aged 18-64) with health insurance

In 2017 Southside Hospital spent $2,064,011 on community health improvement services, representing 0.334% of total operating expenses.

Conclusion

The acute level of patients and the increase in c-sections are addressed by this project. 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

Total Project Cost and Financing

Total project cost for the modernization and expansion is $43,689,101, detailed as follows:

Renovation & Demolition	$21,754,440
Temporary Utilities	50,000
Asbestos Abatement/ Removal	330,000
Design Contingency	2,175,444
Construction Contingency	2,175,444
Planning Consultant Fees	384,589
Architect/Engineering Fees	1,740,355
Construction Manager Fees	1,087,722
Other Fees	1,087,722
Movable Equipment	9,091,060
Telecommunications	1,484,894
Financing Costs	2,086,466
Application Fee	2,000
Processing Fee	238,965
Total Project Cost	$43,689,101

Project costs are based on a construction start date of January 2020, with a 21-month construction period.

Total project cost of $43,689,101 will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($39,320,190 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing. BFA Attachment A is a summary of Northwell Health, Inc.'s 2017-2018 Consolidated Certified Financial Statements and Internal Financial Statements through March 31, 2019, which indicate the availability of sufficient resources to cover the project cost.

Operating Budget

The applicant submitted their current year (2018) inpatient operations and the incremental inpatient operating budget, in 2019 dollars, for the first and third years. The inpatient enterprise budget is summarized below:

	(In Thousands)		
	Current Year	Year One	Year Three
Revenues	Total	Total	Total
Commercial - MC	$157,852	$165,474	$168,224
Medicare - FFS	89,250	93,422	94,796
Medicare - MC	45,580	47,333	47,968
Medicaid - FFS	13,058	13,920	14,123
Medicaid - MC	44,814	46,635	47,288
Private Pay	9,862	10,461	10,649
All Other	6,984	7,209	7,299
Total Revenue	$367,400	$384,454	$390,347

Expenses			
Operating	$274,534	$287,974	$290,979
Capital	13,135	18,693	18,622
Total	$287,669	$306,667	$309,601
Net Income	$79,731	$77,787	$80,746
Total Patient Days	24,169	24,820	25,056

Inpatient Utilization by payor source is as follows:

Payor	Current Year	Year One	Year Three
Commercial-FFS	25.9%	23.7%	23.7%
Medicare-FFS	21.6%	29.0%	29.0%
Medicare-MC	10.2%	13.1%	13.1%
Medicaid-FFS	3.7%	5.2%	5.2%
Medicaid-MC	24.5%	24.1%	24.1%
Private Pay	11.6%	3.6%	3.6%
All Other	2.5%	1.3%	1.3%
Total	100.0%	100.0%	100.0%

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

- The Operating Budget is based on inpatient revenues and expenses only.
- As part of the business plan process, the Northwell Health internal cost accounting system was used to generate the revenue, expense, and utilization assumptions. Payor rate assumptions are based upon the Diagnosis-Related Groups (DRGs) applicable to the inpatient programs.
- Revenue and payor rate assumptions are based on current experience of the existing volume and payer mix at Southside Hospital.
- Expense and utilization assumptions are based upon the DRG Detail Variable Direct Cost. Once the variable direct costs are calculated, overhead costs are developed using the clinical management staff at the hospital. Depreciation and interest expense, based upon estimated capital costs, are added to calculate the total cost.
- The submitted budget projects an inpatient incremental net loss of $1,944,000 for year one and an inpatient incremental net gain of $1,015,000 for Year Three. The enterprise budget, as noted above, can support the incremental first year loss anticipated for implementation of the project.

Capability and Feasibility

Total project cost of $43,689,101 for the modernization and expansion project will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($39,320,190 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing. BFA Attachment A is a summary of Northwell Health, Inc.'s 2017-2018 Consolidated Certified Financial Statements and Internal Financial Statements through March 31, 2019, which indicate the availability of sufficient resources to cover the project cost.

The submitted budget projects an inpatient incremental net loss of $1,944,000 for Year One and an inpatient incremental net gain of $1,015,000 for Year Three. The enterprise budget can support the incremental first year loss anticipated for implementation of the project, maintaining positive income estimated at $77.8M. The Acting Senior Vice President/Chief Financial Officer of Northwell Health, Inc. has submitted a letter attesting that the projected losses will be absorbed by the ongoing operations of Northwell Health Care, Inc.

BFA Attachment A shows Northwell Health, Inc. maintained average positive working capital and net asset positions and achieved an average net operating income of $140,369,500 for the 2017-2018 period. The entity had a net operating loss of $19,657,000 for the period ending March 31, 2019. The applicant indicated that timing issues and the impact of some volume payment and performance improvement initiatives that occur later in the year contribute to the reported net operating loss for this period. Also, certain expenses are higher in the beginning of the year and get substantially lower as the year progresses as salary-based limits are reached. However, after non-operating income is considered, the entity shows a net income of $201,122,000 for the period ending March 31, 2019.

Attachments

BFA Attachment A	Financial Summary of Northwell Health, Inc.
BFA Attachment B	Organizational Chart

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192020-C
Southside Hospital

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

County: **Suffolk**
Acknowledged: **July 15, 2019**

Executive Summary

Description
Southside Hospital (SSH), a 305-bed, voluntary not-for-profit, Article 28 hospital located at 301 East Main St., Bay Shore (Suffolk County), requests approval to modernize and expand their Maternity Nursing Unit on the second floor of the East Building into the adjacent Center and North Buildings and certify ten additional Maternity beds. Upon approval by the Public Health and Health Planning Council (PHHPC), SSH's maternity beds will increase from 29 beds to 39 beds, and the total certified bed count of the hospital will increase to 315 beds.

Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., is the active parent and co-operator of SSH. Northwell Healthcare, Inc. is a comprehensive, integrated health care delivery system comprised of numerous hospitals across the New York metropolitan area as well as physician practices and providers of subacute care including home care, long-term care, and hospice services. SSH is a member of the Northwell Health, Inc. Obligated Group for financing purposes.

Concurrently under review is CON 192019 in which the applicant is seeking approval to modernize and expand their Labor and Delivery Rooms, Post Anesthesia Care Unit, and Neonatal Intensive Care Unit including the conversion of five Neonatal Continuing Care beds to Neonatal Intermediate Care beds (NICU) for a final total of 11 NICU beds.

OPCHSM Recommendation
Contingent Approval

Need Summary
Utilization trends suggest continued growth at Southside Hospital's Obstetrics Unit. The expansion of beds and related renovations will address the increased utilization.

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

Financial Summary
Total project cost of $22,935,640 will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($20,642,076 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing.

Enterprise	(In Thousands)	
Inpatient Budget	Year One	Year Three
Revenues	$372,189	$374,471
Expenses	296,857	299,619
Net Income	$75,332	$74,852

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]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 7, 2020 and construction must be completed by April 16, 2021, 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. This project is approved to be initially funded with Northwell Health Obligated Group equity with the prospect that the project will be 90% financed as part of a future tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards.
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Southside Hospital (SSH), a 305-bed tertiary teaching hospital and member hospital of Northwell Health, located at 301 East Main Street in Bay Shore (Suffolk County) seeks approval to modernize and expand their Maternity Nursing on the current second floor of the East Building into the adjacent Center and North Buildings. Specifically, this project includes:

- Conversion of three small private patient rooms into two larger private maternity rooms in the East Building area, the remaining single and double bed patient rooms will remain;
- Addition of 11 beds in the North/Center Building;
- Loss of one bed in the East Building;
- Due to the addition of 11 beds in the North/Center Building and the subtraction of one bed in the East Building, the 29 bed Maternity Unit will increase to 39 beds;
- The East Building nursing unit will receive cosmetic, medical equipment, furnishing upgrades and minor alterations for improved function; and
- The existing Well Baby Nursey on the second floor will receive cosmetic upgrades as well.

Staffing is expected to increase as a result of this construction/expansion project by 15.8 FTEs in Year One of the completed project and by 23.9 FTEs by Year Three of the completed project.

Analysis

In 2018 the applicant saw an obstetric utilization rate of 73.5%, a 3% increase from 2014. With the increase in volume the applicant also experienced an increase in acuity due largely to growth in C-section deliveries and patients displaying an older maternal age. From 2014 to 2018, maternity-based services utilization of women aged 35-44 grew 29%. Southside also serves a diverse, lower socioeconomic population prone to complications, which leads to a high acuity case mix. All these factors can lead to an extended inpatient visit, driving the need for additional inpatient beds.

Table 1: Southside Hospital Beds, Source: HFIS 2019

Bed Type	Current	Change	Upon Completion
Coronary Care	10		10
Intensive Care	26		26
Maternity	29	10	39
Medical / Surgical	223		223
Neonatal Continuing Care	5		5
Neonatal Intermediate Care	6		6
Pediatric	6		6
Total	**305**	**10**	**315**

Table 2: Southside Obstetric Utilization, Source: Applicant/ICR 2019

	2014	2015	2016	2017	2018
South Side Obstetric Utilization	70.50%	66.30%	72.60%	69.90%	73.50%

Birth Data and Assessment of Impact on Perinatal Designation

Southside Hospital is currently a Level II Perinatal Center in Nassau County, affiliated with North Shore University Hospital's Regional Perinatal Center. Based on 2016 data, the estimated utilization of the 29 maternity beds ranges from 66% (2012) to 73.6% 2016). The addition of 11 beds would reduce the estimated utilization rate assuming birth rates and proportion of Cesarean delivery does not significantly change. The proposed project would not have an impact on the hospital's current level of perinatal designation.

Compliance with Applicable Codes, Rules and Regulations

- The Department issued a Stipulation and Order (S&O) on November 21, 2016 and fined Long Island Jewish Medical Center-Northwell $4,000 based on findings from an allegation survey that was completed on July 11, 2016. Deficient practice was cited in the area of: Infection Control. Specifically, the facility failed to follow acceptable standards of practice of Infection Control in the Surgical Area during observation, in regard to the use of proper attire and exposure of hair during procedures.

Prevention Agenda

Southside Hospital states that the proposed project will advance the *Promote Healthy Women, Infants and Children* priority area of the *Prevention Agenda 2019-2024* by enhancing the availability of acute maternal care services and providing greater opportunities for health care providers to educate and guide women and future mothers in preparation for a healthy pregnancy. Their application also states that since the proposed project is planned to be located in a racially and ethnically diverse community, it would advance the Prevention Agenda goal of reducing disparities in maternal outcomes by providing locally accessible high-quality maternal care.

Southside Hospital points out three interventions that the Northwell health system is participating in to advance the *Promote Healthy Women, Infants and Children* priority area by improving rates of maternal morbidity and reducing disparities:

1. Women's Heart Health Program
2. WomenHeart: The National Coalition for Women with Heart Disease
3. Go Red for Women

Local community partners that Southside Hospital engages in its Prevention Agenda efforts include the Long Island Health Collaborative, and the Community Outreach and Health Education Council (COHEC).

To measure the performance and progress of their interventions, the Prevention Agenda Dashboard indicators that Southside Hospital tracks include:

- Maternal mortality rate per 100,000 live births
- Percentage of preterm births
- Percentage of premature births: Ratio of Hispanics to White non-Hispanics
- Percentage of premature births: Ratio of Medicaid births to non-Medicaid births
- Percentage of women (aged 18-64) with health insurance

In 2017 Southside Hospital spent $2,064,011 on community health improvement services, representing 0.334% of total operating expenses.

Conclusion

The acuity level of patients in conjunction with utilization levels demonstrate a need for additional Maternity beds. 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

Total Project Cost and Financing

Total project cost for the modernization and expansion is $22,935,640, detailed as follows:

Renovation & Demolition	$13,704,363
Temporary Utilities	50,000
Asbestos Abatement/ Removal	300,000
Design Contingency	1,370,436
Construction Contingency	1,370,436
Planning Consultant Fees	113,222
Architect/Engineering Fees	1,096,349
Construction Manager Fees	274,087
Other Fees	274,087
Movable Equipment	2,195,625
Telecommunications	964,250
Financing Costs	1,095,340
Application Fee	2,000
Processing Fee	125,445
Total Project Cost	$22,935,640

Project costs are based on a construction start in January, 2020, with a 16-month construction period.

Total project cost of $22,935,640 will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($20,642,076 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing. BFA Attachment A presents a financial summary of Northwell Health, Inc., which indicates the availability of sufficient resources to cover the project cost.

Operating Budget

The applicant submitted their current year (2018) inpatient operations and the incremental inpatient operating budget, in 2019 dollars, for the first and third years. The inpatient enterprise budget is summarized below:

(In Thousands)

Revenues	Current Year Total	Year One Total	Year Three Total
Commercial - MC	$157,852	$160,357	$161,551
Medicare - FFS	89,250	89,267	89,275
Medicare - MC	45,580	45,585	45,587
Medicaid - FFS	13,058	13,196	13,262
Medicaid - MC	44,814	46,783	47,722
Private Pay	9,862	9,870	9,873
All Other	6,984	7,131	7,201
Total Revenue	$367,400	$372,189	$374,471
Expenses			
Operating	$274,534	$281,051	$283,850
Capital	13,135	15,806	15,769
Total Expense	$287,669	$296,857	$299,619
Net Income	$79,731	$75,332	$74,852
Total Patient Days	24,169	24,770	25,057

Inpatient utilization by payor source is as follows:

Payor	Current Year	Year One	Year Three
Commercial-FFS	23.5%	23.8%	23.9%
Medicare-FFS	29.1%	28.4%	28.1%
Medicare-MC	13.2%	12.9%	12.7%
Medicaid-FFS	5.1%	5.1%	5.1%
Medicaid-MC	24.3%	25.1%	25.5%
Private Pay	3.5%	3.4%	3.4%
All Other	1.3%	1.3%	1.3%
Total	100.0%	100.0%	100.0%

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

- The Operating Budget is based on inpatient revenues and expenses only.
- As part of the business plan process, the Northwell Health internal cost accounting system was used to generate the revenue, expense, and utilization assumptions. Payor rate assumptions are based upon the Diagnosis-Related Groups (DRGs) applicable to the inpatient programs.
- Revenue and payor rate assumptions are based on current experience of the existing volume and payor mix at Southside Hospital.
- Expense and utilization assumptions are based upon the DRG Detail Variable Direct Cost. Once the variable direct costs are calculated, overhead costs are developed using the clinical management staff at the hospital. Depreciation and interest expense, based upon estimated capital costs, are added to calculate the total cost.
- The submitted budget projects an inpatient incremental net loss of $4,399,000 and $4,879,000 for Years One and Three, respectively. The enterprise budget, as noted above, can support the incremental first year loss anticipated for implementation of the project.

Capability and Feasibility

Total project cost of $22,935,640 for the modernization and expansion will initially be funded through Northwell's operating margin with the prospect that the project will be 90% financed ($20,642,076 at 6.5% interest with a 30-year term) as part of a future tax-exempt bond financing through the Dormitory Authority. Citigroup has provided a financing letter of interest to underwrite the bond financing. BFA Attachment A is a summary of Northwell Health, Inc.'s 2017-2018 Consolidated Certified Financial Statements and Internal Financial Statements through March 31, 2019, which indicate the availability of sufficient resources to cover the project cost.

The submitted budget projects an inpatient incremental net loss of $4,399,000 and $4,879,000 for Years One and Three, respectively. The enterprise budget can support the incremental losses anticipated for implementation of the project, maintaining positive income estimated at $75.3M in year one and $74.8M in Year Three. The Acting Senior Vice President/Chief Financial Officer of Northwell Health, Inc. has submitted a letter attesting that the projected losses will be absorbed by the ongoing operations of Northwell Healthcare, Inc.

BFA Attachment A shows Northwell Health, Inc. maintained average positive working capital and net asset positions and achieved an average net operating income of $140,369,500 for the 2017-2018 period. The entity had a net operating loss of $19,657,000 for the period ending March 31, 2019. The applicant indicated that timing issues and the impact of some volume payment and performance improvement initiatives that occur later in the year contribute to the reported net operating loss for this period. Also, certain expenses are higher in the beginning of the year and get substantially lower as the year progresses as salary-based limits are reached. However, after non-operating income is considered, the entity shows a net income of $201,122,000 for the period ending March 31, 2019.

Attachments

BFA Attachment A	Financial Summary of Northwell Health Inc.
BFA Attachment B	Organizational Chart

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191203-C
St. Ann's Community

Program:	**Residential Health Care Facility**	***County:***	**Monroe**
Purpose:	**Construction**	***Acknowledged:***	**May 13, 2019**

Executive Summary

Description

St. Ann's Community (St. Ann's) a 470-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 1500 Portland Avenue, Rochester (Monroe County), requests approval to reconfigure floors 3-8 and decertify 96 RHCF beds, resulting in a final total bed capacity of 374 beds. This project is Phase II of St. Ann's Master Plan to renovate the RHCF in its entirety. Phase I of the Plan, which renovated the 9th floor and relocated the short-term rehabilitation services, was recently completed (CON 181153). In addition, a construction notice was submitted in March 2019 to complete prework for the Phase II renovations, including HVAC and electrical system upgrades (Notice 2704).

The proposed project will renovate approximately 102,000 square feet of space primarily on floors 3-8. The construction plan calls for the reconfiguration of patient space into two households of not more than 15 residents for a maximum of 30 residents per floor, down from 42 residents per floor in the current configuration. Each household will include a hearth room with activity and dining space, access to a shared country kitchen and will lead to a 15-room resident wing with an additional den. All resident rooms will be renovated, either as private rooms using the existing footprint or as larger suites with fully accessible private bathrooms with showers. Support spaces will also be reconfigured and renovated. Building infrastructure will be fully upgraded to support the new design and layout and bring systems to current code compliance.

The proposed project is a critical step in transforming St. Ann's from a medical model of care delivery to a residential model and in meeting current standards of care. The newly designed public spaces are expected to create a more homelike environment conducive to greater resident interaction, increased staff emphasis on care as opposed to task-focused time, and greater comfort and satisfaction for residents, visitors and staff. The facility expects to achieve higher occupancy rates and cost decreases stemming from the reduction in certified beds.

The operator of St. Ann's is St. Ann's Home for the Aged (the Home), which also operates a medical adult day care program, a social adult day care program, and a 10-bed hospice unit. The Home is in turn controlled by St. Ann's of Greater Rochester, Inc. (SAGRI), a not-for-profit corporation that also controls the following: St. Ann's Nursing Home Company, Inc. d/b/a The Heritage, a 72-bed RHCF; Chapel Oaks, Inc, which operates independent rental units for seniors; St. Ann's Senior Housing, Inc. d/b/a Cherry Ridge, which operates independent living and assisted living units for seniors; and the St. Ann's Foundation, which raises and maintains funds for the benefit of SAGRI and its controlled entities.

OPCHSM Recommendation

Contingent Approval

Need Summary

Decertification of beds is appropriate given occupancy at the facility and in the County.

Program Summary

The renovations will provide residents with a more home-like environment.

Financial Summary

The total project cost of $48,100,492 will be met via investments held by the Home and the St. Ann's Foundation of $16,406,816 and $31,693,676 in bonds with a 30-year amortization and a 35-year term at 5.25% interest. Ziegler, Inc. has provided a proposal to underwrite the bond offering and to issue the debt through the Monroe County Industrial Development Corporation. The projected budget is as follows:

	Year One	Year Three
Revenues	$50,892,075	$51,065,624
Expenses	$48,654,545	$49,839,347
Net Income Before Interest and Depreciation	$2,237,530	$1,226,277
Net Income After Interest and Depreciation	($8,828,133)	($9,699,626)

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 documentation of contributions to be used as the source of financing, acceptable to the Department of Health. [BFA]
3. Submission of an executed Limited Support Agreement, acceptable to the Department of Health. [BFA]
4. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within four years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 10, 2019 and construction must be completed by May 31, 2022, 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 operator shall submit a plan to maintain resident services and safety during construction to the Western Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

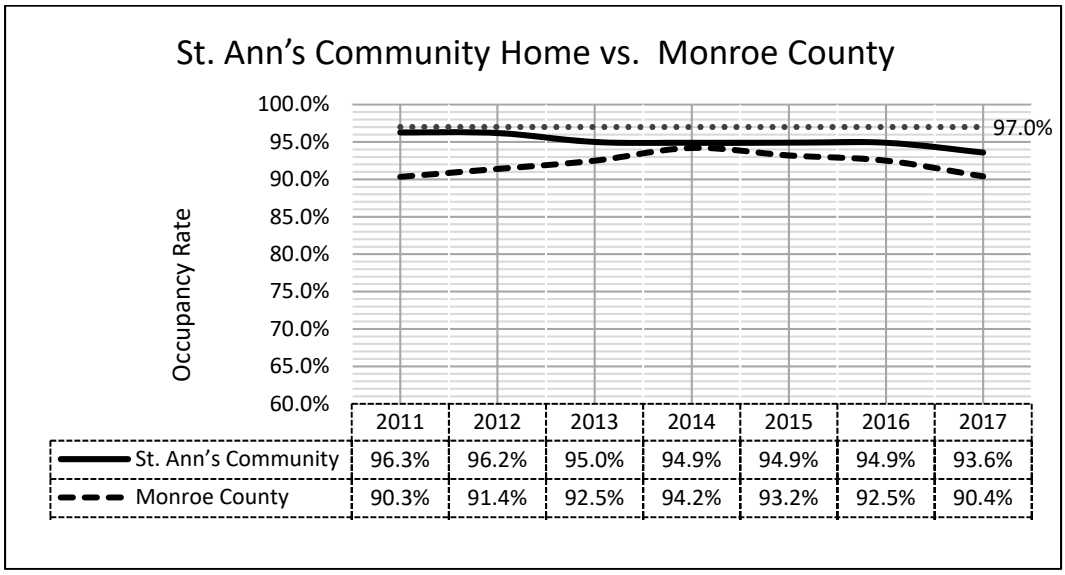
Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	St. Ann's Community	Same
Address	1500 Portland Avenue Rochester, NY 14621	Same
RHCF Capacity	470	374
ADHC Program Capacity	30	Same
Type of Operator	Corporation	Same
Class of Operator	Voluntary Not for Profit	Same
Operator	St. Ann's Home for the Aged	Same

Utilization

The planning optimum for occupancy is 97% in New York State. St. Ann's average occupancy for 2018 was 90.5% and the historical occupancy is displayed below.



Medicaid Access

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

	2016	2017	2018
St. Ann's	24.3%	18.1%	28.1%
Monroe County	11.3%	12.3%	12.8%

St. Ann's Medicaid admission have exceeded the Medicaid threshold for Monroe County.

Program Review

St. Ann's Community is a 470-bed nursing home located in Rochester, New York. The existing nine story building dates back to 1960 and was built using the medical model. St. Ann's Community is requesting to start phase 2 of their plan to renovate the facility to reflect a more modern neighborhood model. Phase 1 renovation of the ninth floor was completed October 2018. Phase 2 will renovate floors three through eight. St. Ann's Community will decertify 96 beds decreasing the bed count on each floor from 46 to 30. The floors will be reconfigured into two resident units designed to function as independent neighborhoods. Construction of Phase 2 will take approximately two and a half years to complete.

The third through seventh floors have an identical layout consisting of two wings with a center core. Each floor will have 30 private rooms with 15 rooms on the north wing and 15 rooms on the south wing. Twenty-one resident rooms on each floor will be redesigned and feature a private shower. The other nine resident rooms will have access to a spa room on the south wing with a tub and shower and a spa room on the north wing with a shower. Each wing features a resident den, utility rooms on the unit, and independent dining space. The center core on each floor has three resident elevators opening to a foyer with reception desk and one service elevator. The service elevator is used to provide bulk food from the central kitchen to the satellite kitchens for food preparation and service on the floors. The south and north dining areas have seating for 15 residents and a hearth featuring a couch, fireplace, and television. The central core also consists of the medication room, nursing cart alcove, IT room, environmental services room, and staff lounge.

The eighth floor has a slightly different in layout due to an emergency stairwell on the north wing from the ninth floor. Only 19 resident rooms on the eighth floor will be redesigned and feature a private shower. The other 11 resident rooms will have access to spa rooms. The remainder of the eighth floor will be identical to the floors below.

Compliance

St. Ann's Community currently has no outstanding civil monetary penalties or pending enforcements.

Quality Review

The subject facility has an average CMS overall rating, below average health inspection and staffing ratings, and a much above average quality measure rating. The applicant states that recent RN and LPN departures resulted in the below average staffing rating. The facility has a detailed plan in place to address staff retention and recruitment. The applicant states that the below average health inspection rating is due to survey results from 2016, and that performance is improving.

Facility	***Ownership Since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***
St. Ann's Community	Current	***	**	*****	**
	02/1968 Data 01/2009	***	**	**	****

Data date*: 8/2019*

Project Analysis and Conclusion

The decertification of the beds is appropriate given occupancy at the facility and in the County. The renovation of St. Ann's Community will enable the applicant to continue its mission of providing long term care for the aged through the redesign of its outdated building. Decertifying 96 beds will allow the applicant to phase the renovations floor by floor resulting in enhanced resident rooms. The new neighborhood model with 15 bed resident units, individual dining space, dens, and hearths will provide the residents with a more modern, home-like environment.

Financial Analysis

Total Project Cost and Financing

Total project cost for renovations and supporting infrastructure work is as follows:

Renovation and Demolition	$28,863,874
Asbestos Abatement/Removal	$760,000
Design Contingency	$2,596,958
Construction Contingency	$2,827,872
Planning Consultant Fees	$25,000
Architect/Engineering Fees	$1,865,000
Construction Manager Fees	$1,089,945
Fixed Equipment	238108
Other Fees	$53,250
Moveable Equipment	$3,015,390
Financing Costs	$3,487,999
Interim Interest Expense	$3,012,001
Con Fees	$2,000
Additional Processing Fee	$263,095
Total Project Cost	$48,100,492

Project costs are based on a construction start date of July 2019, and a 30-month construction period.

The Bureau of Architectural and Engineering Review has determined that reimbursable costs shall be limited to $39,617,095 reflecting allowable RHCF bed cap costs for renovated beds (plus asbestos and application fees) in Monroe County. The required equity contribution is equal to the total project cost amount over the bed cap limitation plus 20% of the allowable bed capped costs, which reflects a 5% reduction to the 25% required per Department policy as allowed for projects that permanently decertify more than 10% of beds in an over-bedded region.

The applicant's financing plan is as follows:

Existing Investments – Home and St. Ann's Foundation	$16,406,816
Monroe County IDA Bond Issue	$31,693,676
Total	$48,100,492

Ziegler, Inc. has provided a proposal to underwrite the tax-exempt, fixed rate bonds with an estimated 5.25% coupon with 30-year amortization and a 35-year term to be issued through the Monroe County Industrial Development Corporation (MCIDA). Ziegler, Inc. specializes in underwriting and arranging debt financing for healthcare and senior living projects.

The board of SAGRI, the sole member of both St. Ann's and St. Ann's Foundation, approved the use of up to $23M in investments held by the Home and the Foundation for project construction and other project-related expenses. The board also authorized St. Ann's Foundation to proceed with a $16M capital campaign to fund several initiatives, including costs for the proposed project, and the Foundation has committed to provide St. Ann's up to an additional $7M of current funding via a Limited Support Agreement as a backstop until the capital campaign has raised the target funds.

The Minutes of a Board Meeting held on March 20, 2019 indicate that the Home may seek to obtain a $30M bank loan (via RFP solicitation process) as an alternative to liquidating investments on its books or from the Foundation. The Limited Support Agreement from the Foundation would remain as a backstop should the Home need to request funding to complete the project. The replacement of currently authorized cash commitments from the Home and Foundation to cover the equity requirements with a new bank loan would constitute a change in financing and would require submission of a CON Project Modification for Department review and consideration. The applicant is reminded that equity requirements on construction projects must be provided via cash resources and the availability and adequacy of financial resources must be demonstrated and committed to at the time of CON application/presentation to the Public Health and Health Planning Council. To comply with Department

policy, any proposed financing change must include equity in amounts sufficient to satisfy the aforementioned requirements for nursing home construction projects and working capital needs.

Operating Budget

The applicant has submitted an incremental operating budget for the renovated facility for the current year in 2018 dollars and for the first year of operations, summarized below.

	Current Year (2018)		Year One (2022)		Year Three (2024)	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Inpatient Revenue		470 beds		394 beds		394 beds
Commercial	$417.42	$259,635	$417.42	$721,302	$417.42	$1,271,879
Medicare	$417.53	$6,103,472	$417.55	$3,716,685	$417.57	$3,153,581
Medicaid	$269.41	$30,646,487	$300.21	$31,110,203	$299.11	$30,911,544
Private Pay	$426.42	$8,661,449	$474.02	$8,186,843	$496.07	$9,201,578
Outpatient Revenue		$1,311,964		$1,311,964		$1,311,964
Ancillary/Other		$7,001,704		$5,215,078		$5,215,078
Total Revenue		$53,984,711		$50,892,075		$51,065,624
Operating Expenses		$55,695,927		$48,654,545		$49,839,347
Capital Expenses						
Interest		$932,457		$2,670,676		$2,530,916
Depreciation		$5,525,513		$8,421,781		$8,421,781
Total Expenses		$62,153,897		$59,747,002		$60,792,044
Net Income before Capital		($1,711,216)		$2,237,530		$1,226,277
Net Income after Capital		($8,169,186)		($8,854,927)		($9,726,420)
Patient Days		148,836		132,858		132,494
Occupancy		87%		97%		97%

The inpatient revenue forecast assumes an 11% drop in patient days, with the impact of the 96-bed decertification (20% of current total beds) offset by the expectation that the reconfigured facility will attract patients and support an improved 97% occupancy rate. The 87% occupancy rate for 2018 is below the 94% average rate achieved during 2015-2017 and reflects a temporary management decision to lower patient census in anticipation of this construction project. Increased utilization is supported by the experience of an affiliated entity, St. Ann's Nursing Home Company d/b/a The Heritage, which operates a floor plan and care model similar to the proposed project and consistently exceeds 97% occupancy.

The Medicaid rate forecast assumes a positive impact from the expectation that Medicaid MLTC residents will revert to Medicaid fee for service (FFS). Medicaid FFS rates are based on the DOH statewide pricing methodology and reflect a forecast case mix index of 1.09 and additional capital cost reimbursement. Private pay rates are projected to grow 2% annually over the forecast period. Ancillary service revenue is expected to decline in line with the bed reduction.

Operating expense projections reflect lower costs consistent with the reduction in beds. FTEs are projected at 627 in Year One and Year Three, 12% below current year levels, with salaries and benefits increasing by 3% between Year One and Year Three. Costs for supplies, purchased services and other direct expenses are all forecast at 20% below current year totals. Interest charges are $1,738,219 and $1,598,459 above current year levels. The Home expects to report net income exclusive of depreciation totaling ($433,146) in Year One and ($1,304,639) in Year Three.

Utilization by payor for St. Ann's RHCF services are as follows:

Payor	Current Year	Year One	Year Three
Commercial	0.4%	1.2%	2.0%
Medicare	9.9%	6.8%	6.0%
Medicaid	76.4%	78.0%	78.0%
Private Pay	13.3%	14.0%	14.0%
Total	100%	100%	100%

The utilization forecast assumes an increase of 2% in commercial/private payors and a 1.6% increase in Medicaid patients. St Ann's expects that the reconfigured space and home-like environment will attract a broader patient base. The corresponding drop in Medicare utilization reflects a reduction in transitional care beds that took place during 2018. Upon completion of the project, transitional care beds will represent 9% of total beds, down from 15% in 2017.

Capability and Feasibility

The total project cost is $48,100,492. Project costs will be met with $16,406,816 in investments held by the Home and the St. Ann's Foundation and $31,693,676 in bond issuance proceeds. BFA Attachment A is the 2017 and 2018 certified financial statements for St. Ann's Home for the Aged and the St. Ann's Foundation. BFA Attachment B is the 2019 interim financial statements for St. Ann's Home for the Aged. The financial statements indicate sufficient funds for the equity contribution.

Working capital requirements are estimated at $10,132,007 based on two months of third year expenses. Working capital will be funded by operations and investments held by St. Ann's Foundation and the Home. BFA Attachments A and B indicate the availability of sufficient funds for the working capital contribution.

The submitted budget indicates an excess of expenses over revenues of ($8,854,927) and ($9,726,420) during the first and third years after project completion, respectively. St. Ann's expects to cover these losses with additional funds from the Capital Campaign and investments from St. Ann's Foundation. Excluding non-cash depreciation charges, losses in Year One and Year Three are projected at ($422,146) and ($1,304,639), respectively. The budget appears reasonable.

As shown on BFA Attachment A, St. Ann's had a positive working capital position and a positive net asset position as of 12/3/18 and 12/31/17 but reported negative working capital as of 6/30/19. The entity achieved an excess of operating revenues over expenses of $2,659,278 for the year ended 12/31/2017 but reported a loss of $8,169,186 for the year ended 12/31/2018 and a loss of $3,505,552 for the six-month period ended 6/30/2019. The operating losses and resulting working capital position reflect activities to prepare St Ann's for the proposed project, specifically a reduction in patient admissions. During the first six months of 2019, approximately 50 beds were unoccupied. St. Ann's expects continued transitional losses during the course of the project. These losses will be balanced by the use of investments held by the Home and St. Ann's Foundation.

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

Attachments

BFA Attachment A	Certified financial statements of St. Ann's Home for the Aged and the St. Ann's Foundation for 2018 and 2017
BFA Attachment B	Interim Financial Statements – St. Ann's Home for the Aged as of 6/30/2019

Public Health and Health Planning Council

Project # 182120-C
The Plaza Rehab and Nursing Center

Program:	**Residential Health Care Facility**	***County:***	**Bronx**
Purpose:	**Construction**	***Acknowledged:***	**September 20, 2018**

Executive Summary

Description

This application is a companion to CON 182117 concurrently under review, whereby TCPRNC, LLC d/b/a New Riverdale Rehab and Nursing (New Riverdale) seeks approval to become the new operator of Riverdale Nursing Home, Inc., a 146-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) located at 641 West 230th Street, Bronx (Bronx County).

TCPRNC, LLC is the current operator of The Plaza Rehab and Nursing Center (The Plaza), a 744-bed, proprietary, Article 28 RHCF located at 100 West Kingsbridge Road in the Bronx. Under this CON application, TCPRNC, LLC requests approval to construct a six-story addition to The Plaza's Zweig building and transfer all 146 beds from New Riverdale, located two miles from The Plaza, to the newly expanded building. The Zweig building is currently a six-story structure located on the campus that houses 25 of The Plaza's beds. A six-story extension to the building will accommodate the transfer of all New Riverdale's beds. Upon completion of this application, the expanded and renovated Zweig building will contain 171 skilled nursing facility beds (including the 146 beds transferred from New Riverdale), for a total of 890 beds at The Plaza. There will be no change in services provided.

TCPRNC Real Estate, LLC is the RHCF's real property owner. There is a relationship between TCPRNC, LLC and TCPRNC Real Estate, LLC in that several members are common to both entities. The current lease will be amended to incorporate the expansion project and the applicant will continue to lease the RHCF premises and expanded building from TCPRNC Real Estate, LLC.

The expanded and renovated Zweig building will allow for new amenity spaces on each patient floor, such as a dining area, country kitchen and lounge spaces. The expansion of the cellar and first floor levels will provide additional administrative office space to serve the existing population and their families. Also, the renovation is expected to benefit patient care, improve access, and reduce wait time. New landscaped areas will provide residents with better access to outdoor fresh air and sunlight. Security systems will be included to provide patients with a high-level privacy and security.

OPCHSM Recommendation

Contingent Approval

Need Summary

The Plaza Rehab had 22 vacant beds of 744 total. Riverdale experienced a recent drop in utilization leaving 13 vacant beds of 146 total. Combined, a total of 35 vacant beds after the merger yields a 96.1% utilization rate. The combined utilization is close to the department's planning optimum and a significant factor in the approval recommendation of this project.

Program Summary

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

Financial Summary

The total project cost of $39,215,155 will be funded by the applicant and the landlord. TCPRNC, LLC will contribute $1,398,765 to be funded via equity and includes funding of costs related to movable equipment and CON fees. The landlord, TCPRNC Real Estate, LLC, will fund the remaining balance of $37,816,390 via members' equity of $8,816,390 and a ten-year loan for $29,000,000 at 6% interest, amortized over 25 years. Greystone has provided a letter of interest. The projected budget is as follows:

	Year One	Year Three
Revenue	$124,075,576	$124,075,576
Expenses	$122,904,944	$122,498,001
Net Income	$1,170,632	$1,577,575

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. Completion of CON 182117. [PMU]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare-Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare-Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of an executed realty loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed amended lease agreement, acceptable to the Department of Health. [BFA]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04, including illustrating the exiting path from stair #1 (213) to the public way. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-04. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 7, 2020 and construction must be completed by June 30, 2022, 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 operator shall submit a plan to maintain resident services and safety during construction to the Metropolitan Area Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

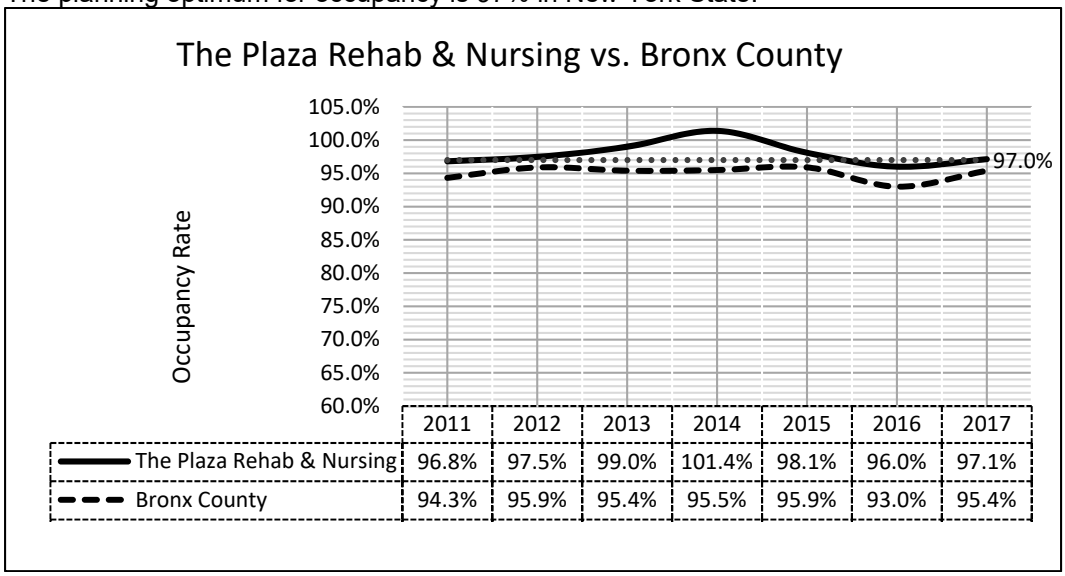
Council Action Date

October 10, 2019

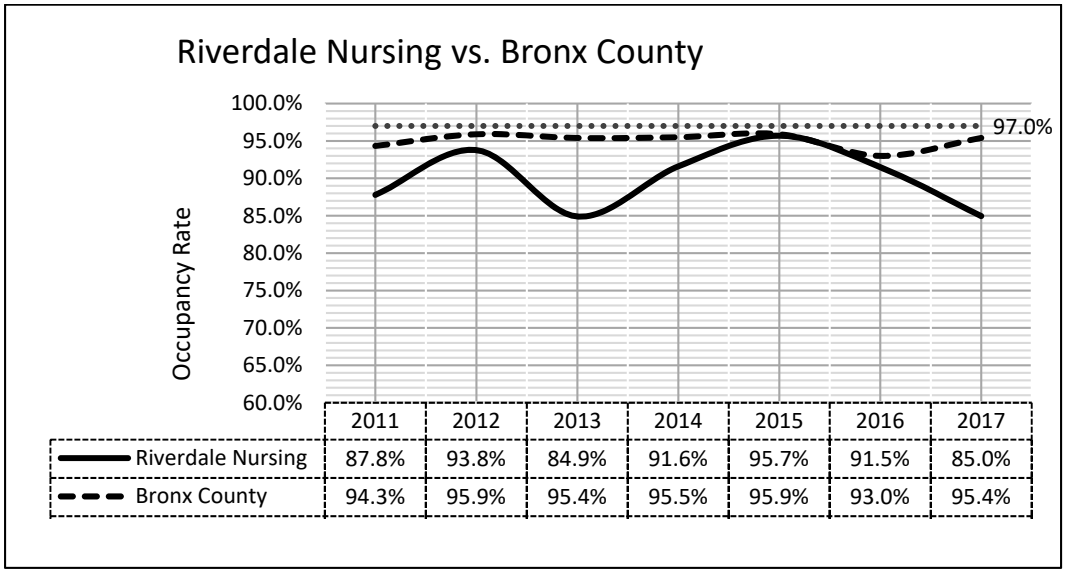
Need Analysis

Analysis

The planning optimum for occupancy is 97% in New York State.



	2011	2012	2013	2014	2015	2016	2017
The Plaza Rehab & Nursing	96.8%	97.5%	99.0%	101.4%	98.1%	96.0%	97.1%
Bronx County	94.3%	95.9%	95.4%	95.5%	95.9%	93.0%	95.4%



	2011	2012	2013	2014	2015	2016	2017
Riverdale Nursing	87.8%	93.8%	84.9%	91.6%	95.7%	91.5%	85.0%
Bronx County	94.3%	95.9%	95.4%	95.5%	95.9%	93.0%	95.4%

Facility	Current Beds	Change	Upon Completion
The Plaza Rehab and Nursing	744	146	890
Riverdale Rehab and Nursing	146	-146	0
Total	890	0	890

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.

Medicaid Admissions
The Plaza
2018 – 82.5%
2017 – 93.7%

Riverdale
2018 – 90.2%
2017 – 85.0%

Bronx County 75% Medicaid Admissions Threshold
2018 – 28.9%
2017 – 34.0%

Both facilities have exceeded the Medicaid threshold for the last couple of years.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Plaza Rehab and Nursing Center	Same
Address	100 West Kingsbridge Road Bronx, NY 10468	Same
RHCF Capacity	**744**	**890**
ADHC Capacity	N/A	N/A
Type of Operator	Limited Liability Corporation	Same
Class of Operator	Proprietary	Same
Operator	TCPRNC LLC	Same

Physical Environment

The proposed addition to the Zweig building is a six-story L shaped asymmetrical design. The floor plan for residential floors consist of two wings with resident rooms lining the exterior walls. The main wing features nurse's stations, dining, and support rooms positioned in the center with an adjacent shorter wing configured as a double loaded corridor.

The cellar level will serve as the main entrance and facility lobby. The main entrance features a reception desk, large open waiting area, café, and admissions office. Directly adjacent to the main entrance is a 224-seat auditorium with stage for events. The rest of the cellar space is set up for staff support and service areas such as maintenance, mechanical & utility service rooms, and offices.

The first floor contains the beauty shop and therapy gym which are located directly adjacent to the elevator lobby. Two central activity rooms are provided for residents on this floor. The main activity room features a country kitchen that can seat 72 residents for large group activities. An additional small activity room is provided adjacent to the main activity room for smaller groups. The remainder of the first floor space is office, storage space, and the staff lounge.

The second floor is a residential floor with 19 double and 4 single bedded rooms for a total of 42 beds. The floor has two decentralized nurse's stations one directly adjacent to the dining area and the other

adjacent to the lounge area. The dining area is centrally located and composed of three distinct areas. The main dining area features a country kitchen and seating for 42 residents. Adjacent to the main dining area is a smaller dining room with seating for 8 and a private family dining room. Resident bathing facilities are centrally located on the floor and provide both shower and tub bathing options for residents.

The third through fifth floors are residential floors with 16 double and 11 single bedded rooms for a total of 43 beds. The layout is similar to the second floor with two decentralized nurse's stations, one directly adjacent to the dining area and the other adjacent to the lounge area. The dining areas on the third through fifth floors are centrally located with two distinct areas on each floor. The main dining area features a country kitchen and seating for 42 residents and an adjacent room for private family dining. The extra dining area and adjacent lounge space on the second floor is configured into an isolation room and storage room on the third through fifth floors.

Compliance

The Plaza Rehab and Nursing Center currently has no outstanding civil monetary penalties or pending enforcements.

Quality Review

The subject facility has an average CMS overall and health inspection rating, an above average quality measure rating, with a below average staffing rating.

Facility	***Ownership Since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***
The Plaza Rehab and Nursing Center	Current	***	***	****	**
	09/2016	*****	*****	*****	*

Data date*: 8/2019*

Project Analysis and Conclusion

The transfer of beds will move residents from Riverdale Nursing Home, an overall one star rated facility, to The Plaza Rehab and Nursing Center, an overall three star rated facility. The residents will remain within two miles from their current location allowing them to stay in close proximity to friends and family. The new addition to the Zweig building will provide residents with a new, code compliant home-like environment**.**

Financial Analysis

Total Project Cost and Financing

The total project cost is estimated at $39,215,155, detailed as follows:

New Construction	$19,293,456
Renovation & Demolition	$8,913,715
Site Development	$468,000
Temporary Utilities	$104,000
Asbestos Abatement or Removal	$520,000
Design Contingency	$2,820,717
Construction Contingency	$1,856,044
Architect/Engineering Fees	$1,213,264
Other Fees	$104,994
Movable Equipment	$1,182,272
Telecommunications	$57,200
Financing Costs	$290,000
Interim Interest Costs	$2,175,000
Application Fees	$2,000
Additional Processing Fees	$214,493
Total Project Cost	$39,215,155

Project costs are based on a construction start date of July 2020, with a 24-month construction period.

The applicant's financing plan appears as follows:

Equity (Operator - TCPRNC, LLC)	$1,398,765
Equity (Landlord - TCPRNC Real Estate, LLC)	$8,816,390
Loan (Landlord, 10-year term, 6% interest, 25-year amortization)	$29,000,000
Total	$39,215,155

Greystone has provided a letter of interest for the financing. BFA Attachments A and A-2 present, respectively, the net worth summaries of the members of TCPRNC, LLC and TCPRNC Real Estate, LLC, which show sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the members' ownership interest in the operating and realty entities. Bernard Fuchs, Gerald Fuchs, Tova Fuchs and Leopold Friedman, all members of TCPRNC, LLC, have provided affidavits stating they are willing to contribute resources disproportionate to their membership interest in the operating entity to cover the construction cost and working capital needs. All members of TCPRNC Real Estate, LLC provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity to cover the construction cost and the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Rental Agreement

The applicant has submitted executed lease rental agreement. The terms are summarized below:

Date:	September 16, 2015
Premises:	Premises located at 100 West Kingsbridge Road, Bronx, NY
Landlord:	TCPRNC Real Estate, LLC
Lessee:	TCPRNC, LLC
Term:	35 years
Rental:	$4,200,000 plus Debt Service of approximately $6,031,260 per year bringing total current rent to $10,231,260.
Provisions:	Tenant is responsible for taxes, insurance, utilities and maintenance.

Amendment of Lease Agreement

The applicant has submitted a draft amendment of the lease. The terms are summarized below:

Premises:	61,838 additional sq. ft. of the renovated/expanded Zweig building located at 100 West Kingsbridge Road, Bronx, NY
Landlord	TCPRNC Real Estate, LLC
Tenant:	TCPRNC, LLC
Terms:	Modifies Base Rent due under the original lease. All other terms remain in full force.
Rental:	$1,200,000 plus Debt Service of $2,268,575 on the new loan. Total incremental rent is $3,468,575 bringing the total rent to $13,699,835

Operating Budget

The applicant has submitted their current year (2018) and projected operating budgets for the first and third years, in 2019 dollars, summarized below:

	Current Year (2018) (744 beds)		Year One (890 beds)		Year Three (890 beds)	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid-FFS	$371.43	$53,789,535	$331.53	$57,374,152	$331.53	$57,374,152
Medicaid-MC	$371.43	$29,143,195	$314.95	$29,531,075	$314.95	$29,531,075
Medicare-FFS	$577.08	$15,642,990	$577.08	$18,693,373	$577.08	$18,693,373
Medicare-MC	$577.08	$4,795,560	$577.11	$5,730,694	$577.11	$5,730,694
Private Pay	$460.25	$2,372,129	$460.25	$2,834,694	$460.25	$2,834,694
Other Revenues*		$4,527,193		$4,527,193		$4,527,193
Assessment Rev.		$0		$5,384,395		$5,384,395
Total Revenues		$110,270,602		$124,075,576		$124,075,576
Expenses						
Operating	$344.19	$90,815,307	$312.48	$98,525,196	$311.25	$98,139,761
Capital	$72.00	$18,998,123	$77.32	$24,379,748	$77.25	$24,358,240
Total Expenses	$416.19	$109,813,430	$389.80	$122,904,944	$388.50	$122,498,001
Net Income		$457,172		$1,170,632		$1,577,575
Pt. Days		263,853		315,304		315,304
Occupancy %		97.16%		97.06%		97.06%

**Other revenues include physician offices and other rental income $220,106, investment income $481 and nurse aide training $4,306,606.*
***Assessment revenues were included in current year inpatient revenue but shown separately in year one and year three.*

The following is noted with respect to the submitted budget:

- Current Year reflects The Plaza's 2018 revenues and expenses.
- The projected Year One and Year Three revenue and utilization assumptions are based on TCPRNC, LLC's experience of operating 744 beds at The Plaza and adjusted for the anticipated transfer of 146 beds from the New Riverdale site to The Plaza site post construction.
- Medicaid FFS revenue for Year One is based on the facility's current 2019 Medicaid rate sheet and Medicaid MC rate is based on an estimated 95% of the Medicaid FFS rate.
- Medicare and Private pay rates are the actual daily rates experienced by the facility during 2018.
- Expense and staffing assumptions are based on the applicant's current experience in operating The Plaza and New Riverdale and is inclusive of additional rent expenses that the operating entity will incur.
- The facility's projected utilization after the transfer of 146 beds from New Riverdale Rehab is 97.06% for Year One and Year Three.
- The breakeven utilization for the RHCF is projected at 96.14% for the first year.

- Utilization by payor source is as follows:

	Current Year		Year One		Year Three	
Payor	Pt Days	%	Pt Days	%	Pt Days	%
Medicaid FFS	144,819	54.89%	173,059	54.89%	173,059	54.89%
Medicaid MC	78,463	29.74%	93,763	29.74%	93,763	29.74%
Medicare FFS	27,107	10.27%	32,393	10.27%	32,393	10.27%
Medicare MC	8,310	3.15%	9,930	3.15%	9,930	3.15%
Private Pay	5,154	1.95%	6,159	1.95%	6,159	1.95%
Total	263,853	100%	315,304	100%	315,304	100%

Capability and Feasibility

The total project cost of $39,215,155 will be funded by the applicant and the landlord. TCPRNC LLC will contribute $1,398,765 via entity, which includes funding for movable equipment and CON fees. The landlord, TCPRNC Real Estate, LLC, will fund the remaining balance of $37,816,390 via $8,816,390 from members' equity and a ten-year loan for $29,000,000 at the stated terms. Greystone has provided a letter of interest for the financing. BFA Attachments A and A-2 present the net worth summaries of TCPRNC, LLC's and TCPRNC Real Estate, LLC's members, which indicates sufficient funds to meet equity requirements.

The working capital requirement is estimated at $2,114,095 based on two months of third year incremental expenses. Funding will be as follows: $1,057,259 from the members' equity with the remaining $1,056,836 satisfied through a five-year loan at 5% interest. Greystone has provided a letter of interest. BFA Attachments A and A-2 indicate the availability of sufficient members' equity to fund the operator and landlord required contributions. It is noted that liquid resources may not be available in proportion to the members' ownership interest in the operating and realty entities. Bernard Fuchs, Gerald Fuchs, Tova Fuchs and Leopold Friedman, members of TCPRNC, LLC, provided affidavits stating they are willing to contribute resources disproportionate to their membership interest in the operating entity to cover the construction cost and working capital. All members of TCPRNC Real Estate, LLC provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity to cover the construction cost and the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects net income of $1,170,632 and $1,577,575 in Year One and Year Three, respectively. Revenue growth is estimated at approximately 12.5% primarily due to the transfer of 146 beds from New Riverdale to The Plaza; however, overall expenses are expected to increase by $13,091,514 primarily due to an increase in RHCF beds and capital costs. BFA Attachment C presents pro forma balance sheets of TCPRNC, LLC (operator) and TCPRNC Real Estate, LLC (landlord), which shows the operator will start with $6,914,967 in members' equity and the landlord will have $2,281,367 in members' equity. The budget appears reasonable.

BFA Attachment D is the 2017 combined The Plaza and TCPRNC Real Estate, LLC certified financial statement. As shown, the combined entity had a negative working capital position of $6,073,099, a positive net assets position of $78,712 and positive operating income of $1,796,929 in 2017. BFA Attachment E is the combined internal financial statement for The Plaza and TCPRNC Real Estate, LLC as of June 30, 2019, which shows positive working capital, negative net assets and operating income of $2,254,263.

BFA Attachments F and G are, respectively, the applicant members' percent ownership interest in their affiliated NYS RFCFs and a financial summary of the affiliated homes. The attachments show the facilities have maintained positive net assets position, positive working capital position and positive income from operations for the periods shown except for the following:

- Beach Gardens Rehab & Nursing Center shows negative net income in 2017 due to a higher-than-expected level of Administrative expenses. As of August 31, 2018, the facility showed positive operating income.
- Hudson Point at Riverdale Center shows negative working capital in 2016, 2017 and 2018 due to a higher than expected level of accounts payable, which the facility expects to pay down by the end of 2018. The facility shows operating income and expects its working capital to be positive by the end

of 2018. The facility's negative equity during 2016 – 2018 was s due to historical operating losses during these periods.

- Ross Center for Nursing and Rehabilitation shows a negative working capital during 2017 and an operating loss during 2016 due to a15-bed reduction from the facility's 135-bed certified capacity. The facility's payroll costs were higher than anticipated as staff reduction took some time to implement after the bed reduction. In addition, the facility's case mix was low when the new operator assumed control of the facility. The facility shows a negative working capital, a negative equity and an operating loss as of August 31, 2018, which they expect to be positive by year end due to higher current occupancy.
- The Plaza Rehab and Nursing Center was purchased by the applicant members in September 2016. The negative working capital and an operating loss in 2017 was due to certain one-time costs incurred by the applicant to update and renovate the facility. As of June 30, 2018, the facility shows an operating income and an improved financial position. The facility also shows a negative working capital as of June 30, 2018. The facility plans to improve the working capital position by refinancing a large portion of the facility's existing debt by converting current liabilities into a long-term HUD loan.
- Bronx Gardens and Rehabilitation and Nursing Center shows a negative working capital during 2017 and 2018 due to higher level of accounts payables and other payables. The facility expects positive operating income during 2018, which will be used to pay down its payables to improve its working capital position by year end.
- Cold Spring Hills Center for Health and Rehabilitation had a small operating loss in 2017 and expects 2018 will end up with positive operating results on higher occupancy.
- The Village of Orleans had a negative working capital position and negative assets position and operating losses for 2015 and 2017. The facility had lower than expected occupancy levels during this period. On a consolidated basis, the operating and realty entities had positive working capital, net assets and a small operating loss of $8,472 by end of year 2017. The 2018 negative working capital was due to a high level of accounts payables which the facility is in process of paying down and expects positive working capital position by the end of 2018.
- Green Meadows Nursing and Rehab had a negative working capital position in 2016 and 2017 due to a higher level of accounts payables. The facility was acquired in November 2016 and the new owners are in the process of paying down the accounts payables to bring working capital in positive position.
- Rosewood Rehab and Nursing Center had a slight negative working capital position and negative net income in 2015. Since then the facility shows improved financial condition and shows positive operating income and positive working capital in year 2016 and 2017.

Attachments

BFA Attachment A	Net Worth Summary of members of TCPRNC, LLC
BFA Attachment A-2	Net Worth Summary of members and TCPRNC Real Estate, LLC
BFA Attachment B	Members of TCPRNC, LLC and TCPRNC Real Estate, LLC
BFA Attachment C	Pro Forma Balance Sheet of TCPRNC, LLC and TCPRNC Real Estate, LLC
BFA Attachment D	2017 Combined Certified Financial Statement of The Plaza Rehab and Nursing Center
BFA Attachment E	Combined Internal Financial of The Plaza Rehab and Nursing Center and TCPRNC Real Estate, LLC as of June 30, 2019
BFA Attachment F	TCPRNC, LLC's members' interest in affiliated RHCFs
BFA Attachment G	Financial summary of members' affiliated RHCFs

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 182117-E
TCPRNC LLC d/b/a New Riverdale Nursing Home

Program:	**Residential Health Care Facility**	***County:***	**Bronx**
Purpose:	**Establishment**	***Acknowledged:***	**September 19, 2018**

Executive Summary

Description

TCPRNC, LLC d/b/a New Riverdale Rehab and Nursing (New Riverdale), a New York limited liability company, requests approval to be established as the new operator of Riverdale Nursing Home, Inc., a 146-bed, Article 28 residential health care facility (RHCF) located at 641 West 230th Street, Bronx (Bronx County). Riverdale Nursing Home, Inc., a New York corporation, is the current operator of the facility. Upon approval of this application, the facility will be named New Riverdale Rehab and Nursing. A separate entity, Riverdale Real Estate Acquisitions, LLC, will acquire the real property. There will be no change in beds or services provided.

On April 11, 2018, Riverdale Nursing Home, Inc. entered into an Asset Purchase Agreement (APA) with TCPRNC, LLC for the sale and acquisition of the RHCF operating interests for $2,000,000. Concurrently, 641 West 230th, LLC the current realty owner, entered into a Real Estate Purchase Agreement (REPA) with Riverdale Real Estate Acquisitions, LLC for the sale and acquisition of the real property for $18,400,000. The APA and REPA will close at the same time upon CON approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between TCPRNC, LLC and Riverdale Real Estate Acquisitions, LLC in that several members are common. The applicant will lease the premises from Riverdale Real Estate Acquisitions, LLC.

TCPRNC, LLC is also the current operator of The Plaza Rehab and Nursing Center (The Plaza), a 744- bed RHCF located at 100 West Kingsbridge Road, Bronx (Bronx County). CON 182120 is concurrently under review, whereby TCPRNC, LLC seeks to ultimately transfer the 146 beds at New Riverdale to The Plaza's Zweig Building, an existing six-story building that currently houses 25 of The Plaza's 744 beds. TCPRNC, LLC plans to expand the Zweig Building by adding a six-story extension to accommodate the 146 beds that will be transferred. The expanded Zweig Building will ultimately contain a total of 171 skilled nursing beds (the 146 transferred beds plus the current 25 beds being utilized).

New Riverdale's real property building will eventually be converted to an adult care facility, which will be the subject of a separate application. The applicant intends to establish the new adult care facility beds at approximately the same time that New Riverdale's RHCF beds are transferred to The Plaza. Upon transfer of the 146 beds to The Plaza, the operational loan will be reflected on the balance sheet of The Plaza Rehab and Nursing Center and will remain the legal obligation of TCPRNC, LLC. Riverdale Real Estate Acquisitions, LLC will enter into a new lease agreement with the new operator of the to-be-developed Riverdale Adult Care Facility. The realty loan obligation will be met by the lease payments received from the new operator of the Riverdale Adult Care Facility.

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

Current Operator	
Riverdale Nursing Home, Inc.	
Shareholders	%
Eric Paneth	50%
Marvin Beinhorn	50%

Proposed Operator	
TCPRNC, LLC	
Members	%
Leopold Friedman	50.0%
Raquel Philipson	12.5%
Avi Philipson	12.5%
Bernard Fuchs	3.0%
Gerald Fuchs	3.0%
Tova Fuchs	3.0%
Joel Edelstein	3.0%
Israel Freund	3.0%
BESCAR, LLC	10.0%
Barbara Gold (20%)	
Donald Fishoff (20%)	
Regina Weinstock (20%)	
Meryl Maybruch (20%)	
Abraham Fishoff (20%)	

The applicant members have ownership interest in several New York State RHCFs. BFA Attachments F and G provide the ownership interests and financial summaries of the proposed members' affiliated RHCFs.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no area impact to beds, services, or utilization through this project.

Program Summary

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

TCPRNC, LLC will acquire the RHCF operations for $2,000,000 funded by $400,000 in members' equity and a ten-year self-amortizing loan for $1,600,000 at 6% interest. Riverdale Real Estate Acquisitions, LLC will purchase the real property for $18,400,000 funded by $3,680,000 in members' equity and a ten-year loan for $14,720,000 at 6% interest, amortized over 30 years. The applicant intends to pursue HUD financing once the facility demonstrates stabilized performance to support the HUD loan. Greystone has provided letters of interest for the operation and realty loans at the stated terms and to refinance the realty loan with a self-amortizing HUD loan. Upon transfer of the 146 beds to The Plaza, the operational loan will be reflected on the balance sheet of The Plaza Rehab and Nursing Center and will remain legal obligation of TCPRNC LLC. The realty loan obligation will be met by lease payment received from the new operator of the to-be-developed Riverdale Adult Care Facility. The projected budget is as follow:

	Year One	Year Three
Revenues	$17,282,762	$17,443,353
Expenses	$17,198,414	$17,214,782
Net Income	$84,348	$228,571

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 an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the purchase of the real property, 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed amended and completed Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed amended and completed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed amended and completed Articles of Organization of BESCAR LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed amended and completed Operating Agreement of BESCAR LLC. [CSL]
11. Submission of evidence, acceptable to the Department, of the consent of all members of the applicant and Riverdale Real Estate Acquisitions, LLC authorizing the purchase and sale, leasing and establishment actions provided for under this application. [CSL]

Approval conditional upon:

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

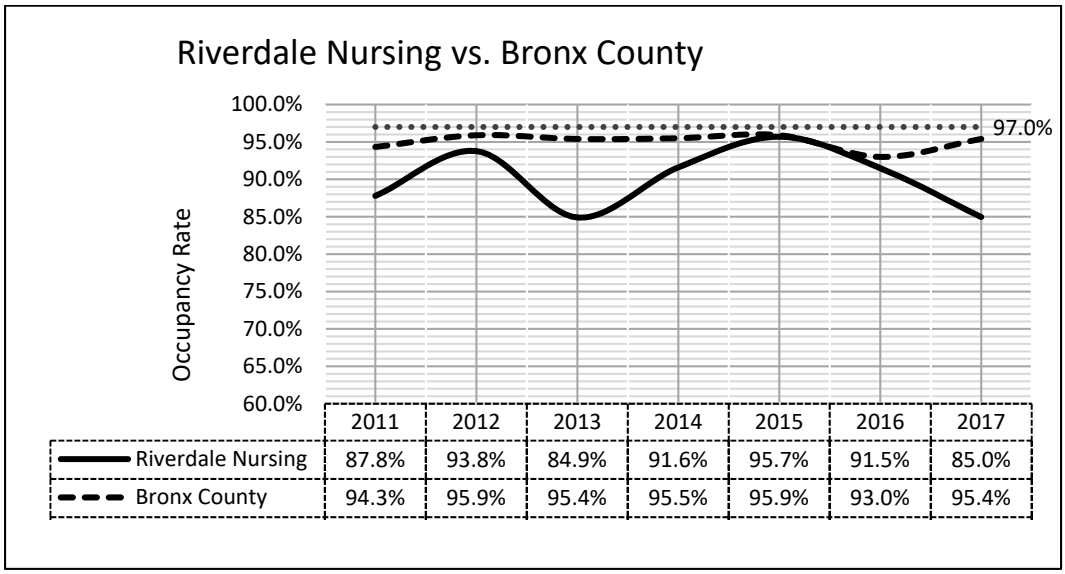
Council Action Date

October 10, 2019

Need Analysis

Analysis

The planning optimum for occupancy is 97% in New York State.



	2011	2012	2013	2014	2015	2016	2017
Riverdale Nursing	87.8%	93.8%	84.9%	91.6%	95.7%	91.5%	85.0%
Bronx County	94.3%	95.9%	95.4%	95.5%	95.9%	93.0%	95.4%

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.

Riverdale Nursing Medicaid Admissions
2018 – 90.2%
2017 – 85.0%

Bronx County 75% Medicaid Admissions Threshold
2018 – 28.9%
2017 – 34.0%

The nursing home has exceeded the County threshold for the last several years.

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Riverdale Nursing Home	New Riverdale Rehab and Nursing
Address	641 West 230th Street, Bronx	Same
RHCF Capacity	146	Same
ADHC Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Corporation	LLC
Operator	Riverdale Nursing Home Inc.	TCPRNC,LLC Leopold Friedman* 50.00% Raquel Phillipson 12.50% Avi Phillipson* 12.50% Bernard Fuchs 3.00% Gerald Fuchs 3.00% Tova Fuchs 3.00% Joel Edelstein 3.00% Israel Freund 3.00% BESCAR, LLC 10.00% Barbara Gold (20%) Donald Fishoff (20%) Regina Weinstock (20%) Meryl Maybrunch (20%) Abraham Fishoff (20%) **Managing Members*

Character and Competence –Assessment

Individual Background Review

Leopold Friedman discloses employment as the Chief Executive Officer of Advanced Care Staffing, Inc., a healthcare staffing agency, since 2006. Mr. Friedman discloses the following ownership interests and affiliations

Beach Gardens Rehab and Nursing Center (20%)	11/2014 to present
Bronx Gardens Rehabilitation and Nursing Center (50%)	11/2016 to present
Hudson Pointe at Riverdale Center for Nursing & Rehab (50%)	06/2016 to present
Long Beach Nursing and Rehabilitation Center (25%)	08/2015 to present
Peninsula Nursing and Rehabilitation Center (25%)	01/2013 to present
Ross Center for Nursing and Rehabilitation (5%)	06/2016 to 07/2018
The Citadel Rehab and Nursing Center at Kingsbridge (50%)	02/2015 to present
The Plaza Rehab and Nursing Center (25%)	11/2016 to present
Upper East Side Rehabilitation and Nursing Center (3%)	06/2015 to present
Cassena Care Dialysis at Peninsula (23.75%)	11/2016 to present
Yonkers Gardens Center for Rehab and Nursing (19%)	04/2018 to present
Downtown Brooklyn Nursing and Rehabilitation Center (27.33%)	06/2018 to present
Margaret Tietz Nursing and Rehabilitation Center (33.33%)	02/2019 to present
Hillside Certified Home Care Agency (30%)	11/2017 to present
Brooklyn Gardens Nursing & Rehabilitation Center (Board Member)	09/2014 to present

Florida

The Sands at South Beach Care Center (45%)	06/2018 to present
Sea Breeze Rehab and Nursing Center (100%)	06/2018 to present
Oak Haven Rehab and Nursing Center (100%)	06/2018 to present
Kensington Gardens Rehab and Nursing Center (100%)	06/2018 to present
Sandgate Gardens Rehab and Nursing Center (100%)	06/2018 to present
Fouraker Hill Rehab and Nursing Center (100%)	06/2018 to present

Raquel Philipson discloses no employment history. She received a BS degree from Touro college/Lander's College for Women in May of 2018. Ms. Philipson discloses the following ownership health facility ownership interests:

The Plaza Rehabilitation and Nursing Center (12.50%)	05/2017 to present

Avi Philipson is currently a student. He is employed as the Managing Member of the Flat Iron Agency which he discloses is a worker's compensation managing agency. Additionally, he is currently employed as the Operations Manager at Standard and Preferred Insurance Company. Mr. Philipson discloses the following health facility interests:

Bronx Gardens Rehabilitation and Nursing Center (25%)	11/2016 to present
Cold Spring Hills Center for Nursing and Rehabilitation (24%)	06/2016 to present
Ross Center for Nursing and Rehabilitation (20%)	06/2016 to present
Seagate Rehabilitation and Nursing Center (10%)	12/2014 to present
The Plaza Rehabilitation and Nursing Center (11.50%)	05/2017 to present

Bernard Fuchs discloses he is employed as the principal for Tiferes Investors, LLC. He also is the President at The Pavilion at Queens Rehabilitation and Nursing, Queens Dialysis at the Pavilion, LLC and the President at Massapequa Center for Rehabilitation & Nursing. Mr. Fuchs discloses the following ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Greene Meadows Nursing and Rehabilitation Center (9%)	12/2015 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
Hudson Pointe at Riverdale Center (50%)	01/2006 to 08/2010
The Pavilion at Queens for Rehabilitation and Nursing (10%)	01/2015 to present
The Plaza Rehab and Nursing Center (3%)	11/2016 to present
The Villages of Orleans Health and Rehabilitation Center (100%)	01/2015 to present
Massepequa Center Rehabilitation & Nursing (13.5%)	11/2017 to present
Queens Dialysis at the Pavilion, LLC (10%)	01/2015 to present

Delaware

Delmar Nursing and Rehabilitation Center (DE) (3.8%)	5/2015 to present

Pennsylvania

Brighton Rehabilitation and Wellness Center (PA) (3.8%)	03/2014 to present

Kentucky

Grandview Nursing and Rehab (KY) (3%)	11/2016 to present
Letcher Manor Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Martin County Health Care (KY) (3%)	11/2016 to present
Maysville Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Middlesboro Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Oakmont Manor (KY) (3%)	11/2016 to present
Ridgeway Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Robertson County Health Care (KY) (3%)	11/2016 to present
Somerset Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Woodland Oaks Terrace Nursing and Rehab (KY) (3%)	11/2016 to present
The Heritage Nursing and Rehab (KY) (3%)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3%)	11/2016 to present
Creekwood Place Nursing and Rehab Center (4%)	06/2018 to present
Spring View Health and Rehab Center (4%)	06/2018 to present
Princeton Health and Rehab Center (4%)	06/2018 to present
Mills Health and Rehab Center (4%)	06/2018 to present
Bradford Heights Health and Rehab (4%)	06/2018 to present
Hilltop Manor Residential Care (Asst. Living) (KY) (3%)	11/2016 to present

Joel Edelstein is currently the Chief Executive officer of The Pavilion at Queens for Rehabilitation and Nursing, Queens Dialysis at the Pavilion, LLC and Massapequa Center for Rehabilitation and Nursing. Mr. Edelstein has a BS degree from Touro College and discloses the following health facility interests:

The Pavilion at Queens for Rehabilitation & Nursing (10%)	05/2017 to present
Massapequa Center Rehabilitation and Nursing (13.5%)	11/2017 to present
Greene Meadows Nursing & Rehab (9%)	10/2018 to present
The Plaza Rehab and Nursing Center (3%)	10/2018 to present
Queens Dialysis at the Pavilion, LLC (10%)	05/2017 to present

Pennsylvania

Brighton Rehabilitation and Wellness Center (PA) (5% member)	03/2014 to present

Kentucky

Letcher Manor Nursing and Rehabilitation (KY) (3%)	11/2016 to present
The Heritage Nursing and Rehab (KY) (3%)	11/2016 to present
Somerset Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Terrace Nursing and Rehab (KY) (3%)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3%)	11/2016 to present
Robertson County Health Care (KY) (3%)	11/2016 to present
Oakmont Manor (KY) (3%)	11/2016 to present
Martin County Health Care (KY) (3%)	11/2016 to present
Maysville Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Middlesboro Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Grandview Nursing and Rehab (KY) (3%)	11/2016 to present
Creekwood Place Nursing and Rehab Center (4%)	06/2018 to present
Spring View Health and Rehab Center (4%)	06/2018 to present
Princeton Health and Rehab Center (4%)	06/2018 to present
Mills Health and Rehab Center (4%)	06/2018 to present
Bradford Heights Health and Rehab (4%)	06/2018 to present
Hilltop Manor Residential Care (Asst, Living) (KY) (3%)	11/2016 to present

Delaware

Delmar Nursing and Rehabilitation (3.80%)	05/2015 to present

Gerald Fuchs is the Chief Operating Officer of The Pavilion at Queens Rehabilitation and Nursing. Mr. Fuchs is a licensed nursing home administrator with license in good standing and has a BS degree from Touro College. Mr. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
The Pavilion at Queens for Rehabilitation & Nursing (10%)	05/2017 to present
Massapequa Center Rehabilitation and Nursing (13.5%)	11/2017 to present
Greene Meadows Nursing & Rehab (9%)	10/2018 to present
The Plaza Rehab and Nursing Center (3%)	10/2018 to present
Queens Dialysis at the Pavilion, LLC (10%)	05/2017 to present

Pennsylvania

Brighton Rehabilitation and Wellness Center (PA) (5% member)	03/2014 to present

Kentucky

Letcher Manor Nursing and Rehabilitation (KY) (3%)	11/2016 to present
The Heritage Nursing and Rehab (KY) (3%)	11/2016 to present
Somerset Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Ridgeway Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Terrace Nursing and Rehab (KY) (3%)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3%)	11/2016 to present
Robertson County Health Care (KY) (3%)	11/2016 to present
Oakmont Manor (KY) (3%)	11/2016 to present

Martin County Health Care (KY) (3%)	11/2016 to present
Maysville Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Middlesboro Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Grandview Nursing and Rehab (KY) (3%)	11/2016 to present
Creekwood Place Nursing and Rehab Center (4%)	06/2018 to present
Spring View Health and Rehab Center (4%)	06/2018 to present
Princeton Health and Rehab Center (4%)	06/2018 to present
Mills Health and Rehab Center (4%)	06/2018 to present
Bradford Heights Health and Rehab (4%)	06/2018 to present
Hilltop Manor Residential Care (Asst. Living) (KY) (3%)	11/2016 to present

Delaware

Delmar Nursing and Rehabilitation (3.80%)	05/2015 to present

Tova Fuchs is retired and has a Master's degree from Adelphi University. She is currently a student at Wurzweiler School of Social Work. Ms. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
The Pavilion at Queens for Rehabilitation & Nursing (10%)	05/2017 to present
Massapequa Center Rehabilitation and Nursing (13.5%	11/2017 to present
Greene Meadows Nursing & Rehab (9%)	10/2018 to present
The Plaza Rehab and Nursing Center (3%)	10/2018 to present
Queens Dialysis at the Pavilion, LLC (10%)	05/2017 to present

Pennsylvania

Brighton Rehabilitation and Wellness Center (PA) (5%)	03/2014 to present

Kentucky

Letcher Manor Nursing and Rehabilitation (KY) (3%)	11/2016 to present
The Heritage Nursing and Rehab (KY) (3%)	11/2016 to present
Somerset Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Ridgeway Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Terrace Nursing and Rehab (KY) (3%)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3%)	11/2016 to present
Robertson County Health Care (KY) (3%)	11/2016 to present
Oakmont Manor (KY) (3%)	11/2016 to present
Martin County Health Care (KY) (3%)	11/2016 to present
Maysville Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Middlesboro Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Grandview Nursing and Rehab (KY) (3%)	11/2016 to present
Creekwood Place Nursing and Rehab Center (4%)	06/2018 to present
Spring View Health and Rehab Center (4%)	06/2018 to present
Princeton Health and Rehab Center (4%)	06/2018 to present
Mills Health and Rehab Center (4%)	06/2018 to present
Bradford Heights Health and Rehab (4%)	06/2018 to present
Hilltop Manor Residential Care (Asst. Living) (KY) (3%)	11/2016 to present

Delaware

Delmar Nursing and Rehabilitation (3.80%)	05/2015 to present

Massachusetts

Brookside Rehabilitation and Healthcare Center (2.5%)	05/2017 – present

Florida

Sandalwood Rehabilitation and Nursing Center (10%)	01/2017 to present

Israel Freund is currently employed as the controller at the Pavilion of Queens Rehabilitation and Nursing. Mr. Freund has a diploma from Yeshivah Mekor Chaim and is a licensed notary public. Mr. Freund discloses the following health facility ownership interests:

The Pavilion at Queens for Rehabilitation and Nursing (10%)	05/2017 to present
Massapequa Center Rehabilitation and Nursing (13.5%	11/2017 to present
Greene Meadows Nursing & Rehab (9%)	10/2018 to present
The Plaza Rehab and Nursing Center (3%)	10/2018 to present
Queens Dialysis at the Pavilion, LLC (10%)	05/2017 to present

Pennsylvania

Brighton Rehabilitation and Wellness Center (PA) (5%)	03/2014 to present

Kentucky

Letcher Manor Nursing and Rehabilitation (KY) (3%)	11/2016 to present
The Heritage Nursing and Rehab (KY) (3%)	11/2016 to present
Somerset Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Ridgeway Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Terrace Nursing and Rehab (KY) (3%)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3%)	11/2016 to present
Robertson County Health Care (KY) (3%)	11/2016 to present
Oakmont Manor (KY) (3%)	11/2016 to present
Martin County Health Care (KY) (3%)	11/2016 to present
Maysville Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Middlesboro Nursing and Rehabilitation (KY) (3%)	11/2016 to present
Grandview Nursing and Rehab (KY) (3%)	11/2016 to present
Creekwood Place Nursing and Rehab Center (4%)	06/2018 to present
Spring View Health and Rehab Center (4%)	06/2018 to present
Princeton Health and Rehab Center (4%)	06/2018 to present
Mills Health and Rehab Center (4%)	06/2018 to present
Bradford Heights Health and Rehab (4%)	06/2018 to present
Hilltop Manor Residential Care (Asst.Living) (KY) (3%)	11/2016 to present

Delaware

Delmar Nursing and Rehabilitation (3.80%)	05/2015 to present

Abraham Fishoff has a Bachelor's degree from I.T.R.I. in Israel. He is employed as the owner of Self-City Lights, which is a real estate development company. Mr. Fishoff discloses the following health facility ownership interests:

Eastchester Rehab and Health Care Center (4.15%)	01/2013 to present
The Plaza Nursing and Rehabilitation Center (2%)	09/2016 to present
Rosewood Rehabilitation and Nursing Center (7.5%)	09/2014 to present

Barbara Gold has a Bachelor's degree from Queens College of SUNY. Ms. Gold lists no employment history for the past 10 years. She discloses the following health facility ownership interests:

Eastchester Rehab and Health Care Center (4.15%)	01/2013 to present
The Plaza Nursing and Rehabilitation Center (2%)	09/2016 to present
Rosewood Rehabilitation and Nursing Center (7.5%)	09/2014 to present

Donald Fishoff has a Juris Doctor degree from N.Y.U School of Law. He is employed as the President of Inter- Ocean Industries, which is a trade business. Mr. Fishoff discloses the following health facility ownership interests:

Eastchester Rehab and Health Care Center (3%)	01/2013 to present
The Plaza Nursing and Rehab Center (2%)	09/2016 to present
Rosewood Rehabilitation and Nursing Center (7.5%)	09/2014 to present

Regina Weinstock has a Master of Arts degree from New York University. She is employed as an accounts Payable Administrator for Santosa Care which is a health care consulting firm. Ms. Weinstock discloses the following health facility ownership interests:

Eastchester Rehab & Health Care Center(5.75%)	01/2013 to present
The Plaza Nursing & Rehab Center (2%)	09/2016 to present
Rosewood Rehabilitation and Nursing Center (7.5%)	09/2014 to present

Meryl Maybruch has a Master of Arts degree from Queens College. She is currently retired, and most recently worked as a curator at a museum. Ms. Maybruch discloses the following health facility ownership interests:

Eastchester Rehab & Health Care Center(4%)	01/2013 to present
The Plaza Nursing & Rehab Center (2%)	2016 to present
Rosewood Rehabilitation and Nursing Center (7.5%)	09/2014 to present
St. James Rehabilitation & Healthcare Center (8.3%)	06/2014 to present

Quality Review

The CMS Special Focus Facility (SFF) program includes nursing homes that have a history of serious quality issues or are included in a special program to stimulate improvements in their quality of care.

Three facilities were placed on the CMS Special Focus Facility (SFF) Candidate List (a list of nursing homes that qualify to be selected as a SFF) while the applicant owned the facilities. As of July 2019, Oak Haven Rehab and Nursing Center FL, has been on this list for 4 months, The Grandview Nursing and Rehabilitation Facility, KY, has been on this list for 2 months, and Brighton Rehabilitation and Wellness Center, PA has been on this list for 19 months.

Attached find the applicants explanation for facilities which have a below average (2 star) or very much below average (1 star) overall rating. This includes 24 (46%) of the applicants' facilities. All these facilities were owned by the applicant for at least one year before they earned these CMS ratings. In general, the applicant indicates that challenges with maintaining sufficient staffing, recent ownership changes, immediate jeopardy enforcements which have been addressed and poor survey results in the past are the reasons for current below average overall ratings.

Refer to BNHLC Attachment for applicant's explanation regarding CMS ratings and owning facilities on the SFF candidate list.

Facility	*Ownership Since*	*Overall*	*Health Inspection*	*Quality Measure*	*Staffing*
New York					
Riverdale Nursing Home (*subject facility*)	Current	*	**	****	*
Bensonhurst Center for Rehab and Healthcare	Current	*****	*****	*****	**
	01/2012	****	***	*****	**
Downtown Brooklyn Nursing and Rehabilitation	Current	*****	*****	*****	**
	06/2018	****	****	*****	*
Margaret Tietz Nursing and Rehabilitation Center	Current	*****	*****	*****	**
	02/2019	*****	*****	*****	**
The Pavilion at Queens for Rehabilitation & Nursing	Current	****	****	*****	*
	01/2015	****	****	****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Long Beach Nursing and Rehabilitation Center	Current	****	***	*****	***
	08/2015	****	***	****	****
Beach Gardens Rehab and Nursing Center	Current	****	****	****	***
	11/2014	**	*	*****	*
Upper East Side Rehabilitation and Nursing Center	Current	****	***	*****	***
	06/2015	*****	****	*****	*
St. James Rehabilitation and Healthcare	Current	****	***	*****	**
	09/2014	****	***	*****	**
Eastchester Rehabilitation and Health Care Center	Current	***	***	*****	*
	01/2013	*	**	****	*
Bronx Gardens Rehabilitation and Nursing Center	Current	***	**	*****	**
	11/2016	*****	***	*****	****
Seagate Rehabilitation and Nursing Center	Current	***	***	*****	*
	12/2014	*****	*****	*****	*
Hopkins Center for Rehabilitation and Healthcare	Current	***	***	***	**
	03/2011	***	***	****	***
The Plaza Rehab and Nursing Center	Current	***	***	****	**
	11/2016	*****	*****	*****	*
Brooklyn Gardens Nursing & Rehabilitation Center	Current	***	**	*****	**
	09/2014	**	**	*****	*
Hudson Pointe at Riverdale Center for Nursing & Rehab	Current	***	****	****	*
	06/2016	***	****	****	*
Yonkers Gardens Center for Rehab and Nursing	Current	***	***	****	***
	04/2018	**	**	*****	*
Cold Spring Hills Center for Nursing and Rehab	Current	**	*	*****	**
	06/2016	**	*	*****	***
Massapequa Center Rehabilitation & Nursing	Current	**	**	*****	*
	11/2017	*	*	**	*
Ross Center for Nursing and Rehabilitation	Current	**	*	*****	*
	06/2016	****	***	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Peninsula Nursing and Rehabilitation Center	Current	**	**	***	**
	01/2013	***	***	****	***
Rosewood Rehabilitation and Nursing Center	Current	**	*	*****	**
	09/2014	**	*	*****	****
The Citadel Rehab and Nursing Center at Kingsbridge	Current	*	*	****	**
	02/2015	***	***	***	***
Greene Meadows Nursing and Rehabilitation Center	Current	*	*	****	***
	12/2015	*	*	**	*
The Villages of Orleans Health and Rehab Center	Current	*	*	***	*
	01/2015	***	**	****	****
Massachusetts					
Brookside Rehabilitation and Healthcare	Current	**	**	****	***
	05/2017	*****	****	*****	****
Pennsylvania					
Brighton Rehabilitation and Wellness Center	Current	**	*	*****	**
	03/2014	*	*	***	**
Kentucky					
The Terrace Nursing and Rehabilitation Center	Current	*****	*****	***	**
	11/2016	*****	****	*****	***
Robertson County Health Care Facility	Current	*****	*****	**	****
	11/2016	****	****	**	***
Middlesboro Nursing and Rehabilitation Facility	Current	*****	*****	*****	***
	11/2016	****	****	**	***
The Heritage	Current	****	***	***	****
	11/2016	****	****	****	***
Mills Health & Rehab Center	Current	****	****	**	***
	06/2016	****	***	*****	***
Ridgeway Nursing & Rehabilitation Facility	Current	****	****	**	**
	11/2016	*	**	*	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Woodland Oaks	Current	****	****	****	***
	11/2016	***	****	*	***
Oakmont Manor	Current	****	****	****	***
	11/2016	*****	****	*****	****
Princeton Health & Rehab Center	Current	**	**	***	***
	06/2018	**	**	***	***
Maysville Nursing and Rehabilitation Facility	Current	**	*	****	***
	11/2016	**	**	****	***
The Grandview Nursing and Rehabilitation Facility	Current	**	*	**	****
	11/2016	***	****	*	***
Spring View Health & Rehab Center	Current	*	**	*	***
	06/2018	*	**	**	*
Bradford Heights Health & Rehab Center	Current	*	*	*	***
	06/2018	**	*	**	****
Creekwood Place Nursing & Rehab Center	Current	*	*	*	***
	06/2018	**	**	**	***
Martin County Health Care Facility	Current	*	*	**	***
	11/2016	****	****	****	***
Somerset Nursing and Rehabilitation Facility	Current	*	*	*	**
	11/2016	*	**	*	***
Letcher Manor	Current	*	*	***	***
	11/2016	*****	*****	*****	****
Delaware					
Delmar Nursing & Rehabilitation Center	Current	**	*	**	****
	05/2015	**	*	*****	*
Florida					
Kensington Gardens Rehab and Nursing Center	Current	****	***	****	****
	06/2018	****	**	*****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Sea Breeze Rehab and Nursing Center	Current	***	**	**	****
	06/2018	**	*	*****	****
Fouraker Hills Rehab and Nursing Center	Current	***	**	****	****
	06/2018	**	*	*****	****
The Sands at South Beach Care Center	Current	***	***	****	***
	05/2018	****	**	*****	****
Sandgate Gardens Rehab and Nursing Center	Current	**	*	*****	*
	06/2018	**	*	*****	****
Oak Haven Rehab and Nursing Center	Current	*	*	***	***
	06/2018	****	***	**	****
Sandalwood Rehabilitation and Nursing Center	Current	*	*	****	***
	01/2017	*	**	*	**

***Data date**: 7/2019*

Enforcement History

A review of operations of **The Citadel Rehabilitation and Nursing Center at Kingsbridge** for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to Stipulation and Order NH-16-205 issued November 29, 2016 for surveillance findings on August 1, 2016. Deficiencies were found under 10NYCRR 415.12(h)(1) Quality of Care Accident Free Environment and 10NYCRR 415.26 Administration.
- The facility paid a Civil Money Penalty (CMP) of $20,737.60 for the survey dated August 1, 2016.

A review of operations of **Upper East Side Rehabilitation and Nursing Center** for the period identified above reveals the following:

- The facility was fined $12,000 pursuant to a Stipulation and Order issued for surveillance findings on February 20, 2018. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of No Significant Med Errors and 10NYCRR 415.15(b)(2)(iii) Physician Services/Physicians Visits.
- The facility paid a CMP of $7,023 for the survey dated February 20, 2018.

A review of operations for **Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula** in Far Rockaway, NY, for the period identified above reveals the following.

- The facility incurred a CMP of $12,468 for survey findings from December 28, 2016 to May 15, 2017 for Respiratory protection program (fit testing, documentation), hazards communication program, sharps injury log.

A review of operations for **Hopkins Center for Nursing and Healthcare** for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-12-037 issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 10 NYCRR 415.5(a) Dignity and 10 NYCRR 415.26 Administration.
- The facility paid a CMP of $ 30,600 for the survey dated April 11, 2011
- The facility was fined $10,000 pursuant to a Stipulation and Order NH-15-006 issued July 2, 2015 for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(l)(ii) – Right to Refuse; Formulate Advanced Directives.

A review of operations for **Greene Meadows Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on July 21, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential

A review of operations for **The Villages of Orleans Health and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH 18-022 issued July 6, 2018 for surveillance findings on February 21,2018. Deficiencies were found under 10 NYCRR 483.10(g)(14)(i)-(iv)(15) Resident Rights
- The facility paid a CMP of $6,893 for the survey findings on February 21, 2018.

A review of operations for **Massepequa Care Center** for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH 19-027 issued July 15, 2019 for surveillance findings on March 1, 2019. Deficiencies were found under 10 NYCRR 483.12(a)(1) Freedom from abuse, neglect and exploitation.
- The facility paid a CMP of $7,036 for the survey findings on March 1, 2019.

Kentucky

A review of operations of **Martin County Health Care** for the period identified above reveals the following:

- The facility paid a CMP of $43,358 for survey findings on March 9, 2018

A review of operations of **Maysville Nursing & Rehabilitation** for the period identified above reveals the following:

- The facility paid a CMP of $12, 250 for survey findings on February 1, 2019.
- The facility has a pending CMP for survey findings on June 1, 2019.

A review of operations **of Grandview Nursing & Rehab** for the period identified above reveals the following:

- The facility paid a CMP of $732,827 for survey findings on July 20, 2018.

A review of operations of **Letcher Manor Nursing & Rehabilitation** for the period identified above reveals the following.

- The facility paid a CMP of $6,500 for survey findings on November 3, 2018.

A review of operations of **Somerset Nursing & Rehab** for the period identifies above reveals the following:

- The facility paid a CMP of $20,965 for survey findings on November 6, 2018

A review of operations of **Ridgeway Nursing & Rehab** for the period identified above reveals the following:

- The facility paid a CMP of $7,150 for survey findings on September 22, 2018

A review of operations of **Bradford Heights Health and Rehab** for the period identified above reveals the following:

- The facility paid CMP's of $7,153 and $7,329 for survey findings on September 6, 2018.

Florida

A review of operations of **Sandalwood Rehabilitation and Nursing Center** for the period identified above reveals the following:

- The facility paid state fines of $2,000 and $800 for a complaint survey on August 4, 2017.
- The facility paid a CMP of $12,012 for survey findings on August 8, 2017.

A review of operations of **Sea Breeze Rehabilitation and Nursing Center** for the period above reveals the following:

- The facility paid a state fine of $1,000 for survey findings on August 16, 2018.

A review of operations of **The Sands at South Beach Care Center** for the period identified above reveals the following:

- The facility paid a CMP of $11,025 for survey findings on February 7, 2019.

A review of operations of **Oak Haven Rehabilitation and Nursing Center** for the period identified above reveals the following:

- The facility paid a CMP of $147,689 for survey findings on November 6, 2018.

Massachusetts

A review of operations of **Brookside Rehabilitation and Healthcare** for the period identified above reveals the following:

- The facility paid a CMP of $7,413 for survey findings on May 17, 2018.

Pennsylvania

A review of operations of **The Brighton Rehabilitation and Wellness Center** for the period identified above reveals the following:

- The facility paid a CMP of $13,627 for survey findings on January 30, 2017.
- The facility paid a CMP of $45,448 for survey findings on July 11, 2017
- The facility paid a CMP of $8,908 for survey findings on April 2, 2018
- The facility paid a CMP of $38,862 for survey findings on January 28, 2019.
- The facility paid a state fine of $16,750 for survey findings on January 28, 2019.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant states they may utilize staffing agencies on an infrequent, as-needed basis, but hasn't identified any specific staffing agencies which may be used.

Conclusion

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 Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	April 11, 2018
Seller:	Riverdale Nursing Home, Inc.
Buyer:	TCPRNC, LLC
Asset Acquired:	Rights, title and interest in the business assets clear of liens including: tangible assets, inventory, instruments, tools, vehicles, furniture/office equipment, all fixtures, leasehold improvements, all books and records, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Riverdale Nursing Home"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patient/employee records, manuals/computer software, phone/telefax numbers, and non-excluded accounts receivables.
Excluded Assets:	Seller's rights, title and interest on the closing date in: cash & equivalents, all insurance policies; all amounts due from affiliates; any claims/refunds due seller; all rate increases from any source; all claims, rights, cause of action, rights of recovery, rights of set-off and recoupment against any third parties; accounts receivables; all accounts payable; Universal Settlement, rate appeals, audits, and real estate including FF&E which is the subject of the real estate contract.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date except retained liabilities by seller.
Purchase Price:	$2,000,000
Payment of Purchase Price:	$100,000 Escrow Deposit paid upon signing; Balance due at closing.

The purchase price of the operations is proposed to be satisfied as follows:

Equity – TCPRNC, LLC's Members	$400,000
Loan (10 years, self- amortizing, 6% interest)	$1,600,000
Total	$2,000,000

Greystone has provided a letter of interest. Upon transfer of the 146 beds to The Plaza, the loan will be reflected on the balance sheet of The Plaza Rehab and Nursing Center and will remain the legal obligation of TCPRNC, LLC.

BFA Attachment A-1 is the net worth summary of the members of TCPRNC, LLC, which reveals sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 13, 2019, the facility had no outstanding Medicaid overpayment liabilities or assessments.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The agreement will close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	April 11, 2018
Seller:	641 West 230th LLC
Buyer:	Riverdale Real Estate Acquisitions, LLC
Asset Transferred:	Real Property of RHCF located at 641 West 230th Street, Bronx, NY
Purchase Price:	$18,400,000
Payment of Purchase Price:	$920,000 down payment at signing. Balance due at closing.

The purchase price of the real property is proposed to be satisfied as follows:

Equity – Riverdale Real Estate Acquisitions, LLC Members	$ 3,680,000
Loan (10 years, 30-year amortization, 6% interest)	14,720,000
Total	$18,400,000

The applicant intends to pursue HUD financing once the facility demonstrates stabilized performance to support the HUD loan. Greystone has provided a letter of interest to underwrite the realty loan and to refinance with a self-amortizing HUD loan.

BFA Attachment A-2 present the net worth summary for the proposed members of Riverdale Real Estate Acquisitions, LLC. Review of the net worth statements reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest in the proposed operating and realty entities. Leopold Friedman, Raquel Philipson, and Avi Philipson (members of TCPRNC, LLC), Benjamin Landa, Bent Philipson, and Deborah Philipson (members of Riverdale Real Estate Acquisitions, LLC), along with Bernard Fuchs, Gerald Fuchs, and Tova Fuchs (members of both entities) have provided affidavits stating the willingness to contribute the necessary resources disproportionate to their membership interest in the respected entities.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	146-Bed RHCF's premises located at 641 West 230th Street, Bronx, NY
Landlord:	Riverdale Real Estate Acquisitions, LLC
Lessee:	TCPRNC, LLC
ProTerm:	5 Years
Rental:	Annual rent equal to sum of lessor's debt service on real property mortgage (estimated at $88,254 per month) plus $100,000 per month.
Provisions:	Tenant is responsible for taxes, insurance, maintenance and utilities.

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.

Operating Budget

The applicant has provided the current year (2018) results and the first- and third-year operating budget subsequent to the change in ownership, in 2019 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid-FFS	$289.48	$10,195,009	$275.63	$10,629,315	$275.63	$10,735,609
Medicaid-MC	$289.48	$1,912,324	$261.83	$1,894,099	$261.85	$1,913,040
Medicare-FFS	$572.48	$2,019,145	$572.49	$2,210,964	$572.44	$2,233,073
Medicare-MC	$572.48	$146,555	$573.14	$160,478	$572.73	$162,083
Private Pay/HMO	$325.52	$428,713	$325.55	$469,441	$325.42	$474,135
Assessment Revenue		$0		$694,843		$701,791
Other Income *		$1,223,622		$1,223,622		$1,223,622
Total Revenue		$15,925,368		$17,282,762		$17,443,353
Expenses						
Operating	$307.73	$14,439,851	$280.19	$14,396,953	$278.59	$14,457,610
Capital	$21.26	$997,778	$54.52	$2,801,461	$53.13	$2,757,172
Total Expenses	$328.99	$15,437,629	$334.71	$17,198,414	$331.72	$17,214,782
Net Income (Loss)		$487,739		$84,348		$228,571
RHCF Patient Days		46,924		51,382		51,896
Occupancy %		88.05%		96.42%		97.38%

** Other income Includes: Vending Machine $2,201, Investment Income $1,639, Nurse Aide Training $249,654 and Medicare Part B Income $970,128.*

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

- Current Year reflects the facility's 2018 revenues and expenses.
- Medicaid FFS revenue is based on the facility's current 2019 Medicaid rate sheet and the Medicaid MC rate is based on an estimated 95% of the Medicaid FFS rate. Current Year Medicare and Private Pay rates are the actual daily rate experienced by the facility during 2018.
- Expenses and staffing assumptions are based on the current operator's model adjusted for inflation, the proposed increase in utilization, increase in capital costs along with some cost efficiencies associated with operating the two facilities.
- The facility's projected utilization for Year One is 96.42% and 97.38% for Year Three. It is noted that utilization for the past three years has averaged around 90.73% and current occupancy was 91.8% as of July 31, 2019. The RHCF beds that will be transferred to The Plaza will be utilized to provide specialty programs relating to Congestive Heart Failure (CHF), the administration of Left Ventricular Assist Devices (LVAD), the administration of inotrope medications, hemodialysis treatments, stroke care for residents and neurological programs. According the applicant, these specialty programs have also been implemented at the members' affiliated RHCF within Bronx County, where the average occupancy for the past two years was around 97% or higher. Also, four RHCFs achieved Preferred Partner Status with hospitals such as Mount Sinai Hospital, New York Presbyterian, Montefiore Medical Center and NYU Langone. In the period prior to the 146-bed transfer, the applicant plans to implement these programs and the Preferred Partner Status.
- Utilization by payer source for the first year after the change in ownership is summarized below:

	Current Year		Year One		Year Three	
Payor	Pt. Days	%	Pt. Days	%	Pt. Days	%
Medicaid-FFS	35,218	75.05%	38,564	75.05%	38,949	75.05%
Medicaid-MC	6,606	14.08%	7,234	14.08%	7,306	14.08%
Medicare-FFS	3,527	7.52%	3,862	7.52%	3,901	7.52%
Medicare-MC	256	.54%	280	.54%	283	.54%
Private Pay	1,317	2.81%	1,442	2.81%	1,457	2.81%
Total	46,924	100%	51,382	100%	51,896	100%

- The breakeven utilization for the RHCF is projected at 95.93% for the first year.

Capability and Feasibility

TCPRNC, LLC will acquire the RHCF operations for $2,000,000 funded by $400,000 in members' equity and a ten-year self-amortizing loan for $1,600,000 at 6% interest. Riverdale Real Estate Acquisitions, LLC will purchase the real property for $18,400,000 funded by $3,680,000 in members' equity and a ten-year loan for $14,720,000, 30-year amortization at 6% interest. The applicant intends to pursue HUD financing once the facility demonstrates stabilized performance to support the HUD loan. Greystone has provided letters of interest for the operation and realty loans and to refinance the realty loan to a self-amortizing HUD loan. Upon the transfer of the 146 beds to the Plaza Rehab and Nursing Center, the operational loan will be reflected on the balance sheet of The Plaza Rehab and Nursing Center and will remain legal obligation of TCPRNC LLC. The realty loan obligation will be met by lease payment received from the new operator of the to-be-developed Riverdale Adult Care Facility. There are no project costs associated with this application.

The working capital requirement is estimated at $2,866,402 based on two months of first year expenses. The applicant will provide $1,433,201 from the members' equity with the remaining $1,433,201 satisfied through a five-year loan at 6% interest. Greystone has provided a letter of interest. Upon transfer of the 146 beds to The Plaza, the working capital loan will be reflected on the balance sheet of The Plaza Rehab and Nursing Center and will remain the legal obligation of TCPRNC, LLC. BFA Attachment A-1 and A-2, proposed members' net worth summaries, reveals sufficient resources overall to meet equity requirements for the operations, working capital, and realty. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Leopold Friedman, Raquel Philipson, and Avi Philipson (members of TCPRNC, LLC), Ben Phillipson and Benjamin Landa (members of Riverdale Real Estate Acquisitions, LLC), along with Bernard Fuchs, Gerald Fuchs, Tova Fuchs (members of both entities) have provided affidavits stating willingness to contribute the necessary resources disproportionate to their membership interest in the respective entities.

The submitted budget projects $84,348 and $228,571 of net income in Year One and Year Three, respectively, after the change in ownership. Revenues are estimated to increase by approximately 8.5%. Overall expenses are expected to increase by $1,760,785 mostly from a $1,803,683 increase in capital expense (primarily from rent). Operating expenses are expected to decrease by 0.3% primarily from cost efficiencies in the areas of fees, supplies and other direct expenses. BFA Attachment C is New Riverdale Rehab & Nursing and Riverdale Real Estate Acquisitions' pro forma balance sheets, which show the operating entity will start with $1,833,201 in members' equity and the realty entity will start with $3,680,000 in members' equity respectively. The budget appears reasonable.

BFA Attachment D is the Financial Summary of Riverdale Nursing Home, Inc. (Consolidated) for 2015 through 2017. As shown, the RHCF had an average negative working capital position of $1,904,299, average negative net assets of $1,670,065, and average positive net income of $1,197,571 for the period. BFA Attachment E is the Internal Financial Statement for Riverdale Nursing Home, Inc. d/b/a Riverdale Nursing Home as of June 30, 2019, which shows an operating income of $518,337 plus positive working capital and net assets.

BFA Attachment F is the proposed members' percent interest in their affiliated RHCFs.

BFA Attachment G, Financial Summary of the proposed members' affiliated RHCFs, shows the facilities have maintained positive net assets position, positive working capital position and positive income from operations for the periods shown except for the following:

- Beach Gardens Rehab & Nursing Center shows negative net income in 2017 due to higher-than-expected level of Administrative Expenses. As of August 31, 2018, the facility showed positive operating income.
- Hudson Point at Riverdale Center shows negative working capital in 2016, 2017 and 2018 due to higher than expected level of accounts payable, which the facility expects to pay down by end of 2018. The facility shows positive operating income and expects its working capital to be positive by

the end of 2018. The facility's negative equity during 2016, 2017 and 2018 was due to historical operating losses during these periods.

- Ross Center for Nursing and Rehabilitation shows a negative working capital during 2017 and an operating loss during 2016 that was due to a 15-bed reduction from the facility's 135-bed certified capacity. The facility's payroll costs were higher than anticipated as staff reduction took some time to implement after bed reduction. In addition, the facility's case mix was low when the new operator assumed control of the facility. The facility shows negative working capital, negative equity and an operating loss as of August 31, 2018, which they expect to be positive by the year end due to higher current occupancy.
- The Plaza Rehab and Nursing Center was purchased by the applicant members in September 2016. The negative working capital and an operating loss in 2017 were due to certain one-time costs incurred by the applicant to update and renovate the facility. As of June 30, 2018, the facility shows an operating income and an improved financial position. The facility also shows a negative working capital as of June 30, 2018. The facility plans to improve the working capital position by refinancing a large portion of the facility's existing debt by converting current liabilities into a long-term HUD loan.
- Bronx Gardens and Rehabilitation and Nursing Center shows negative working capital during 2017 and 2018 due to a higher level of accounts payables and other payables. The facility expects positive operating income during 2018, which will be used to pay down its payables to improve its working capital position by year end.
- Cold Spring Hills Center for Health and Rehabilitation had a small operating loss in 2017 and expects 2018 will end up with positive operating results due to higher occupancy.
- The Village of Orleans had a negative working capital position, negative net assets and operating losses for 2015 through 2017. The facility had lower than expected occupancy levels during this period. On a consolidated basis, the operating and realty entities had positive working capital, net assets and a small operating loss of $8,472 by end of 2017. The 2018 negative working capital was due to a high level of accounts payables, which the facility is in process of paying down and expects positive working capital position by the end of 2018.
- Green Meadows Nursing and Rehab had a negative working capital position in 2016 and 2017 due to a higher level of accounts payables. The facility was acquired in November 2016 and the new owners are in the process of paying down the account's payables, which will bring working capital into a positive position.
- Rosewood Rehab and Nursing Center had a slight negative working capital position and negative net income in 2015. Since then the facility shows improved financial condition and shows positive operating income and positive working capital in year 2016 and 2017.

Attachments

BFA Attachments A-1 and A-2	Net Worth of Proposed Members of TCPRNC, LLC and Riverdale Real Estate Acquisitions, LLC
BFA Attachment B	Current and Proposed Owners of the Real Property
BFA Attachment C	Pro Forma Balance Sheet of Operation & Realty
BFA Attachment D	Financial Summary 2015-2017 and 2017 Certified Financial Statement of Riverdale Nursing Home, Inc.
BFA Attachment E	Internal Financials of Riverdale Nursing Home, Inc. as of June 30, 2019
BFA Attachment F	Proposed members' interest in affiliated RHCFS
BFA Attachment G	Financial Summary of Proposed Member's affiliated RHCFs
BNHLC Attachment	Applicant Response Regarding Star Ratings

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191263-E
Schoellkopf Health Center

Program: **Residential Health Care Facility** ***County:*** **Niagara**
Purpose: **Establishment** ***Acknowledged:*** **June 3, 2019**

Executive Summary

Description
Schoellkopf Health Center (SHC), a 120-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 621 Tenth Street, Niagara Falls (Niagara County), requests approval for Niagara Falls Memorial Medical Center (NFMMC), a 171-bed, Article 28 hospital at the same address, to be established as their active parent and co-operator. There will be no change in authorized services or the number or type of beds at the RHCF. Both facilities share the same parent corporation, Niagara Area Management Corporation and will maintain their separate operating certificates following approval of this application.

SHC is physically attached to NFMMC and has an arrangement with the hospital to receive controlled medications at substantially reduced costs. However, in order to comply with Title 10 NYCRR Section 80.47(c), NFMMC must be the operator or co-operator of the nursing home for the arrangement to continue. Establishing NFMMC as SHC's active parent and co-operator will meet the requirement of the regulation and will enable the hospital to continue distributing controlled medications to the RHCF, eliminating the need for a redundant dispensing system.

The governance powers, as described 10 NYCRR 405.1(c), include:

- Appointment or dismissal of management level employees and medical staff, except the election or removal of corporate officers;
- Approval of operating and capital budgets;
- Adoption or approval of operating policies and procedures;
- Approval of certificate of need applications;
- Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of contracts for management or for clinical services; and
- Approval of settlements of administrative proceedings or litigation, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or applicable self-insurance fund.

NFMMC and Schoellkopf will determine the delineation of powers through their Certificates of Incorporation and bylaws.

OPCHSM Recommendation
Contingent Approval

Need Summary
Approval of this CON will result in no operational changes. There will be no changes to beds, services, utilization, or patient-access to care.

Program Summary
The 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 or purchase price associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$11,637,642	$11,924,575
Expenses	$11,523,418	$11,843,126
Net Income	$114,224	$81,449

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a copy of the amended by-laws of the applicant which are acceptable to the Department. [CSl]
2. Submission of a copy of the certificate of incorporation of the applicant, which are acceptable to the Department. [CSL]
3. Submission of a copy of the transfer documents of the applicant, which are acceptable to the Department. [CSL]
4. Submission of a copy of the corporate documents of Niagara Falls Memorial Medical Center, 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 lanning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 10, 2019

Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Schoellkopf Health Center	Same
Address	621 Tenth Street, Niagara Falls, NY 14302	Same
RHCF Capacity	120	Same
ADHC Program Capacity	none	Same
Type of Operator	Not for Profit Corporation	Same
Class of Operator	Voluntary	Same
Operator	Schoellkopf Health Center	Schoellkopf Health Center Co-operator: Niagara Falls Memorial Medical Center Board Members James C. Roscetti – Chairman Cynthia A. Bianco – Vice Chairman Margaret M. Toohey – Secretary Charles G. Rader – Treasurer Joseph A. Ruffolo Charles G. Rader Robert L. Bradley Jr. Ronald R. Campbell Matthew S. Feldman Murray, R. Hewitt Don J. King Marion B. LaVigne Judith A. Powell Mark D. Perry Craig D. Pridgen Salvatore Santarosa Vijay Bojedla

There will be no changes to beds, services, utilization, or patient-access to care as a result of this application.

Character and Competence

Facilities Reviewed

Schoellkopf Health Center 06/2009 to present
Niagara Falls Memorial Medical Center 06/2009 to present

Individual Background Review

The governing bodies of both Schoellkopf Health Center and Niagara Falls Memorial Medical Center are identical and consist of the following members of the Boards of Directors.

Joseph A. Ruffolo is currently the President and Chief Executive Officer of Niagara Falls Memorial Medical Center, since 2002. Mr. Ruffolo discloses board memberships on Niagara Falls Memorial Medical Center (since 2002), Schoellkopf Health Center (since 2002), Niagara Falls Memorial Medical Center Foundation and the YMCA Buffalo Niagara.

James C. Roscetti, JD is an attorney in the law firm Roscetti & DeCastro, P.C., since 1974. Mr. Roscetti discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Cynthia A. Bianco reports employment from 1966 until she retired as superintendent of schools of the Niagara Falls City School District in 2016. Ms. Bianco discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Charles G. Rader, Ph.D. reports employment from 2001 until he retired as the CEO of IsleChem, LLC in 2010. Mr. Rader discloses he is the Treasurer of the Board for Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Margaret M. Toohey is currently an account executive at The Lewiston Insurance Agency, since 1998. Ms. Toohey discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2003.

Robert L. Bradley Jr. reports employment from 2003 until he retired from the Niagara Falls City School District as Chief Education Administrator in 2018. Mr. Bradley discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Ronald R. Campbell reports employment from 1971 until he retired as COO of Washington Mills Electro Minerals Corporation, a chemical research manufacturer, in 2017. Mr. Campbell discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Matthew S. Feldman, JD is an attorney in the law firm Feldman Kleffer, LLP, since 2011. Prior to this, Mr. Feldman was a clerk attorney with Hogan Willig PLLC from 2008 to 2011. Mr. Feldman discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2012.

Murray R. Hewitt is currently the general manager of Greenpac Mill LLC, since 2012. Prior to this, Mr. Hewitt was the general manager of Catalyst Paper, from 2010 to 2012. Mr. Hewitt discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2015.

Don J. King is the president and owner of King Gallery Inc., an art gallery, since 1990. Mr. King discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Marion B. LaVigne, Ph.D. is president and CEO of the nonprofit venture development organization, Launch New York, Inc., since 2014. Prior to this, Ms. LaVigne was Associate Vice President for Economic Development, and Director for the Center of Excellence in Bioinformatics and Life Sciences from 2005 to 2014. Ms. LaVigne discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2008.

Judith A. Powell is foundation president at Niagara Falls Memorial Medical Center, since 2017. Prior to this, Ms. Powell served in various roles, including executive recruitment, commercial banking, branch banking and public relations at HSBC Bank USA, from 1978 to 2010. Ms. Powell discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center since 2011, were she is currently on leave.

Mark D. Perry, MD is a radiologist employed at Radiologic Solutions Associates, PLLC, as well as the Chief of Diagnostic Imaging at Niagara Falls Memorial Medical Center. Dr. Perry has been employed at Niagara Falls Memorial Medical Center since 1983. Dr. Perry discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2002.

Craig D. Pridgen is a senior vendor management analyst at M&T Bank since 2009 and is the senior pastor of the True Bethel Baptist Church since 2002. Mr. Pridgen discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2017.

Salvatore Santarosa is the president of Buffalo Fuel Corp and Santarosa Holdings since 1979. Mr. Santarosa discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2012.

Vijay Bojedla, MD is self employed as a physician, and Vice President Medical Affairs at Niagara Falls Memorial Medical Center, since 2006. Dr. Bojedla discloses board memberships on Niagara Falls Memorial Medical Center and Schoellkopf Health Center, since 2012.

Character and Competence Analysis

No negative information has been received concerning the character and competence of the board members of both Niagara Falls Memorial Medical Center.

Facility	*Ownership Since*	*Overall*	*Health Inspection*	*Quality Measure*	*Staffing*
Schoellkopf Health Center	Current	*****	****	*****	**
	01/2009	***	***	****	***

***Data date**: 8/2019*

Enforcement History

A review of the operations of Niagara Falls Memorial Medical Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order for Surveillance findings on May 7, 2019. Deficiencies were found under Tag 0710 Life Safety from Fire.

Conclusion

No changes in the program or physical environment are proposed in this application A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Niagara Falls Memorial Medical Center and Schoellkopf Health Center to adversely affect their positions on the boards or as officers.

Financial Analysis

Financial Analysis

There will be no change in authorized services, the number or type of beds, or utilization as a result of approval of this project. There is no purchase price consummating the establishment of NFMMC as active parent/co-operator.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 20, 2019, SHC has no outstanding Medicaid liabilities.

Operating Budget

The applicant has submitted their current year (2018) results and an operating budget, in 2019 dollars, for the first year (2020) and third year (2022) of operations, summarized below:

	Current Year		Year One		Year Three	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	$261.91	$5,234,878	$274.23	$5,426,149	$278.24	$5,505,556
Medicaid MC	225.37	2,487,459	227.86	2,489,851	227.86	2,489,851
Medicare FFS	534.13	859,413	545.02	868,213	560.02	892,111
Medicare MC	410.72	1,076,495	419.73	1,089,198	435.73	1,130,708
Commercial FFS	410.72	129,787	419.65	131,352	435.65	136,358
Private Pay	313.25	1,488,273	351.90	1,654,993	381.15	1,792,549
All other		28,628		0		0
Bad debt		(21,110)		(22,114)		(22,558)
Total Revenues		$11,283,823		$11,637,642		$11,924,575
Expenses						
Operating	$269.73	$10,875,827	$280.64	$11,202,490	$289.30	$11,548,103
Capital	8.83	356,234	8.04	320,928	7.39	295,023
Total Expenses	$278.57	$11,232,061	$288.68	$11,523,418	$296.69	$11,843,126
Net Income		$51,762		$114,224		$81,449
Patient Days		40,321		39,918		39,918
Occupancy		92.05%		91.14%		91.14%
Breakeven				90.24%		90.52%

Total budgeted revenues increase due to expected inflation, an increase in future rates and Schoellkopf joining United Health's network as of August 1, 2019.

Utilization by payor source is the same for Current Year, Year One and Year Three:

Payor	Utilization
Medicaid FFS	49.57%
Medicaid MC	27.37%
Medicare FFS	3.99%
Medicare MC	6.50%
Commercial FFS	0.78%
Private Pay	11.79%

Utilization, revenue and expense assumptions are based on historical experience.

Capability and Feasibility

There are no issues of capability as there are no project costs or purchase price associated with this application. The submitted budget indicates an excess of revenues over expenses of $114,224 and $81,449 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment A is the consolidate 2018 certified financial statements of Niagara Area Management Corporation, which includes the financial data for NFMMC and SHC. As shown, the hospital and the nursing home had positive working capital and net asset positions in 2018. Also, the hospital incurred an operating loss of $4,961,890 and the nursing home achieved an operating income of $44,871 in 2018. The applicant indicated that the hospital operating losses were due to the loss of a high-volume surgeon, a shift of medical inpatient cases to observation cases reimbursed at a lower rate, and a decline in outpatient ancillary referrals. NFMMC implemented various steps to improve operations including: replacing the lost surgeon with another physician deemed to have similar qualifications; implementing a weekly tracking mechanism to monitor observation cases and provide staff assistance to ensure cases meet inpatient utilization criteria for admission; and entered into a joint venture with Roswell Park

Comprehensive Cancer Center that will include a dedicated patient unit within NFMMC and an infusion therapy/medical oncology center that will boost referrals to diagnostic imaging and medical laboratory services. NFMMC has continued to respond to staffing challenges by hiring staff to increase primary care volume and ancillary service referrals and to assist in rebuilding outpatient volume that will also generate maternity cases and gynecology procedures. Furthermore, the entity expects additional revenues with the expansion of the 340B Program.

BFA Attachment B is the internal financial statements of SHC as of April 30, 2019. As shown, the facility maintained a positive working capital position, a positive net asset position and incurred an operating income.

BFA Attachment C is the internal financial statements of NFMMC as of April 30, 2019. As shown, the entity had a positive working capital position and a positive net asset position and incurred an operating loss of $659,161 through April 30, 2019. The operating loss for the period continues to reflect the loss of the high-volume surgeon, the shift to lower reimbursed observation cases, and the decline in outpatient ancillary referrals. NFMMC has implemented the various steps previously noted to improve operations

Attachments

BFA Attachment A	Financial Summary – Consolidated 2018 certified financial statements of Niagara Area Management Corporation (with NFMMC and SHC affiliates)
BFA Attachment B	Schoellkopf Health Center – April 30, 2019 Internal Financial Statements
BFA Attachment C	Niagara Falls Memorial Medical Center- April 30, 2019 internal financial statements
BFA Attachment D	Post-Transaction Organizational Chart

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191270-E
Troy Diamond Operations, LLC d/b/a The Diamond Hill Nursing and Rehabilitation Center

Program:	**Residential Health Care Facility**	***County:***	**Rensselaer**
Purpose:	**Establishment**	***Acknowledged:***	**June 3, 2019**

Executive Summary

Description

Troy Diamond Operations LLC, a New York limited liability company, requests approval to be established as the new operator of Diamond Hill Nursing and Rehabilitation Center (Diamond Hill), a 120-bed, Article 28 residential health care facility (RHCF) located at 100 New Turnpike Road, Troy (Rensselaer County). Diamond Hill Operator, LLC, a proprietary LLC, is the current operator of the facility. The real property is owned by Troy Diamond Property, LLC, which acquired the property from the previous owner, Diamond Hill Building LLC, on July 1, 2019. There will be no change in the ownership of the real estate as a result of this application. Upon approval by the Public Health and Health Planning Council (PHHPC), the applicant will operate the facility under the name The Diamond Nursing and Rehabilitation Center. There will be no change in beds or services provided.

On May 2, 2019, Diamond Hill Operator, LLC entered into an Operations Transfer Agreement (OTA) with Troy Diamond Operations LLC for the acquisition of the operating interests of the RHCF. The OTA will be effectuated upon PHHPC approval. Troy Diamond Operations LLC will enter into a lease agreement with Troy Diamond Property, LLC for site control of the facility. There is a relationship between Troy Diamond Operations LLC and Troy Diamond Property, LLC in that the entities have members in common.

The current and proposed ownership of the nursing home operation is as follows:

Current Operator	
Diamond Hill Operator, LLC	
Shareholders	
Michael Netzer	29.30%
Manny Haber	11.20%
Israel Birnbaum	10.00%
Saul Horowitz	8.66%
Chaim Klein	8.40%
Jay Lobell	7.00%
Chana Lichtschein	5.25%
Aaron Lichtschein	5.25%
Anne Gottlieb	5.00%
Moshe Wiederman	4.34%
Nachum Stein	2.80%
Chaya Millet	2.80%

Proposed Operator	
Troy Diamond Operations LLC	
Members	
Aryeh Grinspan	20%
Gedaliah Wielgus	20%
BSDSNF LLC	60%
Jerome Kahan (41.67%)	
Pearl Kahan (8.34%)	
Benjamin Kahan (25.00%)	
Naomi Engelman (8.33%)	
Chaya Rosenfeld (8.33%)	
Rifka Friedman (8.33%)	

BSDSNF LLC is an existing New York limited liability company whose members are common to 90% of the members of the realty entity, Troy Diamond Property, LLC.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of July 17, 2019 was 87.5% for the facility and 94.7% for Rensselaer County.

Program Summary

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 is no purchase price for the operations transfer and no project cost associated with this application. The projected budget is as follows

	Year One	Year Three
Revenues	$11,903,500	$11,954,000
Expenses	11,233,700	11,235,600
Net Income	$669,800	$718,400

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of 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 an executed lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed operations transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of a copy of the applicant's articles of organization, acceptable to the Department. [CSL]
5. Submission of a copy of the applicants operating agreement, acceptable to the department. [CSL]
6. Submission of a copy of the BSDSNFs operating agreement, acceptable to the department. [CSL]

Approval conditional upon:

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

Council Action Date

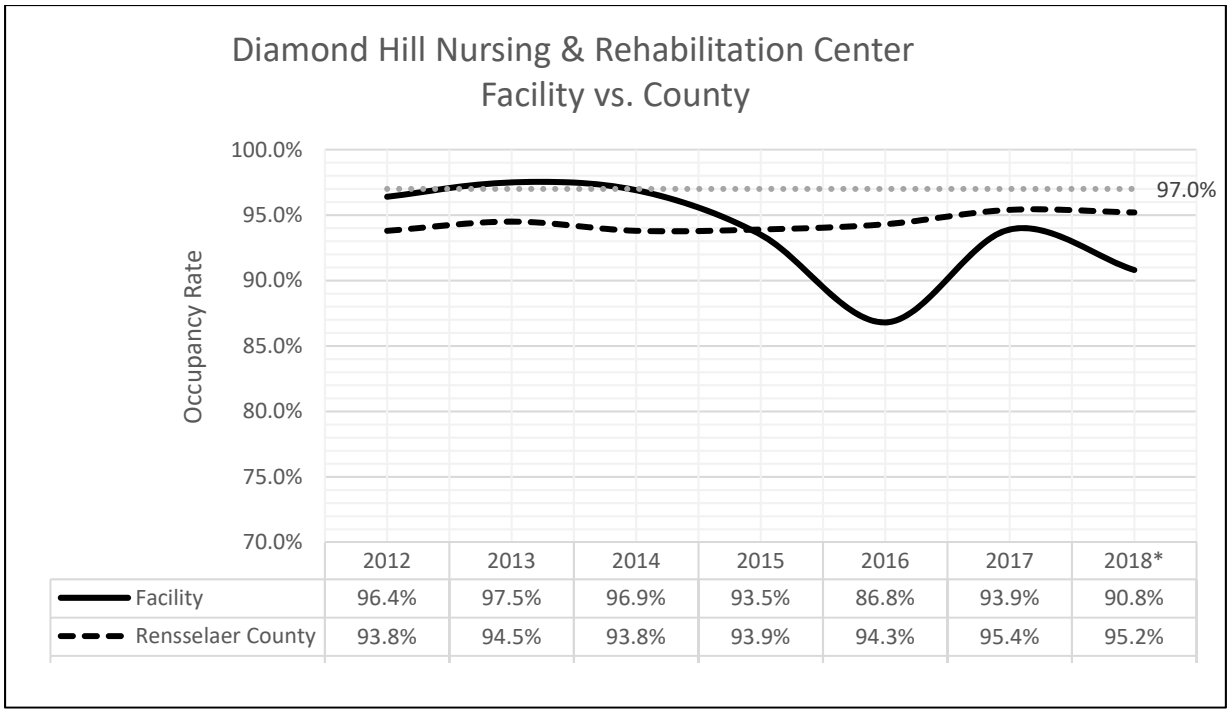
October 10, 2019

Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Diamond Hill Nursing and Rehabilitation Center	The Diamond Nursing and Rehabilitation Center
Address	100 New Turnpike Road Troy, NY 12182	Same
RHCF Capacity	120	Same
ADHC Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Diamond Hill Operator, LLC	Troy Diamond Operations, LLC <u>Members</u> Aryeh Grinspan* 20% Gedaliah Wielgus* 20% BSDSNF LLC 60% Jerome Kahan* (41.67%) Pearl Kahan* (8.34%) Benjamin Kahan* (25.00%) Naomi Engelman (8.33%) Chaya Rosenfeld (8.33%) Rifka Friedman (8.33%) **Managing Members*

Utilization



** 2018 data is not certified, it's based upon weekly census information*

The current operator, Diamond Hill Operator, LLC assumed ownership of this facility in July 2016. Occupancy improved in 2017 and then dropped slightly for 2018. The decision was made to sell the facility. The new operator is confident that with providing stability to operations, re-training necessary personnel, and marketing outreach that the facility can achieve an occupancy rate of 95%.

Medicaid Access

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

Diamond Hill Nursing & Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Rensselaer County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2016	2017	2018
Rensselaer County 75% Threshold	18.5%	23.2%	24.0%
Diamond Hill Nursing & Rehabilitation Center	53.1%	58.5%	32.1%

Character and Competence

Jerome Kahan is a licensed New York State nursing home administrator and considered to be in good standing. He is currently employed as the nursing home administrator of record at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, NY. Mr. Jerome Kahan holds a master's degree from The New School of Social Research. Mr. Jerome Kahan discloses the following ownership interests:

Sheepshead Nursing and Rehabilitation Center		(1%)	07/2014 to present
Harbor Care, LLC	(LCHSA)	(50%)	08/2009 to present

Benjamin Kahan lists employment since February 2016 as Director of Strategic Planning at Sheepshead Skilled Nursing facility located in Brooklyn, NY. He reports previous employment as an Energy Consultant at OE Group between February 2012 and January 2016. Mr. Benjamin Kahan lists a high school diploma, and he attended Yeshiva Mir Talmudic College. Mr. Benjamin Kahan discloses no health care facility ownership.

Pearl Kahan lists employment as Medicaid Coordinator at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, NY. Ms. Kahan holds a Teaching certificate from Beth Jacob Teachers Seminary. Ms. Kahan discloses the following ownership interests:

Sheepshead Nursing and Rehabilitation Center	(11%)	1997	to present
Haym Salomon Center for Nursing and Rehabilitation	(10%)	2008	to present

Naomi Engelman lists employment as the Transportation Coordinator at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, NY. Ms. Engelman lists a high school diploma. Ms. Engelman discloses no health care facility ownership.

Chaya Rosenfeld lists employment as of July 2017 in Interior Design at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, NY. Ms. Rosenfeld lists a high school diploma. Ms. Rosenfeld discloses no health care facility ownership.

Rifka Friedman lists employment since September 2015 as website designer at Sheepshead Nursing and Rehabilitation Center located in Brooklyn, NY. Ms. Friedman is currently enrolled in Excelsior College. Ms. Friedman discloses no health care facility ownership.

Aryeh Grinspan is a New York State licensed nursing home administrator considered to be in good standing. He is the Administrator of Record at Elm Manor Nursing and Rehabilitation Center. He reports employment as Operator of Elm Manor Nursing and Rehabilitation Center and Wedgewood Nursing and Rehabilitation Center. He reports employment as Chief Executive Officer, and Temporary Administrator of record between December 2018 and May of 2019 at Foltsbrook Center for Nursing and Rehabilitation. Prior employment includes Administrator of Record at various nursing homes since 11/2011. Mr. Grinspan holds degrees in Accounting and Business Management from CUNY Brooklyn. Mr. Grinspan discloses the following health facility interests:

Elm Manor Nursing and Rehabilitation Center	(15%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center	(15%)	12/2017 to present

Receivership

Foltsbrook Center for Nursing and Rehabilitation	(60%)	7/2018 to present
Foltsbrook Center for Senior Living	(5%)	7/2018 to present

Pending

The Brook at High Falls Nursing and Rehabilitation was presented to PHHPC on 10/11/18. Upon completion of the CON, Mr. Grinspan will have 25% interest.

Gedaliah Wielgus is a Certified Public Accountant in good standing. Mr. Wielgus lists employment as the Chief Financial Officer / Chief Operating Officer of FoltsCare, LLC which operates Foltsbrook Center for Nursing and Rehabilitation located in Herkimer, NY since July 2018. From October 2015 through June 2018, he reports employment as the Assistant Controller at the Omni Agency which sells property and casualty insurance in Brooklyn, NY. Mr. Wielgus holds a bachelor's degree in accounting from Touro College. Mr. Wielgus discloses the following health facility interests:

Receivership

Foltsbrook Center for Nursing and Rehabilitation	(15%)	7/2018 to present
Foltsbrook Center for Senior Living	(5%)	7/2018 to present

Quality Review

DOH staff requested that the applicant explain the star ratings of facilities under ownership of the applicants having CMS star ratings of two or below.

Addressing the below average staffing ratings at all the facilities, the applicant states that none of the facilities have recently changed staffing ratios, but the ratings dropped, in part, due to the CMS changes in the way they calculate ratings. Regarding Haym Solomon, Foltsbrook and Sheepshead Nursing, the applicant states, referring to staffing ratings, "We do not believe that having low star ratings has had an adverse effect on the overall operations of the facilities in question."

Foltsbrook Center had problems prior to the placement of this receiver. However, the applicant states that increased RN/LPN hours will result in an increased overall star rating; Wedgewood is having technical problems with staffing data submissions and is following up with CMS to resolve these issues. Elm Manor has chronic staffing challenges. They are requesting a waiver from CMS related to the requirement to provide RN staffing 7 days a week, for an 8-hour day. If this waiver is accepted, the staffing ratio will not change, but the staffing rating will increase.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Diamond Hill Nursing and Rehabilitation Center	Subject Facility	*	*	***	**
Sheepshead Nursing and Rehabilitation Center	Current	*****	*****	*****	**
	1997 (Data Date 01/2009)	***	****	***	*
Wedgewood Nursing and Rehabilitation Center	Current	***	****	****	*
	12/2017	**	***	****	*
Haym Salomon Center for Nursing and Rehab	Current	***	**	*****	**
	2008 (Data Date 01/2009)	****	*****	*	****
Foltsbrook Center for Nursing and Rehabilitation	Current	*	*	***	**
	7/2018	*	*	****	***
Elm Manor Nursing and Rehabilitation Center	Current	*	*	*	*
	12/2017	**	***	**	*

Data date: *08/2019*

Refer to BNHLC Attachment for applicant's explanation regarding CMS ratings.

Enforcement History

A review of the operations of Haym Solomon Center for Nursing and Rehab for the past ten years revealed the following:

- A federal CMP in the amount of $6,893.25 was assessed for 6/8/18 surveillance findings. Deficiencies were found under F 600 Free from Abuse and Neglect, and F 689 Free of Accident Hazards/ Supervision/Devices.

A review of the operations of Foltsbrook Center for Nursing and Rehabilitation for the time period indicated above revealed the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-19-023 for surveillance findings on 2/21/19. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- A federal CMP in the amount of $84,903 assessed for the surveillance findings above. CMS has granted the facility the ability to make payments on this CMP over an extended time period.

Conclusion

There will be no changes to beds for services as a result of this application, No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3)

Financial Analysis

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	May 2, 2019
Old Operator:	Diamond Hill Operator, LLC
New Operator:	Troy Diamond Operations LLC
Assets Acquired:	Assumed contracts, patient trust funds, provider agreements, resident agreements, and any other trade services marks used in the operation of the Facility and the website material.
Assumed Liabilities:	None
Purchase Price:	$0

The applicant has submitted an affidavit, acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 19, 2019, the facility has an outstanding Medicaid overpayment liability of $745,581.

Lease Rental Agreement

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

Premises:	A 120-bed skilled nursing facility located at 100 New Turnpike Road, Troy, New York.
Lessor:	Troy Diamond Property LLC
Lessee:	Troy Diamond Operations LLC
Term:	10 years (Initial Term)
Rental: *	$1,260,000 annually for years 1 through 5 ($1,502,000 inclusive of triple net provisions plus reserve for replacement); yearly increases at 3% per year starting at year 6
Provisions: *	Lessee shall be responsible for real estate taxes, insurance, maintenance and utilities

** Triple net lease: real estate tax payments (escrow payments) estimated at $200,000; Reserve for Replacement payments estimated to be $42,000. In total, the RENT is $1,260,000 + $200,000 + $42,000 = $1,502,000*

The lease agreement will be a non-arm's length lease arrangement in that the realty and operating entities have members in common. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant.

Operating Budget

The applicant has submitted the current year (2018) operations and an operating budget, in 2019 dollars, for the first and third years after the change in operator, summarized below:

	Current Year		Year One		Year Three	
Revenues	Per Diem.	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	$246.41	$5,543,054	$0	$0	$0	$0
Medicaid MC	$0	0	$230.51	6,928,400	$230.51	6,928,400
Medicare FFS	$363.46	1,399,692	$0	0	$0	0
Medicare MC	$0	0	$474.40	2,670,400	$479.07	2,696,700
Comm. FFS	$281.82	3,328,558	$306.02	910,100	$309.21	919,600
Private Pay	$389.79	647,826	$357.00	1,364,800	$360.63	1,378,700
Other		3,770		29,800		30,600
Total Revenues		$10,922,900		$11,903,500		$11,954,000

Expenses						
Operating	$254.27	$10,124,976	$224.58	$9,541,000	$224.63	$9,542,900
Capital	21.99	875,597	39.84	1,692,700	39.84	1,692,700
Total Expenses	$261.35	$10,750,350	$264.42	$11,233,700	$264.47	$11,235,600
Net Income		$662,376		$669,800		$718,400
Patient Days		39,819		42,483		42,483
Occupancy		91.00%		97.00%		97.00%
Breakeven Occ				91.67%		90.83%

** Other Revenue: Interest income, rebates/refunds and miscellaneous.*

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

- Year One expenses reflect an adjustment for anticipated efficiencies based on the applicant's experience in operating similar sized facilities. Minor FTE reductions are anticipated for clerical, administrative and technician staff. However, increased FTEs are budgeted for RNs (3.9 FTEs), LPNs (2.7 FTEs) and Aides/Orderlies (12.3 FTEs).
- Salaries, benefits and other expenses are projected based on 2018 financial data and increased for inflation by 2%.
- Utilization broken down by payor source during the Current Year (2018) and the first and third year after the change in operator is as follows:

Payor	Current Year	Years One & Three
Commercial FFS	29.66%	7.00%
Medicare-FFS	9.67%	0.00%
Medicare-MC	0.00%	13.25%
Medicaid-FFS	56.49%	0.00%
Medicaid-MC	0.00%	70.75%
Private Pay	4.18%	9.00%

- The utilization change noted in the projected Year One and Year Three budgets reflects a shift of Medicaid and Medicare managed care days into their proper categories. The current operator incorrectly miscategorized these as Other Insurance for cost reporting, which overstates the true Commercial utilization and related revenue information noted in the Current Year budget.
- Private Pay rates are projected based on similar facilities in the same geographical area and are increased by 1% per annum for inflation to reflect 2018 dollars. The Medicare rates are projected based on the full federal rates for the Medicare Reimbursement System in effect for 2018 and are increased by 1% per annum for inflation.
- The new operator will endorse and agree to meet "Medicaid Access" requirements. In addition, the nursing home will accept Medicaid "pending" residents. The anticipated payor-mix for this facility assumes 84% Medicaid and Medicare utilization in Year One.

Capability and Feasibility

There is no purchase price for the transfer of the operations. The working capital requirement is estimated at $1,872,284 based on two months of Year One expenses and will be funded with members' equity. BFA Attachment A is the personal net worth statements of the proposed members of Diamond Hill Nursing and Rehabilitation Center, which indicates the availability of sufficient funds for the equity contribution. Jerome Kahan has submitted an affidavit indicating he will provide equity disproportionate to his ownership interest to cover any equity shortfall of any other member. BFA Attachment C is the pro forma balance sheet of Diamond Hill Nursing and Rehabilitation Center, which indicates a positive net asset position of $2,522,600.

The submitted budget projects net income of $669,800 and $718,400 in Year One and Year Three, respectively, after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is a financial summary of Diamond Hill Holdings LLC from 2017 through 2018. As shown, the entity had an average positive working capital position, average negative net asset position and an average net gain of $304,186 from 2017 through 2018. The applicant has indicated that the reasons for the negative net asset position are the result of the following: the facility reported losses in previous years, which contributed to the negative net asset position. These losses are a contributing factor in the sale of the facility to an operator who can realize the operational efficiencies with other regional skilled nursing facilities.

BFA Attachment D provides the financial summary of the affiliated NYS facilities the proposed members own. As shown, most of the facilities had average positive working capital positions, average positive net asset positions and average net incomes from 2016 through 2018. Wedgewood Rehabilitation and Nursing Center experienced a slight negative net income in 2018; however, due to financial preparation errors, once the long-term portion of debt and general and administrative expenses are reported correctly a positive outcome will result. Elm Manor experienced a slight operating loss in 2018 and negative working capital in 2018. Again, this was due to financial preparation errors incorrectly reporting long term debt and general and administrative expenses. Once corrected a positive outcome will result.

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

Attachments

BFA Attachment A	Personal net worth statements- Proposed members
BFA Attachment B	Financial Summary- Diamond Hill Holdings LLC
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries of Affiliated Facilities and Ownership Interest
BNHLC Attachment	Quality Response Applicant's

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192001-E
St. Joseph's Hospital - Skilled Nursing Facility

Program: **Residential Health Care Facility** ***County:*** **Chemung**
Purpose: **Establishment** ***Acknowledged:*** **July 16, 2019**

Executive Summary

Description
Arnot Ogden Medical Center (AOMC), a 266-bed, Article 28 hospital located at 600 Roe Avenue in Elmira, requests approval to be established as the new operator of an 85-bed, Article 28 residential health care facility (RHCF) located at 555 St. Joseph's Boulevard, Elmira (Chemung County). The RHCF is currently operated by St. Joseph's Hospital (SJH), a 125-bed, Article 28 hospital located at the same address. On March 6, 2019, AOMC received Public Health and Health Planning Council (PHHPC) approval to certify SJH as a division of AOMC (CON 181304). The voluntary not-for profit hospitals are located two miles apart and have operated with combined management under a common sole member and active parent, Arnot Health, Inc., since August of 2011. The RHCF located within SJH is a separately licensed entity and was inadvertently excluded from CON 181304. This application seeks to rectify that omission. There will be not change to the RHCF's location, services and staff. The facility's management, officers and directors will remain the same under AOMC as existed under SJH. There are no capital costs or change in operating structure or capacity as a result of this application.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy as of July 10, 2019 was 92.9% for the facility and 94.8% for Chemung County.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations.

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

	Year One	Year Three
Revenues	$9,000,932	$9,496,451
Expenses	4,968,742	5,155,317
Gain	$4,032,190	$4,341,134

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]

Approval conditional upon:

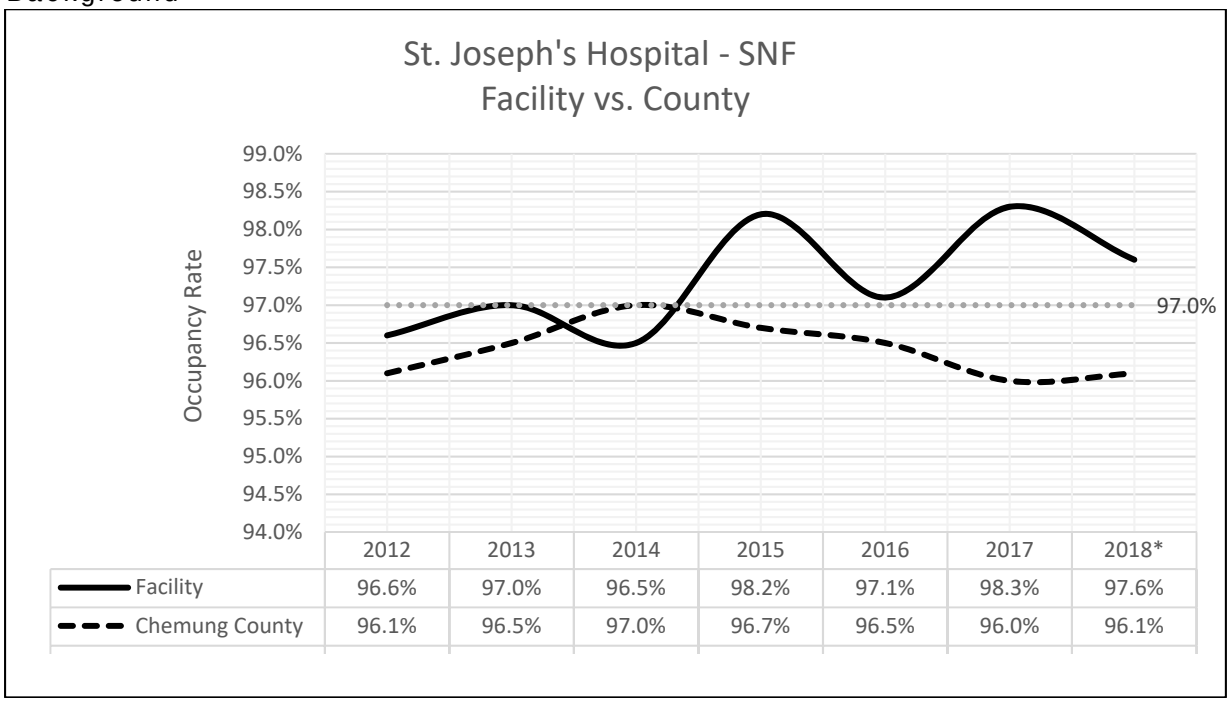
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission to, and subsequent approval by NYS Department of Health to change the name of Ira Davenport Memorial Hospital SNF/HRF to reflect the name depicted on the facility website and currently in use. [LTC]

Council Action Date

October 10, 2019

Need Analysis

Background



** 2018 data is not uncertified, weekly census information.*

St. Joseph's Hospital – SNF occupancy has remained consistently strong, at or near 97% since 2012.

Medicaid Access

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

St. Joseph's Hospital – SNF's Medicaid admissions rate has been below the 75% Chemung County rate, threshold, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2016	2017	2018
Chemung County 75% Threshold	17.5%	16.7%	17.6%
St Joseph's Hospital – SNF	14.0%	4.8%	5.3%

Conclusion

There will be no changes to beds or services as a result of this project.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	St. Joseph's Hospital – Skilled Nursing Facility	Same
Address	555 St. Joseph's Blvd Elmira, NY 14902	Same
RHCF Capacity	85	Same
ADHC Capacity	N/A	N/A
Type of Operator	Not for Profit Corporation	Not for Profit Corporation
Class of Operator	Voluntary	Voluntary
Operator	St. Joseph's Hospital Co-Operator: Arnot Health Inc.	Arnot Ogden Medical Center Co-Operator: Same Donald Quick – Chairman Mark J. Hagan – Vice – Chairman Jan (Arie) van den Blink – Vice – Chairman Jonathan I. Lawrence – President & CEO John Alexander – Secretary Ronald Kintz – Treasurer Joyce A. Carr Louis C DiFabio Jeffrey W. Evenson Michael Hosey Jonathan I. Lawrence John MacMahon Robert M. McNamara Richard L. Simons Scott E. Sprague Jeffrey B. Streeter Anders M. Tomson Pallavi Kamjula Kevin DeLuca

Character and Competence

Donald Quick is licensed as a Certified Public Accountant in New York State. He discloses that he is a retired partner of Mengel, Metzger, Barr, Co. LLP and continues to serve the firm as a consultant. Mr. Quick discloses the following board memberships:

Arnot Ogden Medical Center	9/11- present
St. Joseph's Hospital	9/11 – 05/19

Mark Hagan is a licensed property/casualty insurance broker in New York State. He discloses that he is the owner of Hagan Consulting, LLC in Elmira, NY since 2015, which is an insurance consulting business with an emphasis on commercial property, casualty risks and hospital malpractice. He discloses that he retired in 2014 from his previous position as President of Perry & Carroll, Inc. which is an insurance company located in Elmira, NY. Mr. Hangan discloses the following board memberships:

Arnot Ogden Medical Center	04/17- present
St. Joseph's Hospital	04/17 – 05/19

Jan (Arie) van den Blink discloses employment as Chairman, Chief Executive Officer, and President of The Hilliard Corporation which is a motion control / filtration manufacturing company located in Elmira NY. Mr. van den Blink discloses the following board memberships:

Arnot Ogden Medical Center	04/15- present
St. Joseph's Hospital	04/15 – 05/19

Jonathan I. Lawrence discloses employment as President and Chief Executive Officer of Arnot Health since April 2017. Prior employment includes Chief Executive Officer of TriNet Group Managed Services Organization in San Leanro, CA between November 2014 and March of 2017, Principal and Chief Executive Officer of Canyon Healthcare Strategies a healthcare consulting company located in Denver, Co. between April 2013 and November of 2014, and President and Chief Executive Officer of Lake Erie Regional Health System of NY between January 2009 through March 2013. Mr. Lawrence previously held a New York State nursing home administrator license which was in good standing. Mr. Lawrence likely allowed the license to elapse because he no longer needed the license. Mr. Lawrence discloses the following board memberships:

Arnot Ogden Medical Center	04/17- present
St. Joseph's Hospital	04/17 – 05/19

John Alexander is a licensed NYS attorney. He discloses that he is a managing partner at Sayles and Evans Law firm located in Elmira, NY. Mr. Alexander discloses the following board memberships:

Arnot Ogden Medical Center	05/87- present
St. Joseph's Hospital	05/12 – 05/19

Ronald Kintz discloses employment as Sr. Vice President and Chief Financial Officer of Arnot Health which is a regional healthcare delivery system located in Elmira, NY. He discloses the following board memberships:

Arnot Ogden Medical Center	08/87- present
St. Joseph's Hospital	09/11 – 05/19

Joyce Carr is a licensed NYS School District Administrator, with additional teaching certifications in Special Education, and Health Education. Ms. Carr discloses employment as Supervisor of Special Education and Student Support Services at Elmira School District. Ms. Carr discloses the following board membership:

Arnot Ogden Medical Center	05/19- present

Louis DiFabio discloses employment as Executive Vice President of Chemung Canal Trust Company which is a bank located in Elmira, NY. Mr. DiFabio discloses the following board memberships:

Arnot Ogden Medical Center	09/16- present
St. Joseph's Hospital	09/16 – 05/19

Jeffrey Evenson discloses employment as Executive Vice President of Corning Inc. a high-tech manufacturing company located in Corning, NY since 2011. Prior to this he reports employment as Senior-Vice President / Sell Side Equity Analyst at Alliance Bernstein located in NY, NY. Mr. Evenson discloses the following board memberships:

Arnot Ogden Medical Center	09/18- present
St. Joseph's Hospital	09/18 – 05/19

Michael Hosey discloses that he retired in 2013. Prior to this he was the President of Elmira Savings Bank located in Elmira, NY. Mr. Hosey discloses the following board memberships:

Arnot Ogden Medical Center	09/18- present
St. Joseph's Hospital	09/18 – 05/19

Jonathan Lawrence discloses employment since 2017 as President and Chief Executive Office of Arnot Health which is a regional healthcare delivery system located in Elmira, NY. Prior employment includes employment at TriNet Group, managed services organization located in San Leanro, CA. Mr. Lawrence discloses the following board memberships:

Arnot Ogden Medical Center	04/17- present
St. Joseph's Hospital	04/17 – 05/19

John MacMahon discloses employment as Senior Vice President, Global Compensation and Benefits of Corning, Inc. which is a high-tech manufacturing company. Mr. MacMahon discloses the following board memberships:

Arnot Ogden Medical Center	09/18- present
St. Joseph's Hospital	09/18 – 05/19

Robert M. McNamara is licensed as a Certified Public Accountant in New York State. He discloses current employment as the Finance Office Director of Notre Dame High School. This is a part-time job as Mr. McNamara discloses that he retired in 2011 from a position he held as the Chief Financial Officer and Treasurer of St. Joseph's Hospital. Mr. McNamara discloses the following board memberships:

Arnot Ogden Medical Center	09/11- present
St. Joseph's Hospital	09/11 – 05/19

Richard L. Simons discloses that he retired in 2017 from the position of Chief Executive Officer of Hardinge, Inc., which specializes in metal-cutting solutions and is located in Elmira, NY. Mr. Simmons discloses the following board memberships:

Arnot Ogden Medical Center	09/15- present
St. Joseph's Hospital	09/15 – 05/19

Scott E. Sprague is a licensed property/casualty insurance broker, and property/casualty agent in New York State. Mr. Sprague discloses that he is presently the owner of Keuka Insurance Group located in Hammondsport, NY since 2014. Prior to this he was the President of Sprague Insurance Company located in Corning, NY. Mr. Sprague discloses the following board memberships:

Arnot Ogden Medical Center	08/15- present
St. Joseph's Hospital	09/18 – 05/19

Jeffrey B. Streeter discloses employment as President of Streeter Associates, Inc a firm that offers commercial construction contracting in Elmira, NY. Mr. Streeter discloses the following board memberships:

Arnot Ogden Medical Center	06/17- present
St. Joseph's Hospital	06/17 – 05/19

Anders M. Tomson discloses employment as President and Chief Executive Officer of Chemung Canal Trust Company which is a bank located in Elmira, NY. Mr. Tomson discloses the following board memberships.

Arnot Ogden Medical Center	06/17- present
St. Joseph's Hospital	06/17 – 05/19

Pallavi Kamjula is a licensed physician in New York State. She discloses employment as Chair of the Department of Medicine at Arnot Ogden Medical Center. Ms. Kamjula discloses the following board memberships:

Arnot Ogden Medical Center	01/19- present
St. Joseph's Hospital	01/19 – 05/19

Kevin DeLuca is a licensed physician in New York State. He discloses employment as Chairman of the Department of Anesthesiology at Associated Anesthesiologists of the Finger Lakes located in Elmira, NY. Mr. DeLuca discloses the following board memberships:

Arnot Ogden Medical Center	01/17- present
St. Joseph's Hospital	01/17 – 05/19

Quality Review

The three facilities associated with the applicant have below average, or much below average CMS ratings. The current ratings are lower compared to ratings the facilities exhibited when the applicant became co-operator. Of particular note, IRA Davenport Memorial Hospital SNF/HRF declined from a five-star overall rating to a one-star rating.

The applicant states that below average CMS ratings for St. Joseph's Hospital Skilled Nursing Facility are due to challenges with staffing and documentation. Plans are in place to address these challenges. The below average CMS ratings for St. Joseph's Hospital TCU are also due, in part, to staffing challenges. This unit is now in a transition period, with no new patients being accepted, existing staff being reassigned to other units, and relocation of the unit under consideration. The IRA Davenport Memorial Hospital SNF/HRF has much below average CMS ratings. The applicant states that documentation and staffing are the largest challenges for this facility. Ongoing education of staff by MDS subject matter experts, and routine documentation audits are being implemented to address documentation challenges. A recent regional wage comparison for LPN nursing staff has led the applicant to increase wages.

Refer to BNHLC Attachment for applicant's explanation regarding CMS ratings.

Facility	***Ownership Since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***
St.Joseph's Hospital Skilled Nursing Facility	Current	**	**	**	**
	08/2011	***	***	***	***
St. Joseph's Hospital TCU	Current	**	****	*	*
	12/2013 Data Date 05/2015	**	**	*	*****
IRA Davenport Memorial Hospitals SNF/HRF	Current	*	*	**	**
	08/2011	*****	***	*****	****

Data date*: 8/2019*

Enforcement History

Review of the operations of St. Joseph's Hospital TCU reveals the following:

- A federal CMP of $4,875 was assessed for May 17, 2018 for life safety code survey findings. Deficiencies were found related to Evacuation and Relocation Plan.

Project Review

This application proposes to establish Arnot Ogden Medical Center as the operator of St. Joseph's Hospital – Skilled Nursing Facility. The 85 bed RHCF is located within the same building as St. Joseph's Hospital. Arnot Ogden Medical Center has already been established as the operator of St. Joseph's Hospital through CON # 181304 which became effective on March 6, 2019.

Arnot Health, Inc. is the parent and sole member of Arnot Ogden Medical Center. Board membership for Arnot Health Inc. and Arnot Ogden Medical Center are identical.

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the board members. All health care facilities are in substantial compliance with all rules and regulations. The applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Merger Agreement

The executed merger agreement between AOMC and SJH was effectuated upon PHHPC approval of CON 181304. The terms of the agreement are summarized below:

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

Operating Budget

The applicant has submitted RHCF's operating budget, in 2019 dollars, for the current year, first year and the third year after the merger, summarized below:

	Current		Year One		Year Three	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	$191.22	$2,019,266	$195.04	$2,059,651	$202.69	$2,140,422
Medicaid MC	$218.44	$1,891,509	$222.81	1,929,339	$231.55	2,005,000
Medicare FFS	$386.76	$725,176	$394.50	739,680	$409.97	768,687
Medicare MC	$337.42	$401,872	$344.17	409,909	$357.67	425,984
Comm. FFS	$949.12	$109,149	$977.59	112,423	$1,025.84	117,972
Private Pay	$462.45	$3,605,702	$480.95	3,749,930	$517.94	4,038,386
Total Revenues		$8,752,674		$9,000,932		$9,496,451
Expenses						
Operating	$154.47	$4,664,386	$157.55	$4,757,674	$163.73	$4,944,249
Capital	6.99	211,068	6.99	211,068	6.99	211,068
Total Expenses	$161.45	$4,875,454	$164.54	$4,968,742	$170.72	$5,155,317
Net Income		$3,877,220		$4,032,190		$4,341,134
Patient Days		30,197		30,197		30,197
Occupancy		97.32%		97.32%		97.32%

Expense and utilization assumptions are based on the historical experience of the nursing home. Reimbursement rates are based on current rates adjusted for inflation.

Utilization by payor source for the current, first and third year (no changes) is as follows:

Medicaid FFS	34.97%
Medicaid MC	28.68%
Medicare FFS	6.21%
Medicare MC	3.94%
Comm FFS	.38%
Private Pay	25.82%

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application. The submitted budget indicates an excess of revenues over expenses of $4,032,742 and $4,341,134 during the first and third year after the merger. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the 2017 and 2018 certified financial statements of Arnot Health, Inc. As shown, Arnot Ogden Medical Center and Affiliates had a positive working capital position and a positive net asset position in 2017 and 2018. The entity incurred average net losses of $10,838,020 in 2017 and 2018. The applicant indicated that the reason for the losses were the result of the following: adverse socio-economic factors reflected in the payer mix and overall area demographics; increased competition from a brand new Guthrie Corning hospital in neighboring Steuben County; the facility experienced large expenditures for contract staffing to fill the gaps in nursing staff; and for Locums to cover gaps in available physicians. The facility implemented corrective steps including entering into a Department approved management agreement with the University of Rochester Medical Center to identify strategies to improve operations. Other strategies include: consolidation of AOMC and SJH's emergency department to reduce costs; converting several clinics to Article 28 for eligibility in 340B cost savings; working with Corning, Inc. through their loaned extension program to develop and implement quality and lean initiatives; and the recent start of the graduate medical education program, which now trains over a 100 residents in five specialties at Arnot.

As shown on Attachment B, St. Joseph's Hospital had a positive working capital position and a positive net asset position in 2018. Also, the entity incurred a net loss of $1,106,760 in 2018. The entity indicated that the reason for the losses were the result of the following: much of the facility is old with inefficient space; the hospital requires consolidated investments related to healthcare information technology and support; and the facility's size does not enable their ability to attract better prices for goods and supplies. To improve operations, the entity merged with AOMC into a single entity with a long-range plan of constructing a new more efficiently built facility on the Arnot Campus to replace the old oversized facility.

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

Attachments

BFA Attachment A	Organizational Chart Pre-and Post- Merger
BFA Attachment B	2017 and 2018 certified financial statements of Arnot Health, Inc.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191341-E
Marquis Certified Home Care, LLC

Program:	**Certified Home Health Agency**	***County:***	**Albany**
Purpose:	**Establishment**	***Acknowledged:***	**July 1, 2019**

Executive Summary

Description

Marquis Certified Home Care, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Living Resources Certified Home Health Agency, Inc., an Article 36 certified home health agency (CHHA) located at 300 Washington Avenue Extension, Albany (Albany County). The CHHA is licensed to provide nursing, home health aide, medical social services, medical supplies equipment and appliances, nutritional, occupational therapy, speech language pathology and physical therapy services. The agency is authorized to serve Albany, Columbia, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington Counties. There will be no change to the services provided and no programmatic changes to the CHHA as a result of the transition.

The proposed members of Marquis Certified Home Care, LLC are Eric E. Newhouse (67%) and Neil (Naftali) S, Zelman (33%). Marquis Certified Home Care, LLC is affiliated through common ownership with Marquis Home Care, LLC, an existing New York State licensed home care services agency (LHCSA) located at 230 North Main Street, Spring Valley (Rockland County).

On December 27, 2017, Living Resources Certified Home Health Agency, Inc., the current CHHA operator, and Marquis Certified Home Care, LLC entered into an Asset Purchase Agreement (APA) whereby Marquis Certified Home Care, LLC agreed to purchase the operations and certain assets of the CHHA.

The APA includes the sale of Living Resources Home Care Agency, Inc., an existing New York State LHCSA, to Marquis Home Care, LLC. The APA provides a combined purchase price of $1,500,000 for the CHHA and LHCSA assets, of which $1,000,000 is allocated to the purchase of the CHHA. Two Amendments to the APA (dated November 5, 2018 and April 8, 2019, respectively) modified the amount due at closing ($1.3M inclusive of deposit), the terms for payment of the $200K balance due (two equal annual installments plus interest at 1.87%) and the assignment of the LHCSA assets to Marquis Home Care, LLC. The executed APA and Amendments constitute the Promissory Note for payment. The sale of the LHCSA to Marquis Home Care, LLC is concurrently under review (CON # 191340).

There is no Administrative Services Agreement or Management Agreement associated with this application. All administrative functions will be handled in-house. Upon Public Health and Health Planning Council (PHHPC) approval, Living Resources Corporation (Sublandlord) will sublet the CHHA office space to Marquis Certified Home Care, LLC. The executed lease and sublease agreements have been provided.

OPCHSM Recommendation

Contingent Approval

Need Summary

The change in ownership of the CHHA will not result in any changes to the counties being served or to the services provided.

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 CHHA assets will be purchased for $1,000,000 equity. BFA Attachment A shows sufficient resources exist For the purchase. The project budget is as follows:

	Year One	Year Three
Revenues	$6,104,877	$6,418,289
Expenses	5,512,445	5,738,148
Gain	$592,432	$680,141

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 executed Articles of Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
4. Submission of an executed Medicaid affidavit, acceptable to the Department [CSL]

Approval conditional upon:

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

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

The services currently offered by Living Resources are: Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Therapy – Occupational, Therapy – Physical and Therapy – Speech Language Pathology. The CHHA provides services to residents in the following counties: Albany, Columbia, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington. The establishment of Marquis Certified Home Care as the operator will have no immediate impact on the services, nor will there be a change to the counties served by the CHHA.

Upon approval, the applicant intends to relocate the agency to 296 Washington Avenue Extension and the name of the agency will change to Marquis Certified Home Care, LLC.

The membership of Marquis Certified Home Care, LLC is as follows:

Eric E. Newhouse, Esq., President – 67%
Founder & CEO, MedWiz Solutions, LLC
Founder & President, The Eliot Management Group, LLC
President, Marquis Home Care, LLC
Affiliations

- The Eliot at Erie Station (LHCSA)
- The Sentinel of Amsterdam (LHCSA)
- The Eliot at Catskill (LHCSA)
- Marquis Home Care, LLC (LHCSA)
- The Eliot at Erie Station (ALP)
- The Sentinel of Amsterdam (ALP)
- The Eliot at Catskill (ALP)

Neil S. Zelman, COO – 33%
Chief of Operations, Adult Care Management LLC
Affiliations

- The Eliot at Erie Station (LHCSA)
- The Sentinel of Amsterdam (LHCSA)
- The Eliot at Catskill (LHCSA)
- Marquis Home Care, LLC (LHCSA)
- The Eliot at Erie Station (ALP)
- The Sentinel of Amsterdam (ALP)
- The Eliot at Catskill (ALP)

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 Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned Assisted Living Programs and reports as follows:

- The Eliot at Catskill was fined $5,700.00, pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015 and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- The Eliot at Catskill was fined $2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

- The Eliot at Catskill was fined $7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017 and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR 487.11(a).
- The Sentinel at Amsterdam was fined $1,065.00 pursuant to a stipulation and order dated November 28, 2018 for inspection findings on May 18, 2018 and August 15, 2018 for violations of Article 7 of the Social Services Law and 18 NYCRR 487.8(d)(1-2).

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.

CHHA Quality of Patient Care Star Ratings as of August 13, 2019 **New York Average:** 3.5 out of 5 stars **National Average:** 3.5 out of 5 stars	
CHHA Name	**Quality of Care Rating**
Living Resources Certified Home Health Agency, Inc.	3 out of 5 stars

Conclusion

There will be no changes to counties served or services provided as a result of this application. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA for the operating interests of the CHHA. The APA will become effectuated upon Public Health and Health Planning Council (PHHPC) approval of this CON. The terms of the agreement are summarized below:

Date:	December 27, 2017
Buyer:	Marquis Certified Home Care, LLC
Seller:	Living Resources Certified Home Health Agency, Inc.
Purchased Assets:	All of seller's right, title and interest in all furniture, fixtures, furnishings, equipment, appliances, tools, instruments, machinery, computers, computer equipment and hardware, office equipment, parts, supplies and other tangible personal property; all inventory and supplies; all contracts, agreements, leases, purchase orders; all policies and procedures manuals, operating manuals, training materials, marketing, sales and promotional materials, and all intellectual property; all rights to telephone and facsimile numbers used exclusively by the Seller and any websites and other advertising rights; certain administrative records and payroll records, including, as deemed appropriate, files, computer software, data or databases, correspondence, memoranda, notes and other documents or papers and other evidence thereof relating solely to the Assets; licenses, certificates, permits, waivers, consents, authorizations, variances, approvals, accreditations, covenants, commitments, warranties, deposits and reserves relating to the Assets; and goodwill.
Excluded Assets:	All cash and cash equivalents as of closing date; all accounts receivable prior to closing date; licenses, permits, and contracts not assignable or transferable; marketable securities; any government awarded grants; funds from all rate adjustments and appeals prior to closing date; and all employee benefit plans maintained by the seller.
Purchase Price:	$1,500,000 whereas $1,000,000 is for the CHHA and $500,000 is for the LHCSA.
Payment of Purchase Price: *	$30.000 deposit apportioned to the CHHA $970,000 CHHA balance due at the Closing per terms of the Amendments

The applicant will fund the total purchase price via members' equity. BFA Attachment A shows sufficient equity for the purchase.

Amendment Number One and Number Two to the Asset Purchase Agreement

On November 5, 2018, Amendment Number One to the APA was executed between Living Resources CHHA, Inc. and Marquis Certified Home Care, LLC which states that Marquis Home Care North, LLC will purchase the assets of Living Resources Home Care Agency, Inc. The combined purchase price under the APA and the Related Agreement is $1,500,000, of which $1,300,000 (less the deposit) will be paid on the Closing Date and $200,000 will be paid in two equal annual installments at 1.87%, beginning 12 months following the Closing Date. The allocation of the purchase price is as follows: $1,000,000 to the purchase price of the CHHA assets and $500,000 to the purchase price of the LHCSA assets. The deposit of $50,000 will be allocated as follows: $30,000 paid under the APA (Amendment One) and $20,000 paid under the Related Agreement.

On April 8, 2019 Amendment Number Two to the APA was executed pertaining to the LHCSA purchase between Living Resources Home Care Agency, Inc. and Marquis Home Care North, LLC, which states that Marquis Certified Home Care, LLC will purchase the assets of LHCSA. Marquis Home Care North, LLC assigned its rights as buyer to Marquis Home Care, LLC. Marquis Home Care North, LLC and Marquis Home Care, LLC have identical ownership.

As of August 29, 2019, the CHHA had no outstanding Medicaid overpayment liabilities.

Lease Agreement

CHHA occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	July 21, 2016
Premises:	Approximately 3,258 rentable square feet in the building located at 296 Washington Avenue Extension, Albany, New York
Landlord:	Anderson Holdings, LLC
Tenant:	Living Resources Corporation
Terms:	60 months commencing on execution of the lease (November 1, 2016) with option to renew for an additional 5 years commencing on November 1, 2021 and ending October 31, 2026.
Rental:	Monthly rent years 1 – 3: $4,615.50; Monthly rent years 4 – 5: $4,751.25
Provisions:	Insurance

The landlord is responsible for utilities and maintenance, but the tenant is obligated to pay additional rent over and above normal usage, if applicable, per the lease.

Sublease Agreement

The applicant submitted an executed sublease agreement, the terms of which are summarized as follows:

Date:	April 11, 2019
Premises:	Approximately 3,258 rentable square feet in the building located at 296 Washington Avenue Extension, Albany, New York
Landlord:	Living Resources Corporation
Tenant:	Marquis Certified Home Care, LLC
Terms:	Commencement Date (November 1, 2016) and to expire on October 31, 2021, with the option to renew for an additional 5 years.
Rental:	Monthly rent years 1 – 3: $4,615.50; Monthly rent years 4 – 5: $4,751.25
Provisions:	Insurance

The applicant has confirmed that it intends to relocate the CHHA's office to 296 Washington Avenue Extension, Albany, New York, as listed in the lease documents. Living Resources Corporation (Tenant) currently leases the building located at 296 Washington Avenue Extension from Anderson Holdings, LLC (Prime Landlord) and upon approval of the application will subleasing the building to Marquis Certified Home Care, LLC.

Operating Budget

The applicant has provided an operating budget, in 2019 dollars, for the first and third year subsequent to the change of ownership of Living Resources. The budget is summarized below:

	Current Year		Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total	Per Visit	Total
Medicaid	$244.18	$1,311,251	$244.18	$2,404,440	$244.18	$2.527,752
Medicare	$150.36	1,574,714	$150.36	3,010,507	$150.36	3,164,928
Commercial	$239.39	402,890	$239.39	550,119	$239.39	$578,126
All Other	$426.25	113,382	$426.25	139,811	$426.25	147,483
Total Revenues		$3,402,237		$6,104,877		$6,418,289
Expenses						
Operating	$148.82	$2,647,799	$165.98	$5,447,989	$164.42	$5,673,692
Capital	7.82	139,138	1.96	64,456	1.87	64,456
Total Expenses	$156.64	$2,786,937	$167.94	$5,512,445	$166.29	$5,738,148
Net Income		$615,300		$592,432		$680,141
Visits		17,792		32,823		34,507

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization assumptions are based on based on Living Resources CHHA' s 2018 Certified Medicare Cost Report and the applicant's anticipated enrollment of new patients from the community through community outreach, advertising, reaching out to health care entities to create a stronger referral system, and utilizing the applicant members' broad network of affiliated entities for referrals to the CHHA
- The applicant projected 105.46 FTEs in Year One of operations and 106.00 FTEs in Year Three of operations.
- A 2.8% (2019) cost of living allowance based on information taken from the Social Security Administration (SSA) website was added to Year One and Year Three salaries.
- Capital includes rent, depreciation and interest. The interest stated in the APA is 1.87% ($9,070 per annum) and this amount is included in the first and third-year budgets.
- All Other revenues include No Fault, Veteran's Administration and Workers' Compensation.
- Utilization by payor source is as follows:

Payor	Current Year	Year One	Year Three
Medicaid FFS	30.18%	30.00%	30.00%
Medicare FFS	58.86%	61.00%	61.00%
Commercial FFS	9.46%	7.00%	7.00%
Charity Care	0.00%	1.00%	1.00%
All Other	1.50%	1.00%	1.00%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

There are no project costs associated with this application. The combined purchase price for the CHHA and LHCSA assets is $1,500,000 of which $1,000,000 is allocated to the purchase of the CHHA assets and $500,000 is allocated to the purchase of the LHCSA assets. The applicant will fund the total purchase price via members' equity. BFA Attachment A shows sufficient funds.

The working capital requirement of $918,741, based on two months of the first year's expenses, will be satisfied from existing funds. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,937,441 for the operation. It is noted that assets include $1,018,700 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity is $918,741.
BFA Attachment B is a summary of the 2018 certified financial statements of Living Resources Certified Home Health Agency, Inc. The CHHA maintained a positive working capital position, a positive net asset position, and had an excess of revenue over expenses of $615,299 in 2018. BFA Attachment C is the

internal financial statements of Living Resources Certified Home Health Agency Inc. as of June 30, 2019, which shows the CHHA maintained a positive working capital position, a positive net asset position, and had an excess of revenue over expenses of $504,446.

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

Attachments

BFA Attachment A	Marquis Certified Home Care, LLC – Member net worth statements
BFA Attachment B	Living Resources Certified Home Health Agency Inc. – 2018 Certified Financial Statements
BFA Attachment C	Living Resources Certified Home Health Agency Inc. – Internal Financial Statements as of June 30, 2019
BFA Attachment D	Organizational Chart before and after change of ownership
BFA Attachment E	Marquis Certified Home Care, LLC - Pro Forma Balance Sheet

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192030-E
Unity Hospital of Rochester

Program: **Hospital** ***County:*** **Monroe**
Purpose: **Establishment** ***Acknowledged:*** **July 30, 2019**

Executive Summary

Description
The Unity Hospital of Rochester (Unity), a 311-bed, voluntary, Article 28 acute care hospital located at 1555 Long Pond Road, Rochester (Monroe County) whose co-operator and active parent is Rochester Regional Health, is seeking approval to establish a separate New York not-for-profit corporation, Regional Health Reach, Inc. (RHR), together with Unity, as co-operator of Unity's Health Reach – Healthcare for the Homeless Program's (Health Reach) two HRSA-funded Section 330(h) FQHC clinics only. The establishment of RHR as co-operator of Health Reach is required to comply with conditions imposed on January 23, 2019 by the Federal Health Resources and Services Administration (HRSA), an agency of the U.S. Department of Health and Human Services, on renewal of Unity's Section 330(h) grant used to support Health Reach. RHR will be legally established as an operator of Health Reach and will have legal authority over the program with respect to all obligations that an FQHC governing board must have under Section 330. RHR will not have any corporate member or parent and will have a self-perpetuating Board of Directors. There will be no changes to services with this application.

Health Reach is the only Federally Qualified Health Center (FQHC) in Rochester solely dedicated to serving the healthcare needs of the homeless. Health Reach has provided comprehensive primary medical care to the homeless in Rochester and the surrounding area since 1994. The FQHC seeks to improve access to comprehensive medical care for the homeless, while simultaneously affording each individual access to services needed to obtain gainful employment, permanent housing and other resources, without regard to the individual's ability to pay. Health Reach provides comprehensive medical and dental care to those who are currently experiencing homelessness in Rochester and Monroe County. Services are provided at area homeless shelters, a Mobile Medical Unit and the clinic located at 89 Genesee Street in Rochester.

OPCHSM Recommendation
Contingent Approval

Need Summary
There are no projected changes in the services or utilization of the clinics as a result of this application.

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

Financial Summary
There are no project costs or changes in staffing or services associated with this application. The budget is as follows:

	Year One	Year Three
Revenues	$1,753,075	$1,753,850
Expenses	$1,753,075	$1,753,850
Net Income / (Loss)	$0	$0

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 executed Resolution of the Board of Directors of The Unity Hospital of Rochester, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Resolution of the Board of Directors of Rochester Regional Health (RRH), acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Incorporation of RRH, acceptable to the Department. [CSL]
4. Submission of a photocopy of the bylaws of RRH, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Resolution of the Board of Directors of Regional Health Reach, Inc. (RHR), acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Certificate of Incorporation of RHR, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended bylaws of RHR, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 10, 2019

Need and Program Analysis

Description

Health Reach is the only Federally Qualified Health Center (FQHC) in Rochester that is solely dedicated to serving the healthcare needs of the homeless. Health Reach seeks to improve access to comprehensive medical care for the homeless while simultaneously affording each individual access to services needed without regard to ability to pay. Health Reach provides comprehensive medical and dental care to those who are experiencing homelessness in Rochester and Monroe County. The services are provided at area homeless shelters, a Mobile Medical Unit, and the clinic located at 89 Genesee Street, Suite 1408, Rochester (Monroe County).

Once the CON application is approved, Unity and Regional Health Reach will jointly be the licensed operators of the Health Reach sites. Regional Health Reach will be legally responsible for exercising the required FQHC authorities and functions over the Health Reach programs. Health Reach patients will be deemed to be the patients of Unity and Health Reach jointly. Unity will continue to maintain the medical records for the services provided under the Health Reach program and will continue to bill for such services. Unity will seek to have its Section 330(h) grant transferred to Regional Health Reach through HRSA's successor in interest process. Such transfer would be effective as of the date on which Regional Health Reach is established as the co-operator of the Health Reach program.

There will be no changes to the services or staffing as a result of the approval of this proposal.

Character and Competence

The Board of Regional Health Reach, Inc is comprised of the following individuals:

Name	Title/Position
Karen Gallina	Director & Chair
Daniel Meyers	Director
Julia Tedesco	Director
Daisy Algaren	Director
Karen Kinter	Director
Bridgett Wiefling M.D.	Director
Michael "Kelly" Finnegan	Director
Elain Spall	Director
Rosa Wims	Director
Jane Boessman PA	Director
Deborah Tschappet	Director
Carlos Swanger, M.D.	Project Director

Ms. Daisy Algaren is the Director of the Neighborhood Service Centers for the City of Rochester for over 19 years. Her responsibilities include oversight for four (4) Neighborhood Service Center offices in the community including community relations, budgeting, direct oversight of 20 employees, and oversight of day to day operations. The primary focus is to provide focused customer service and improve the quality of life for all Rochester citizens. In additions, she was part of a planning team for the North Clinton Avenue revitalization project.

Ms. Jayne Boessmann is a retired Physician Assistant. She retired in 2016 from the Veteran's Administration as a Physician Assistant in Primary Care. She is currently a committee for the Healthcare for the Homeless and sits on the Board for a FQHC.

Mr. Michael "Kelly" Finnegan is the Director of Operations of the House of Mercy for over five (5) years. He is responsible for operations, community relations, finances, marketing, and fundraising. He was previously a Case Manager, Behavioral Health Coordinator, Counselor, and Program Manager in a program that had community-based services intellectually disabled, HIV/AIDS, and traumatic brain injured individuals.

Ms. Karen Gallina is the current Chair of the Community Affairs Committee of Unity Hospital. This committee's primary role is to oversee the Healthcare for the Homeless program and report to the Hospital board.

Ms. Karen Kinter is the Executive Director of Community Services and Executive Director of FQHC for five (5) years. Her responsibilities include to ensure all FQHCs supported by the Health System comply with the HRSA standards and maximize revenue opportunities; write and administer grant related projects for FQHCs;
establish community partners to meet patient needs; ensure the financial viability, high quality outcomes, continued growth and evolution of the programs with changing external and payer environment; report to and coordinate the governance with the Board of Directors; oversee the 340B program and support staff; and serve as the National Health Service Corp Administrator.

Mr. Daniel Meyers is a retired President and Executive Director of the Al Sigl Community of Agencies for over 31 years. He is a Board Chair of a hospital in the Rochester regional Health network and a Chairman of Greater Rochester Independent Practice Association. Additionally, he serves on the board of George Eastman Museum and several not-for-profit institutions and foundations.

Ms. Elaine Spaull is the Executive Director of a large youth serving agency for 19 years. Her responsibilities include overseeing all fiscal, operational, and programmatic aspects including healthcare needs and housing. She is a Board Member of the Rochester General Hospital board. Her prior training and education as a lawyer as well as work with health care for homeless and at risk youth has prepared her to provide guidance.

Mr. Carlos Swanger is the Medical Director of Health Reach Healthcare for 25 years. He is involved with not only supervising the clinical delivered by the providers and staff, but also chair the CQI committee/program. He has been an integral part of the Center's administrative management team. In his leadership role at the University, he has experience with the employment process including termination, evaluations of staff, and formulating and administering corrective action plans when necessary. He has been responsible for helping lead clinical research

Ms. Julia Tedesco is the President and CEO of Foodlink, a regional food bank and community health organization. She governs a $28 million non-profit community-based organization that works collaboratively with a network of over 500 non-profit organizations that serve those in need. She oversees the distribution of over 19 million pounds of food to agencies and shelters. She oversees the administration of many nutrition and health-related programs.

Ms. Deborah Tschappat is employed by the Anthony Jordan Health Corporation for over six (6) years in Grants and Program Development. Her responsibilities include developing programs to address the needs of the low-income patient population. She conducts annual community health assessments, including needs of the homeless. She has extensive experience in developing programs for healthcare facilities, FQHCs, including addressing financial and compliance issues. She regularly collaborates with leadership and the Board of Directors on budgeting, planning, and compliance.

Dr. Bridgett Wiefling, M.D. is a practicing physician employed by Rochester General Hospital for over six (6) years. She is the Senior Vice President for Primary Care Institute. This role allows her a deep operational knowledge of medical practice operations to facilitate governance over safety and quality of operations. She was previously the Medical Director and CEO of a local FQHC that provided primary care. This role allowed her to understand HRSA standards for FQHC governance and operations.

Ms. Rosa Wims is a retired Licensed Practical Nurse and Community Advocate for 15 years. She is a member of the Healthcare for the Homeless committee.

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. Wiefling disclosed that, during her employ as Chief Executive Officer at Westside Health Center, the Center was part of an asset only acquisition and then closed on September 30, 2011.

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.

Prevention Agenda

The applicant identifies Chronic Disease as the Prevention Agenda Priority with a focus on reducing preventable hospitalizations by improving management of chronic disease, specifically diabetes care. Additionally, in collaboration with the Physical Activity and Nutrition Task Force, the applicant will identify and implement sustainable policy, system and environmental changes to promote increased physical activity and improved nutrition among adults.

Unity Hospital has engaged with multiple community partners across various sectors, including the Monroe County Health Department to address the Prevention Agenda priorities.

To measure the performance and progress of their interventions, Unity Hospital will monitor the rate of preventable hospitalizations; monitor the number of Primary care physicians receiving NCQA certification in diabetes care; and monitor the rate of physical activity and nutritional status among adults.
In 2017 Unity Hospital spent $99,100 on community health improvement services, representing 0.021% of total operating expenses.

Conclusion

There will be no changes to services at these clinics. 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

Operating Budgets

The applicant has submitted an operating budget, in 2019 dollars, for years one and three, summarized below:

	Current Year (2018)	Year One	Year Three
Revenues			
Commercial	$17,510	$17,685	$18,036
Medicare	37,826	38,204	38,960
Medicaid	402,662	406,688	414,742
Other	2,261	2,285	2,329
Total Patient Revenue	$460,259	$464,862	$474,067
Other Operating Rev			
HRSA Grant	$1,184,265	$1,184,265	$1,184,265
Unity Hosp. Contribution	108,462	103,948	95,518
Total Other Op. Rev	$1,292,727	$1,288,213	$1,279,783
Total Revenues	$1,752,986	$1,753,075	$1,753,850
Expenses			
Operating	$1,744,272	$1,744,355	$1,745,100
Capital	8,713	8,720	8,750
Total	$1,752,986	$1,753,075	$1,753,850
Net Income / (Loss)	$0	$0	$0
Total Visits	4,635	4,681	4,774
Cost per Visit	$378.21	$374.51	$367.38

Utilization by payor source for Current Year, Year One and Year Three is as follows:

Payor	Current, Years One & Three
Commercial	3.16%
Medicare	8.26%
Medicaid	61.38%
Other	0.54%
Charity Care	26.66%
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenue is based on the current rate experience by payor of the outpatient clinic and mobile van operated by Unity Hospital.
- Charity Care is based on the actual experience of the existing clinic and mobile van.
- Other represents No Fault and Workmen's Compensation.
- There is no Private Pay recorded for the homeless patient population.
- Expenses and utilization are based on the current experience outpatient clinic and the mobile van operated by Unity Hospital.

Capability and Feasibility

There are no project costs or changes in staffing or services associated with this application. The submitted budget projects a net operating income of $0 during Years One and Three of operations, respectively. Medicare and Medicaid reimbursement rates are based on the current and projected FQHC rates for D&TCs. Commercial reimbursement rates are based on the historical experience of the clinics. The budget appears reasonable.

BFA Attachment A is the 2018 consolidated financial statements of Rochester Regional Health Hospital Affiliates, which shows Unity Hospital maintained a positive working capital position, positive net assets and generated $6,118,000 net operating income.

BFA Attachment B is the May 31, 2019 internal financial statements of Unity Hospital of Rochester which shows Unity Hospital maintained a positive working capital position, positive net assets and $1,689,000 net operating income.

Attachments

BFA Attachment A	Financial Summary 2018 consolidate financial statement of Rochester Regional Health Hospital Affiliates
BFA Attachment B	Financial Summary May 31, 2019 internal financial statements of Unity Hospital of Rochester
BFA Attachment C	Rochester Regional Health Current Organizational Chart
BFA Attachment D	Rochester Regional Health Proposed Organizational Chart

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191137-B
Binghamton ASC, LLC
d/b/a Greater Binghamton Eye Surgery Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Broome**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**March 29, 2019**

Executive Summary

Description
Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center, an existing New York limited liability company, requests approval to establish and construct a single specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in ophthalmology services. The facility will be housed in approximately 7,100 square feet of leased space in a to-be-constructed, one-story medical office building located at 1016 Vestal Parkway East, Vestal (Broome County). The building will be constructed and owned by 1016 Vestal Parkway Land, LLC, an affiliate of Binghamton ASC, LLC.

Daniel Sambursky, M.D. is the sole member of the FASC.

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 2,128 in Year Three, with Medicaid at 5.0% and Charity Care at 2.0%. The FASC will serve primarily Broome County, with a secondary service area consisting of Chenango, Tioga, Delaware and Susquehanna (Pennsylvania) counties, all of which represent the catchment area of Dr. Sambursky's medical practice.

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
Total project cost for the Article 28 space, inclusive of building shell and FASC fit-out, is $3,969,286 and will be met via member's equity of $432,220, a $439,085 equipment loan (applicant) at 4.89% interest for a seven-year term, and a $3,097,981 bank loan (landlord) at 4.79% interest rate for a ten-year term. M&T Bank has provided a letter interest for the respective financings at the stated terms. The proposed budget is as follows:

	Year One	Year Three
Revenues	$1,657,923	$1,758,704
Expenses	$1,255,971	$1,306,063
Net Income	$401,952	$452,641

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 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 centers 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a loan commitment for equipment (applicant), acceptable to the Department of Health. [BFA]
6. Submission of a bank loan commitment (landlord), acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicants Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Certificate of Assumed Name, acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
11. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 15, 2020 and construction must be completed by September 15, 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 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]
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]
5. 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]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
October 10, 2019

Need Analysis

Analysis

The primary service area consists of Broome County, with a secondary service being the surrounding counties. There are currently no freestanding ambulatory surgery centers in Broome County. The County has one multi-specialty hospital extension clinic and three hospitals providing multi-specialty surgery services. The table below shows the number of patient visits for facilities in Broome County for 2017 and 2018.

Type	Facility Name	Total Patient Visits	
		2017	2018
Multi-speciatly	UHS Inc.- Binghamton General Hospital	8,270	9,895
Multi-speciatly	Our Lady of Lourdes Memorial Hospital	13,216	13,181
Multi-speciatly	UHS Inc. – Wilson Medical Center	9,738	11,196
Multi-speciatly	Wilson Place Ambulatory Surgery Center (extension clinic of UHS)	14,497	15,585
Total Visits		**45,721**	**49,857**

The number of projected procedures is 2,007 in Year One and 2,128 in Year Three. Currently 85% of the procedures moving to the proposed surgery center are being performed at local hospitals: 61% at Our Lady of Lourdes and 24% at UHS- Wilson. The rest of the cases (15%) are being performed in an office-based setting.

The applicant indicated that he has a five to six-week patient wait time due to insufficient OR time or staff at the area hospitals. Additionally, the applicant says it is inefficient to work out of two hospitals. The applicant also states that currently there are no retina or occuplasty surgeries performed in Binghamton, with patients having to travel to Syracuse. Preliminary discussions are underway to explore having Syracuse-based surgeons perform some cases at the FASC.

The table below shows the projected payor source utilization for Years One and Three.

Projections-191137	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	100	4.99%	106	4.98%
Medicare	1,064	53.01%	1,128	53.01%
Commercial	783	39.01%	830	39.00%
Private Pay	20	1.00%	21	0.99%
Charity Care	40	1.99%	43	2.02%
Total	**2,007**	**100.0%**	**2,128**	**100.0%**

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: CDPHP, Excellus, MVP Medicaid and United Health Community Plan. The center plans to reach out to Cornerstone Family Healthcare, an FQHC and Dr. Garabed A. Fattal Community Free Clinic. Both organizations provide services to the under-insured in the region. The center has developed a financial assistance policy with a sliding fee scale to be utilized once the center is operational.

Conclusion

Approval of this project will provide increased access to Ophthalmology surgery services at an FASC setting for the communities within the service area.

Program Analysis

Program Description

Proposed Operator	Binghamton ASC, LLC
Doing Business As	Greater Binghamton Eye Surgery Center
Site Address	1016 Vestal Parkway East Vestal, New York 13850
Surgical Specialties	Single Specialty: Ophthalmology
Operating Rooms	2
Procedure Rooms	1
Hours of Operation	Initially, 2 days per week 7 am to 3 pm Adjusted as necessary to accommodate patient scheduling issues.
Staffing (1st Year / 3rd Year)	3.8 FTEs / 3.8 FTEs
Medical Director(s)	Daniel Sambursky, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Lourdes Hospital 6.4 Miles / 14 minutes or UHS Wilson Medical Center 5.4 miles/ 12 minutes
On-call service	Patients who require assistance during off-hours will call Dr. Sambursky's service and be directed to the surgeon or another ophthalmologist on call.

Character and Competence

The sole member of Binghamton ASC, LLC is Daniel Sambursky, M.D.

Dr. Daniel Sambursky is a board-certified Ophthalmologist. He has over 24 years of experience as an ophthalmic surgeon at a private practice and the Associate Professor of Ophthalmology at Upstate Medical Center. He proctors the third- and fourth-year medical students during their clinical rotation. He spent four years as the co-director of a hospital operated ambulatory surgery center that he helped develop. He received his medical degree from State University of New York Upstate Medical University. He completed his fellowship in Cornea, external Disease and Refractive Surgery from Johns Hopkins Hospital.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will require its patients, whenever possible, to have medical clearance with a PCP prior to surgery and provide a list of local PCPs including names and telephone numbers. The Applicant is committed to serving all persons in need of services and there will be no discrimination based on personal characteristics or ability to pay. There is a financial assistance policy with a sliding fee schedule. The Applicant will advise patients of the financial assistance policy through multiple outlets, website, informational packet, and through employee

recognition and assistance in the application process. Other activities to provide outreach to the underserved including Cornerstone Family Healthcare, a FQHC, and Dr. Garabed A. Fattal Community Free Clinic. The Center will participate with traditional fee for service Medicaid and area Medicaid Managed Care Plans.

The Center intends on using an Electronic Medical Record (EMR) program and will consider participating in a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE).

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 rental agreement for the site that they will occupy, the terms are summarized below:

Date:	March 1, 2019
Premises:	7,100 square feet located at 1016 Vestal Parkway East, Vestal, New York.
Lessor:	1016 Vestal Parkway Land, LLC
Lessee:	Binghamton ASC, LLC
Term:	15 years with two additional five-year terms.
Rental:	Year 1-5: $301,500 annually ($42.46 per sq. ft.). Base rent will increase 2% annually beginning in lease year six.
Provisions:	Tennant responsible for utilities, real estate taxes, insurance and maintenance.

The applicant has submitted an affidavit indicating that the lease agreement will be a non-arm's length lease arrangement. The applicant submitted letters from two New York real estate brokers attesting to the reasonableness of the per square foot rental.

Administrative Services and Billing Agreement

The applicant has submitted an executed administrative services and billing agreement. The terms are summarized below:

Date:	March 1, 2019
Facility Operator:	Binghamton ASC, LLC
Contractor:	Ophthalmic Associates of The Southern Tier, P.C.
Term:	Three years; automatically renews for successive periods of one year each.
Services Provided:	Claims processing including resolution/follow-up; tracking of accounts receivable; monthly/annual claims reporting; coordinate prior authorizations, pre-determinations and deposits for surgeries; follow operator's charity care policy/ procedures; budget prep, bookkeeping and accounts management; assist in credentialing; assist with payor contract negotiations; provide revenue analysis on monthly and annual collections; provide computer support; and human resources management services.
Compensation:	$5,000 per month ($60,000 annually)

While Ophthalmic Associates of The Southern Tier, P.C. will be providing all the services, Binghamton ASC, LLC retains ultimate control in all the final decisions associated with the services provided. The applicant 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.

Total Project Cost

The total Article 28 project cost, which is for new construction and the acquisition of moveable equipment, is estimated as $3,969,286, broken down as follows:

New Construction	$2,638,125
Design Contingency	$251,500
Construction Contingency	$125,625
Architect/Engineering Fees	$391,250
Other Fees (Consultant)	$40,000
Moveable Equipment	$439,085
Financing Costs	$25,000
Interim Interest Expense	$35,000
CON Fee	$2,000
Additional Processing Fee	$21,701
Total Project Cost	$3,969,286

Project costs are based on a construction start date of January 2020. and an eight-month construction period.

The applicant's financing plan appears as follows:

Equity (Applicant)	$432,220
Equipment Loan (Applicant) (4.89% interest rate for a seven-year term)	$439,085
Bank Loan (Landlord) (4.79% interest rate for w ten-year term)	$3,097,981
Total	$3,969,286

M&T Bank has provided a letter interest for the respective financings at the stated terms. BFA Attachment A is the applicant member's net worth statement which shows sufficient liquid resources to fund the equity requirement.

Operating Budget

The applicant submitted an operating budget for the first and third years, in 2019 dollars, summarized below:

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Medicaid MC	$735.57	$73,557	$736.11	$78,028
Medicare FFS	$813.78	$865,860	$814.27	$918,493
Commercial MC	$894.69	$700,543	$895.33	$743,127
Private Pay	$898.15	$17,963	$907.38	$19,055
Total Revenues		$1,657,923		$1,758,703
Expenses				
Operating	$429.88	$862,778	$433.56	$922,623
Capital	$195.91	$393,196	$180.19	$383,443
Total Expenses	$625.80	$1,255,974	$613.75	$1,306,066
Net Income		$401,949		$452,637
Procedures		2,007		2,128

Utilization by payor during the first and third years is as follow:

Payor	Year One	Year Three
Medicaid MC	4.99%	4.98%
Medicare FFS	53.01%	53.01%
Commercial MC	39.01%	39.00%
Private Pay	1.00%	.99%
Charity Care	1.99%	2.02%

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization assumptions are based on Dr. Sambursky's previous experience.
- Revenues reflect Medicare reimbursement rates per the 2019 Medicare Fee Schedule with Commercial reimbursement estimated at 110%, Medicaid Managed Care estimated at 90% and Private Pay estimated at 110% of the Medicare payment rate. The Medicare payment rates by CPT code for procedures to be performed in the FASC were provided in support of the revenue projections.
- Utilization assumptions are based on the physician's current outpatient surgical procedure volume. The year one procedures (and estimated volume) to the performed in the FASC include the following: Revision of Iris (23 procedures); after Cataract Laser Surgery (275 procedures); Cataract Surgery Complex (130 procedures); and Cataract Surgery w/IOL 1-stage (1579 procedures). Utilization is expected to increase 6% by the third year due to the area's growing aging population.
- The iris revision and cataract laser surgery procedures are currently being done in the office setting using a YAG laser. The procedures will transition to the FASC where both YAG and Argon Laser technologies will be available.
- The cost of medical supplies per cataract surgery is estimated at $230 per case.
- Anesthesia costs are not included in the budget. The applicant will contract with an anesthesiology group to provide anesthesia services at the ASC. An anesthesia group has not been selected.

Capability and Feasibility

Total project cost of $3,969,286 for the Article 28 space will be met via member's equity of $432,220, a $439,085 equipment loan (applicant) at 4.89% interest for a seven-year term, and a $3,097,981 bank loan (landlord) at 4.79% for a ten-year term. M&T Bank has provided a letter of interest for the equipment lease at the stated terms. Additionally, M&T Bank has provided a letter of interest for the construction loan.

Working capital requirements are estimated at $217,678 based on two months of third year expenses. The applicant will finance $108,839 at an interest rate of 4.89% for a five-year term. The remaining $108,839 will be provided as equity via the proposed member of Binghamton ASC, LLC. BFA Attachment A is the personal net worth statement of the proposed member of Binghamton ASC, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B presents the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $541,056.

The submitted budget projects net income of $401,949 and $452,637 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ophthalmology services. The submitted 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.

Our Lady of Lourdes Memorial Hospital -- **See Below**
169 Riverside Drive
Binghamton, New York 13905

UHS-Binghamton General Hospital -- **See Below**
10-42 Mitchell Avenue
Binghamton New York 13903

UHS-Wilson Medical Center -- **See Below**
33-57 Harrison Street
Johnson City, New York 13790

Our Lady of Lourdes

Our Lady of Lourdes Memorial Hospital (OLL) operates a Laser Eye Center (LEC) as part of its hospital-based ambulatory surgery services. The applicant is one of three surgeons performing ambulatory eye surgery at the LEC. The three surgeons performed 2,138 cases in CY 2017 and 2,029 in CY 2018 at OLL with the applicant's cases accounting for 57.3% of the total cases in CY 2018 (1,163 cases). Utilization of the LEC is at 28.15% and the applicant's scheduled block time accounts for 70.5% of this utilization. As the LEC has excess capacity, the applicant was recently granted additional block time but has used 0% of the newly offered times. OLL contends that departure of the applicant will decrease the LEC's productivity and have negative effect on the LEC's operations.

OLL calculated that the hospital received $4,895,475 in net patient service revenue (NPSR) from the 2,029 eye surgery cases performed in CY 2018. Adjusting for total variable and fixed operating expenses of $2,580,458 for these cases, OLL calculated a net operating gain of $2,315,017 for these eye surgery cases. As the applicant's cases accounted for 57.3% of its total CY 2018 eye cases, lost operating profit attributable to the FASC's establishment is estimated at $1,326,504 annually. OLL's ambulatory eye surgery service is profitable overall and buffers losses related to other services (inpatient and outpatient) OLL provides.

OLL's certified financial statements (reported on a FYE 6/30 basis) indicate the consolidated entity generated operating income of $5.78M for FY 2017 but experienced an operating loss of $5.76M for FY 2018. Though operating revenue in FY 2018 increased 7.5% over FY 2017, operating expenses increased by 11.12% for the same period. A 12% increase in labor cost was a significant contributing factor. OLL explained that the labor cost increase was the result of adding two Orthopedic Practices ($9.7M), the full year effect and expansion of a recently added Cardiology Practice ($1.5M), an increase in Contract Labor ($3.3M), and other various staffing changes ($2.0M).

The Department's review of OLL's Institutional Cost Report indicates that eye surgery case accounted for only about 11% of OLL's total ASC procedures in their past two FYs, with the number of cases performed by the applicant accounting for only about 6% in FY 2018 and 2017. Using the applicant's estimate of $4.8M of NPSR from their total eye surgery procedures, this represents only 1.6% of OLL's total net patient service revenue. The Department's ICR review indicates that the ambulatory surgery service line is profitable for OLL, generating an operating gain of $11.7M (FY 2018), and helps to offset losses from other hospital services. Approval of the applicant's FASC will reduce the profitability of OLL's ambulatory surgery service line by $1.3M, however it will remain a highly profitable service line that contributes to OLL's overall operations and financial stability.

Per the Department's analysis, the loss of revenue from the applicant's cases currently being performed at OLL is expected to have a negative financial impact on the hospital, however this impact will not jeopardize OLLs financial sustainability. In addition, OLL is not designated as a Critical Access Hospital (CAH) or a Sole Community Hospital. Therefore, consistent with the DOH's ASC policy, the Department recommends approval of the project.

United Health Services

United Health Services Hospitals, Inc. (UHS) operates two main hospital campuses in Broome County, Binghamton General Hospital in Binghamton (220 beds) and Wilson Medical Center (WMC) in Johnson City (280 beds). Ambulatory eye surgeries are currently performed by four surgeons at the Ambulatory Surgery Center at Wilson Place (across the street from WMC). The Wilson Place ASC performed 1,514 eye surgeries in 2018 with the applicant's cases accounting for 25% (386 surgeries) of the total. As the applicant proposes to operate only two days, UHS believes this could increase over time with no regulatory oversight. The three other surgeons performing eye surgeries are independent with no affiliation to UHS and UHS states it is likely the proposed ASC will seek to fill open time with surgeries performed by these three physicians. The applicant has block time at the Wilson Place and a year ago informally requested specific additional time on Thursdays, which was denied due to high demand and alternate OR use on that day.

UHS calculated that the applicant's higher acuity 2018 cases generated net revenue of $1,116,562, and a net profit of $469,127 after accounting for variable costs. Given the proposed ASC's capacity UHS's position is that all its 1,514 eye cases could migrate to the new ASC resulting in an annual revenue loss of $4,191,148 and a net loss of $930,828.

The Department's review of UHS's certified financial statements from 2015-2018 do not support financial instability should UHS lose the 386 surgeries currently performed at UHS by the applicant. The Department's review indicates the hospital had consistent operating gains from 2015 to 2017 (from $15.1M to $17.3M, or about a $1M increase per year); however, operating income decreased in 2018 to $9.2M due to net patient revenue not keeping pace with increased costs for labor, supplies and pharmaceuticals. UHS reported non-operating income of $9.5M in 2018 which included a $6.4M one-time distribution related to the sale of its malpractice insurer resulting in an excess revenue over expenses of $18.7M for 2018.

The Department's review of UHS's 2018 Institutional Cost Report (ICR) indicates that although its ambulatory surgery service line is profitable, the applicant's 386 cases account for only 1.5% of UHS's total ASC procedures, 0.2% of the Hospital's total net patient service revenue.

Per the Department's analysis, the loss of revenue from the applicant's cases currently being performed at UHS is not material and will not jeopardize UHS's financial sustainability. In addition, UHS is not designated as a Critical Access Hospital (CAH) or a Sole Community Hospital. Therefore, consistent with the DOH's ASC policy, the Department recommends approval of the project.

Supplemental Information from Applicant

There are currently no free-standing ASCs in Broome County. Most of the applicant's current eye surgery cases (72%) will move from a hospital setting (primarily OLL) to the proposed FASC, while 28% will remain office based. The applicant states there is no intention to increase from the proposed plan to operate two days per week. The applicant states intention to recruit one or more ophthalmologists to his practice and to work with Syracuse-based retina and oculoplastic medical groups that have offices in Binghamton to perform [retina surgeries] at the proposed center, a service which the applicant states is not currently offered in the Binghamton area and patients must travel to Syracuse (75 miles) to have these procedures.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BHFP Attachment	Map

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191164-B
Harlem Road Ventures, LLC t/b/k/a
Harlem Road Ambulatory Surgery Center, LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**Erie**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**April 3, 2019**

Executive Summary

Description

Harlem Road Ventures, LLC (the Center), an existing New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) to be located at 3085 Harlem Road, Cheektowaga (Erie County). The Center will be certified as a single-specialty FASC specializing in urology procedures. The applicant will lease 8,000 square feet of space on the third floor in an existing building that houses multiple medical practices. The FASC will include eight procedure rooms, eight prep/recovery bays, along with the requisite support areas. Upon approval by the Public Health and Health Planning Council, the Articles of Organization will be amended to allow for the operation of the FASC, and the name will be changed to Harlem Road Ambulatory Surgery Center, LLC.

Proposed Operator	
Harlem Road Ventures, LLC	
Member	%
KH Ventures Services, Inc. (a subsidiary of Kaleida Health)	100%

The sole member of Harlem Road Ventures, LLC is KH Ventures Services, Inc. whose sole member and passive parent is Kaleida Health, an integrated healthcare delivery system in Western New York that provides acute, skilled nursing, rehabilitative, outpatient, and home healthcare services.

The Center will have 13 participating physicians, each of whom is a urologist employed by Great Lakes Physicians P.C. d/b/a WNY Urology, a captive physician practice of Kaleida Health. The proposed FASC will be located one floor above the WNY Urology medical practice. The participating physicians have provided letters of interest to perform an estimated 13,651 procedures at the FASC in the first year. Utilization is based on the physicians' 2017 caseload experience at WNY Urology.

K. Kent Chevli, M.D., who is Board-certified in Urology, will serve as Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Millard Fillmore Suburban Hospital (a member hospital of Kaleida Health), which is located 7.1 miles (17 minutes travel time) from the 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 13,651 in Year One and 15,048 in Year Three with Medicaid at 8% and Charity Care at 2%.

Program Summary

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

Total project costs of $4,938,503 will be provided via equity by Kaleida Health, the sole member and passive parent of KH Venture Services, Inc., who is the sole member of the applicant. The proposed budget is as follows:

	Year One	Year Three
Revenues	$5,991,439	$6,872,427
Expenses	$3,288,288	$3,658,489
Gain/(Loss)	$2,703,151	$3,213,938

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 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 centers 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed building 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 a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of applicant's amended, executed, and completed Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of applicant's amended, executed, and completed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed Resolution of the Board of Directors of KH Ventures, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the amended bylaws of KH Ventures, Inc., acceptable to the Department. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [CSL]
14. The provision of a Type 1 EES and storage for medical gases, as well as submission of Engineering (MEP) Drawings for review and approval as described in BAER Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 10, 2019 and construction must be completed by October 31, 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 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]
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 applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
October 10, 2019

Need Analysis

Analysis

The service area is Erie County. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2017 and 2018. This will be the first ambulatory surgery center in Erie County to specialize in urology procedures.

Specialty Type	Facility Name	Patient Visits	
		2017	2018
Multi	Ambulatory Surgery Center of Western NY [1]	14,591	11,888
Multi	Buffalo Ambulatory Surgery Center	13,625	12,866
Multi	Buffalo Surgery Center	14,755	15,248
Multi	Center for Ambulatory Surgery [1]	10,350	12,540
Multi	Endoscopy Center of Western NY	11,407	12,941
Ophthalmology	Eye Health Associates	4,093	4,012
Multi	Millard Fillmore Surgery Center	3,891	3,439
Gastroenterology/ Ophthalmology	Premier Ambulatory Surgery Center (opened 7/31/18)	N/A	N/A
Multi	Southtowns Surgery Center	1,857	2,280
Multi	Sterling Surgical Center	5,825	5,747
Pain Management	WNY Medical Management	2,446	2,093
	Totals	82,840	83,054

[1] 2018 data is an estimation, based upon partial year information

The number of projected procedures is 13,651 in Year One and 15,048 in Year Three. The applicant reports that all the projected procedures are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Projections- 191164	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	83	0.61%	91	0.60%
Medicaid MC	1,004	7.35%	1,107	7.35%
Medicare - FFS	2,168	15.88%	2,390	15.88%
Medicare - MC	4,279	31.35%	4,717	31.35%
Comm Ins -FFS	4,089	29.95%	4,508	29.96%
Comm Ins MC	1,635	11.98%	1,802	11.98%
Private Pay	59	0.43%	65	0.43%
Other	61	0.45%	67	0.45%
Charity Care	273	2.00%	301	2.00%
Total	13,651	100.0%	15,048	100. 0%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Independent Health Medisource, Blue Cross Western Ny Community Care, and Your Care. The applicant will reach out to Jericho Road Community Health Center, an FQHC, to provide service to the under-insured in the service area. The center will adopt a financial assistance policy with a sliding fee scale once operational. 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 increase access for urology services in a certified setting for the communities within Erie County.

Program Analysis

Program Description

Proposed Operator	Harlem Road Venture, LLC
Doing Business As	Harlem Road Ambulatory Surgery Center, LLC
Site Address	3085 Harlem Road Cheektowaga, New York 14225 (Erie County)
Surgical Specialties	Urology
Operating Rooms	0 (none)
Procedure Rooms	8 (eight)
Hours of Operation	Monday through Friday 7 am to 5pm
Staffing (1st Year / 3rd Year)	11.90 FTEs / 13.50 FTEs
Medical Director(s)	K. Kent Chevli, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: Millard Fillmore Suburban Hospital 7.1 miles / 17 minutes
On-call service	If a patient requires assistance during hours when the Center is closed, the patient will call an on-call service which will be available 24 hours a day, 7 days a week, to immediately refer the patient to the Center's on-call physician.

The sole member of Harlem Road Ambulatory Surgery Center is Kaleida Health Venture Services, Inc., a subsidiary of Kaleida Health. Kaleida Health is the sole member and passive parent of Kaleida Health Venture Services, Inc.

Character and Competence

The members/managers of Harlem Road Venture, LLC are:

Kaleida Health Venture Services, Inc
- Donald Boyd, Director
- Robert Nesselbush, Director
- Alyson Spaulding, Esq, Director

Mr. Boyd is the Executive Vice President and Chief Operating Officer of Kaleida Health. He is responsible for the day to day operations of he health system. Mr. Boyd has worked for Kaleida Health since its inception in in 1998 in various such as Vice President for Ambulatory Services and Business Development and Affiliations and Director of the Ambulatory Surgery Center in Williamsville.

Mr. Nesselbush is the Executive Vice President and Chief Financial Officer of Kaleida Health. He is responsible for the financial operation of the health system. He was previously employed at Rochester Regional Health and held various positions beginning as the Director of Financial Reporting and finishing as the Executive Vice President and Chief Operating Officer. He was part of the executive leadership that founded Rochester Regional Health.

Ms. Spaulding is the General Legal Counsel for Kaleida Health. She is responsible for providing primary legal counsel for Kaleida Health and its corporate affiliates. He oversees Risk Management, Emergency Management, Internal Audit and Corporate Compliance, and Risk Management.

Dr. Chevli, the proposed Medical Director, is a board-certified practicing Urologist with over 25 years of experience. Since January 1994, he has operated a private practice, Great Lakes Physicians PC, in Cheektowaga, New York. He is the Chair and Clinical Professor for the Department of Urology at the State University of Buffalo, the Director of Urology at Kaleida Health and Buffalo ASC and the Site Director of Urology at Millard Filmore Suburban Hospital.

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. Chevli disclosed one malpractice case that was filed in January 2009 which alleges a hematoma and abdominal pain following lithotripsy. The case was dismissed on June 10, 210 with no payments.

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.

- On May 24, 2018, Upper Alleghany Health System -Olean General Hospital and Occupational Safety and Health Review Commission (OSRHC) entered into a Stipulation of Settlement regarding insufficient documentation and staff training. The stipulation required Olean General Hospital to pay $25,500.
- In January 2015, the New York State Office of the Inspector General (OIG) received a report of non-compliance with dental centers in Olean, New York and Braford Pennsylvania. There are four (4) dental centers in total. Specifically, that dental hand pieces were not routinely sterilized by autoclaving between patients. Instead, after being used in the mouths of patients, contaminated dental hand pieces were wiped off with a disinfectant not intended for such use before being reused in the mouths of subsequent patients. The case is currently under investigation with the Federal government and the State of Pennsylvania.
- The Department issued a Stipulation and Order (S&O) on January 13, 2016 and fined HighPointe on Michigan Healthcare Facility $16,000 based on findings from a survey that was completed on April 17, 2015. Deficient practice was cited in the following areas: Quality of care: Accident Free Environment, Staff Treatment of Resident: Investigate Report Allegations/Individuals, Quality of Care: Needs Respiratory Care, and Administration.
- The Pennsylvania Department of Health issued a Civil Monetary Penalty to Visiting Nurses of Northwest PA (Hospice) in the amount of $2,850 based on findings from a survey concluded on April 5, 2018. Deficient practice was cited in the following areas: QAPI.

Integration with Community Resources

The majority of patients will require a referral from a primary care physician prior to being seen in the Center. If a patient does not have a primary care physician, the Center could offer Kaleida Health Primary Care and UBMD options to these patients. The surgery center plans to leverage its relationship with Kaleida Health to enhance access to services, as follows: materials will be developed to promote the new ASC and distributed to service area physicians and local federally qualified health care centers as well as participate with traditional Medicaid and Medicaid managed care plans. In addition, the center will have a sliding fee schedule for services for those who express hardship in paying for services.

The applicant intends on utilizing an Electronic Medical Record and will consider participating in a Regional Health Information Organization (RHIO)/Health Information Exchange (HIE). Additionally, the applicant will consider participating in one or more Accountable Care Organizations (ACOs) subject to its eligibility to do so.

Conclusion

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 Analysis

Lease Rental Agreement

The applicant has submitted an executed prime lease for the building at 3085 Harlem Road:

Date:	July 8, 2015
Premises:	69,403 gross square feet located at 3085 Harlem Road, Cheektowaga, NY 14225
Landlord:	Ciminelli Real Estate Corporation
Lessee:	Kaleida Health
Term:	15 years
Rent:	$1,943,284 per year ($28 per sq. ft) plus operating expenses. Rent increases approximately 1.5% per year
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease between the landlord and lessee is an arm's length arrangement.

Sub-Lease Rental Agreement

The applicant has submitted a draft sub-lease for the proposed site:

Premises:	8,000 gross square feet located at 3085 Harlem Road, 3rd floor, Suite 300, Cheektowaga, NY 14225
Sub-Landlord:	Kaleida Health
Sub-Lessee:	Harlem Road Ventures, LLC
Term:	117 months (9.75 years - Start date Nov 1, 2020 / End date July 31, 2030)
Rent:	$241,360 per year ($30.17 per square ft) plus operating expenses estimated at $240,000 per year ($30.00 per square ft) Rent increase approx. 1.76% per yr.
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease between the Sub-landlord and Sub-Leases is a non-arm's length arrangement in that the sole member of Harlem Road Ventures, LLC is KH Venture Services, Inc., a subsidiary of Kaleida Health. Two NYS licensed realtors have provided letters attesting the rental rate is at fair market value.

Administrative Service Agreement

The applicant has submitted a draft administrative services agreement:

Facility:	Harlem Road Ventures, LLC
Contractor:	Great Lakes Physicians P.C.
Services Provided:	Assist with performing the following financial and operational services: establishing, administrating and implementing accounting procedures, controls, business records, uncompensated services, payable functions, monthly financial reporting, arrange for annual audits and tax reporting, assist in obtaining and maintaining licenses and certifications, credentialing services, risk management and arrange for commercial insurance. .
Above service fee:	Annual Fee of $85,000 (1/12 to be paid monthly = $7,084)
Services Provided:	With approval, provide professional and non-professional staff, process payroll and provide purchasing services.
Above service fee:	Reimburse at actual costs
Services Provided:	Consistent with the approved billing and collections policies, fee schedules and charity care policy: maintain accounting, credit, coding, timely bill, collect, deposit, and reconcile account receivables. Provide approved staff experienced in insurance claims and legal coding of claims.
Above service fee:	Annual Fee of $468,785 (1/12 to be paid monthly = $39,066)
Term:	1-year with automatic 1-year renewals

Great Lakes Physicians P.C. is a related party to the applicant in that they are both subsidiaries of Kaleida Health. 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.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at $4,938,503, broken down as follows:

Renovation & Demolition	$1,947,196
Design Contingency	206,693
Construction Contingency	281,708
Fixed Equipment	117,424
Architect/Engineering Fees	199,500
Constructions Manager Fees	488,775
Other Fees	397,425
Movable Equipment	1,084,005
IT (including telecommunications)	186,775
CON Application Fee	2,000
CON Processing Fee	27,002
Total Project Cost	$4,938,503

Project cost is based on a start date of December 2019, with an 11-month construction period. Kaleida Health will fund the $4,938,503 project from accumulated resources.

BFA Attachment B is Kaleida Health's 2016 and 2017 certified consolidated financial statements and their internal financial statements as of December 31, 2018, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted their first- and third-years' operating budgets, in 2019 dollars, as summarized below:

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Medicaid FFS	$653.29	$54,223	$683.47	$62,196
Medicaid MC	$442.42	$444,194	$460.25	$509,509
Medicare FFS	$397.92	$862,693	$414.04	$989,544
Medicare MC	$364.28	$1,558,743	$379.04	$1,787,942
Commercial FFS	$509.44	$2,083,098	$530.04	$2,389,399
Commercial MC	$543.69	$888,933	$565.84	$1,019,643
Private Pay	$1.749.41	$103,215	$1,821.42	$118,392
All Other	$910.33	$55,530	$950.67	$63,695
Bad Debt		-$59,190		-$67,893
Total Revenues		$5,991,439		$6,872,427
Expenses				
Operating	$179.59	$2,451,519	$186.36	$2,804,280
Capital	$61.30	836,769	$56.77	854,209
Total Expenses	$240.89	$3,288,288	$243.13	$3,658,489
Net Income		$2,703,151		$3,213,938
Procedures		13,651		15,048
Cost Per Procedure		$240.89		$243.13

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

Payor	Year One	Year Three
Medicaid FFS	0.61%	0.60%
Medicaid MC	7.35%	7.35%
Medicare FFS	15.88%	15.88%
Medicare MC	31.35%	31.35%
Commercial FFS	29.95%	29.96%
Commercial MC	11.98%	11.98%
Private Pay	0.43%	0.43%
All Other	0.45%	0.45%
Charity	2.0%	2.00%
Total	100%	100%

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

- Reimbursement rates reflect the actual experience of WNY Urology, the captive urology physician practice of Kaleida Health, as well as the experience of Kaleida Health in providing ambulatory urology procedures.
- Expenses assumptions are also based upon the operating experience of WNY Urology related to the types of procedures that will be performed in the FASC setting.
- Utilization by payor is based on the number of procedures performed by the participating physicians' in their office-based practice in 2017 that will be transitioned to the FASC.
- Breakeven utilization is approximately 7,492 procedures in Year One.

Capability and Feasibility

Total project costs of $4,938,503 will be met via equity provided by Kaleida Health, the sole member and passive parent of KH Venture Services, Inc., who is the sole member of the applicant.

The working capital requirement is estimated at $609,748 based on two months of third year expenses. Kaleida Health will fund the working capital needs via equity. BFA Attachment B is Kaleida Health's 2016 and 2017 certified consolidated financial statements and their internal financial statements as of December 31, 2018, which reveals sufficient resources to meet the equity requirements. Review of Attachment B shows the entity achieved positive net assets and working capital positions and had average income from operations of $28.79 million for the certified 2016-2017 period. As of December 31, 2018, the entity maintained positive net assets and working capital and had operating income of $10.1 million. For the period 2016 through 2018 working capital averaged $311 million with net assets ending at $524.5 million as of end of 2018.

BFA Attachment C is the proforma balance sheet of Harlem Road Ventures, LLC that shows operations will start with $5,548,251 in equity.

Harlem Road Ventures, LLC projects an operating surplus of $2,703,151 and $3,213,938 in the first and third years of operation, respectively. The budget appears reasonable.

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.

Sisters of Charity Hospital – St Joseph's Campus -- **No Response**
2605 Harlem Road
Cheektowaga, New York 14225

Sisters of Charity Hospital -- **No Response**
462 Grider Street
Buffalo, New York 14215

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

DOH Comment

In the absence of comments from hospitals in the area of 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

BHFP Attachment	Map
BFA Attachment A	Harlem Road Ventures, LLC, Organizational Chart
BFA Attachment B	2016 & 2017 Certified Financial Statement and December 31, 2018 Internal Financial Statement for Kaleida Health
BFA Attachment C	Pro Forma Balance Sheet of Harlem Road Ventures, LLC

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191212-B
Atlantic SC, LLC d/b/a Atlantic Surgery Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Suffolk**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**April 29, 2019**

Executive Summary

Description

Atlantic SC, LLC d/b/a Atlantic Surgery Center, an existing New York limited liability company whose sole member is Nitin Mariwalla, M.D., requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. The Center will be located in a to-be-constructed building at 1145 Montauk Highway, West Islip (Suffolk County). Lola 1145 Realty, LLC, the property owner, will construct the FASC and lease the premises to the applicant. There is a relationship between landlord and tenant in that Dr. Mariwalla is the sole member of both entities.

Dr. Mariwalla is a neurosurgeon with a medical practice in West Islip. He will be an owner/operator of the FASC and will serve as its Medical Director. Seven gastroenterologists of Island Gastroenterology Consultants, P.C., a Suffolk County based medical practice, have provided a letter of interest to perform procedures at the Center. Collectively, the physicians are currently performing approximately 10,500 procedures annually that will be performed in the ASC. Of these procedures, about 10,000 are currently being performed at other ASCs and about 500 are performed in a hospital setting. The physicians are all Board-certified and have admitting privileges at Good Samaritan Hospital Medical Center where the applicant intends to have a Transfer and Affiliation Agreement for back-up and emergency services. Good Samaritan Hospital Center is located 0.4 miles from the proposed facility.

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 7,500 in Year One and 10,352 in Year Three with Medicaid at 15.0% and Charity Care at 3.0%.

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

Total project costs of $3,582,708 will be funded as follows: $750,000 of member's equity; a $2,000,000 bank construction loan, self-amortizing for a 10-year term (landlord); and an $832,708 bank loan for fit-out and equipment, self-amortizing for 10-year term (applicant). Peapack-Gladstone Bank has provided a letter of interest for the respective financings with interest rates indexed at the Bank's five-year Cost of Funds (current indicative rate of 4% interest). The proposed budget is as follows:

	Year One	Year Three
Revenues	$4,789,409	$6,477,598
Expenses	$3,356,925	$3,934,271
Net Income	$1,432,484	$2,543,327

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 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]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment (landlord) for the building's construction, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment (applicant) for equipment and fit-out costs, acceptable to the Department of Health. [BFA]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [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. Construction must start on or before March 1, 2020 and construction must be completed by August 31, 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 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]
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 applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
October 10, 2019

Need Analysis

Need Analysis

The service area is Suffolk County. The table below shows the number of patient visits at ambulatory surgery centers in Suffolk County for 2017 and 2018.

Specialty Type	Facility Name	Patient Visits 2017	Patient Visits 2018
Gastro/Pain Manage	Advanced Surgery Center of Long Island	7,107	7,876
Gastroenterology	Digestive Health Center of Huntington, Inc	3,020	3,155
Gastroenterology	Great South Bay Endoscopy Center, LLC	5,838	6,198
Gastroenterology	Island Digestive Health Center	5,771	5,565
Gastroenterology	Island Endoscopy Center, LLC [2]	5,573	0
Multi	Long Island Ambulatory Surgery Center	15,857	15,265
Orthopedics	Long Island Hand and Orthopedic Surgery Center	751	651
Multi	Melville Surgery Center	6,243	6,542
Multi	North Shore Surgi-Center [1]	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center, LLC [3]	1,008	1,208
Multi	South Shore Surgery Center [3]	5,007	8,160
Multi	Suffolk Surgery Center, LLC [2]	6,107	0
	Totals	62,282	54,620

[1] No SPARCS data was found for 2017 or 2018.
[2] No SPARCS data was found for 2018.
[3] 2018 data is an estimation, based upon partial year information.

The number of projected procedures is 7,500 in Year One and 10,352 in Year Three. The applicant estimates that approximately 95% of the projected procedures are currently being performed at other freestanding ambulatory surgery centers. The table below shows the projected payor source utilization for Years One and Three.

	Year One		Year Three	
Payor	Volume	%	Volume	%
Commercial Ins	3,525	47.0%	4,865	47.0%
Medicare	2,625	35.0%	3,623	35.0%
Medicaid	1,125	15.0%	1,553	15.0%
Charity Care	225	3.0%	311	3.0%
Total	7,500	100.0%	10,352	100. 0%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Affinity Health, Health First, Neighborhood Health and United Healthcare Community. The proposed center will reach out to Hudson River Healthcare – Amityville and Long Island Selected Healthcare (LISH) at Central Islip, both FQHCs, to provide service to the under-insured. The center will adopt a financial assistance policy with a sliding fee scale once operational. 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 the additional access to gastroenterology ambulatory surgery services, such as orthopedics and pain management, for the communities within Suffolk County.

Program Analysis

Facility Information

Proposed Operator	Atlantic SC, LLC
Doing Business As	Atlantic Surgery Center
Site Address	1145 Montauk Highway West Islip, NY 11795 (Suffolk County)
Surgical Specialties	Single Specialty: Gastroenterology
Operating Rooms	0
Procedure Rooms	5
Hours of Operation	Monday through Friday from 8:00 am – 6:00 pm
Staffing (1st / 3rd Year)	11.2 FTEs / 15.2 FTEs
Medical Director	Nitin Mariwalla, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by: Good Samaritan Medical Center 0.4 miles / 1 minute
After-hours access	The patient and responsible party will be informed of the afterhours care including the contact information for their physician and the ASC. The discharge instruction and the answering machine message will also provide instructions to call the patient's Medical Doctor if the surgery center is closed or 911 in the event of an emergency.

Character and Competence

Dr. Mariwalla is the sole member and proposed Medical Director. He is a Neurosurgeon with over 11 years of experience. He has managed a private practice for approximately two years. He is responsible for the hiring of staff, billing practices, and delivery of surgical services. He received his medical degree from Tulane University School of Medicine. He completed his residency and Cerebrovascular Fellowship at Emory University. He currently resides on the Medical Advisory Board, World Wide Task Force for Syringomyelia and Chiari and is a Physician Advisor for Interfaith Outreach Home.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

Atlantic Surgery Center aims to promote access to primary care services by aligning themselves with Good Samaritan Hospital Medical Center and notifying any patient that cones to the Center without a primary care physician of the primary care services offered by the hospital affiliates. The Center plans for outreach to underserved communities by participating in community health events and local religious institutions to make these facilities aware of the services provided and the Center's relationship with the local hospital. The Center proposes to serve uninsured persons and persons without the ability to pay the entire charge by providing a sliding scale fee.

The center is committed to implementing an electronic medical record (EMR) system and will consider joining a regional health information organization (RHIO) or qualified health information exchange (HIE).

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 for the proposed site, the terms are summarized below:

Date:	January 1, 2019
Premises:	8,400 sq. ft located at 1145 Montauk Highway, West Slip, NY 11795
Landlord:	Lola 1145 Realty, LLC
Tenant:	Atlantic SC, LLC
Term:	10 Years with renewal options for two (2) additional five-year terms.
Rent:	$168,000 per year ($14,000 per month) increased 2% annually.
Provisions:	Tenant will pay its proportion of taxes, insurance, common area expenses (including snow removal), HVAC costs and utilities. Improvements made by tenant will be at tenant's expense.

The lease agreement is a non-arm's length arrangement. The applicant has provided an affidavit attesting that there is a relationship between landlord and tenant in that Dr. Mariwalla is the sole member of both entities. The lease reflects current rates for similar property. Letters for two New York State licensed realtors were provided attesting to the rent being of fair market value.

Total Project Costs and Financing

Total project costs for construction, fit-out and the acquisition of moveable equipment is estimated at $3,582,708, broken down as follows:

Renovation & Development	$2,056,320
Design Contingency	102,816
Construction Contingency	102,816
Architect/Engineering Fees	164,506
Other Fees	204,000
Movable Equipment	894,499
Financing Costs	15,499
Interim Interest Expense	20,666
CON Application Fee	2,000
Additional CON Processing Fee	19,586
Total Project Cost	$3,582,708

Project costs are based on a construction start date of March 2020, with a six-month construction period.

The applicant's plan for financing is as follows:

Equity (Applicant Member)	$750,000
Loan (Landlord, 10-year term, 4% interest, 10-year amortization)	$2,000,000
Loan (Tenant, 10-year term, 4% interest, 10-year amortization)	$832,708
Total Project Financing	$3,582,708

BFA Attachment A is the applicant's personal Net Worth Statement, which indicates sufficient liquid resources exist to fund the equity requirement for project costs. Peapack-Gladstone Bank submitted a letter of interest for the respective financings at the stated terms with interest rates indexed at the Bank's five-year Cost of Funds (current indicative rate of 4% interest).

Operating Budget

The applicant has submitted their first-and third-year operating budget, in 2019 dollars, summarized below.

	Year One		Year Three	
Revenues	Per Visit	Revenues	Per Visit	Revenues
Commercial FFS	$845.28	$2,979,608	$814.48	$3,962,455
Medicare FFS	$595.34	$1,562,764	$595.26	$2,156,615
Medicaid MC	$543.93	$611,926	$543.76	$844,458
Bad Debt		-$108,219		-$146,068
Other *		-$256,670		-$339,862
Total Revenues		$4,789,409		$6,477,598
Expenses				
Operating Expense	$341.36	$2,560,215	$302.10	$3,127,330
Capital Expense	$106.23	$796,710	$77.95	$806,941
Total Expense	$447.59	$3,356,925	$380.05	$3,934,271
Net Income		$1,432,484		$2,543,327
Total Procedures		7,500		10,352

** NYS gross receipt tax on revenue (Health Facility Cash Receipts Assessment).*

Utilization for by payor sources is anticipated as follows:

Payor	Year One	Year Three
Commercial FFS	47%	47%
Medicare FFS	35%	35%
Medicaid MC	15%	15%
Charity Care	3%	3%
Total	100%	100%

The following assumptions were considered for the operating budget:

- Volume is based on the historical experience of the physicians of Island Gastroenterology Consultants, P.C., a Suffolk County medical practice. Seven of the practices' physicians have provided a letter of intent to perform surgery at the Center and have collectively submitted a letter in support of utilization projections.
- Medicare revenues are based on the 2019 Medicare fee schedule. Commercial revenues are based on the physicians' past commercial payor rate experience for the types of gastroenterology cases they would perform at the center. Medicaid revenues are based on the recent APG rates listed on the Department of Health website.
- Expense and utilization assumptions reflect the physicians' experience in operating through private practice, as well as with Island Gastroenterology Consultants, P.C.
- Data by CPT code detailing case mix and volume was provided to support payment rates and revenue projections. It is estimated that 28% of the procedures will be endoscopies, 37% will be esophagogastroduodenoscopies, 23% will be colonoscopies, 6% will be polyp removals, and 6% of the procedures will include endoscopic ultrasound. The budget appears reasonable given the payment and expense rates for these types of procedures performed at the FACS.

Capability and Feasibility

Total project costs of $3,582,708 will be funded as follows: $750,000 of member's equity; a $2,000,000 bank construction loan, self-amortizing for a 10-year term (landlord); and an $832,708 bank loan for fit-out and equipment, self-amortizing for 10-year term (applicant). Peapack-Gladstone Bank has provided a letter of interest for the respective financings with interest rates indexed at the Bank's five-year Cost of Funds (current indicative rate of 4% interest).

Working capital requirements are estimated at $655,712 based on two months of third year expenses. The applicant will fund the working capital needs via equity. BFA Attachment A is the member's net

worth statement which indicates the availability of sufficient funds for the stated levels of equity. BFA Attachment B is the pro forma balance sheet of Atlantic SC, LLC as of the first day of operations, which indicates a positive member equity position of $655,712.

Atlantic SC, LLC d/b/a Atlantic Surgery Center projects net income of $1,432,484 and $2,543,327 in the first and third years, respectively. Revenues are based on the current 2019 Medicare fee schedule, the Medicaid APG rates and the Commercial rates experience of the physicians in their private medical practice. The budget appears reasonable.

Conclusion

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. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Southside Hospital -- **No Response**
301 East Main Street
Bay Shore, New York 11706

Good Samaritan Hospital Medical Center -- **No Response**
1000 Montauk Highway
West Islip, New York 11795

DOH Comment

In the absence of comments from hospitals in the area of 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

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of the Proposed Member of Atlantic SC, LLC
BFA Attachment B	Pro Forma Balance Sheet – Atlantic Surgery Center, LLC
BFA Attachment C	Organizational Chart of the Proposed Member/Facility

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191314-B
Staten Island ASC, LLC d/b/a Specialty Surgery Center of Staten Island

Program:	**Diagnostic and Treatment Center**	***County:***	**Richmond**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**June 19, 2019**

Executive Summary

Description

Staten Island ASC, LLC d/b/a Specialty Surgery Center of Staten Island, an existing New York limited liability company whose sole member is Ramin Mostafavi, M.D, request approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 3869 Victory Boulevard, Staten Island (Richmond County). The FASC will be housed in approximately 7,719 square feet of leased space on the third floor of a to-be-constructed medical office building. Victory Blvd Medical Holdings, LLC, will construct the three-story building including all leasehold improvements necessary to fit out the Center. There is relationship between Staten Island ASC, LLC and Victory Blvd Medical Holdings, LLC in that the entities have identical membership. The applicant will lease the FASC space from Victory Blvd Medical Holdings, LLC. The building will also provide space for private medical practices not affiliated with the landlord. The FASC will include two operating rooms, one procedure room, one exam room, nine patient care stations and the requisite support spaces. The Center will initially specialize in ophthalmology and gynecology services.

Ramin Mostafavi, M.D., who is Board-certified in ophthalmology, will serve as Medical Director and will be a practicing physician at the Center. The initial medical staff will also include his wife, Noreen Kamal-Mostafavi, M.D., who is Board-eligible in OB/GYN. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Staten Island University Hospital, located 7 miles (17 minutes travel time) from the proposed FASC site.

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 2,653 in Year One and 2,815 in Year Three, with Medicaid at 9.0% and Charity Care at 2.0%.

Program Summary

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

Project costs of $5,277,093 will be met with $1,568,526 equity, a $3,300,398 bank loan for a ten-year term at 5% interest (landlord), and a $408,169 bank loan for equipment with a 7-year term at 5% interest. The proposed budget is as follows:

	Year One	Year Three
Revenues	$2.545.076	$2,700,486
Expenses	$1,870,529	$1,951,157
Net Income/(Loss)	$674,547	$749,329

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 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]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for equipment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an Administrative Billing and Services Agreement, acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
10. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2020 and construction must be completed by June 1, 2021, 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 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]
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 applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
October 10, 2019

Need Analysis

Analysis

The service area is Richmond County. Currently, there is just one FASC in Richmond County which specializes in Pain Management procedures. The table below shows the number of patient visits for ambulatory surgery in Richmond County (hospital or FASC setting) for 2017 and 2018.

	Facility Name	Patient Visits	
		2017	2018
Pain Management	Richmond Pain Management ASC	4,073	3,720
Multi	Richmond University Medical Center	11,010	10,078
Multi	Staten Island University Hospital – North	12,860	16,000
Multi	Staten Island University Hospital – South	5,600	6,393
	Totals	33,543	36,191

The number of projected procedures is 2,653 in Year One and 2,815 in Year Three. Of the procedures to be performed at the proposed center, 44% are being performed in local hospitals, 34% are being performed in other ASCs (in Kings County) and 22% are being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Projections-191314	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	239	9.0%	253	9.0%
Medicare	1,857	70.0%	1,951	70.0%
Comm Ins.	478	18.0%	507	18.0%
Private Pay	27	1.0%	28	1.0%
Charity Care	52	2.0%	56	2.0%
Total	2,653	100.0%	2,815	100. 0%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Healthplus, HIP and United Community Plan. The applicant will reach out to Beacon Christian Community Health Center and Community Health Center of Richmond, both FQHCs, to provide service to the under-insured in the service area. One of the physicians currently receives patient referrals from both these FQHCs. The center will adopt a financial assistance policy with a sliding fee scale once operational. 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 the additional access to ambulatory surgery services in a certified setting for the communities within Richmond County.

Program Analysis

Program Description

Proposed Operator	Staten Island ASC, LLC
Doing Business As	Specialty Surgery Center of Staten Island
Site Address	3869 Victory Boulevard Staten Island, New York 10314 (Richmond County)
Surgical Specialties	Multi-Specialty
Operating Rooms	2
Procedure Rooms	1
Hours of Operation	Tuesday, Wednesday, and Thursday from 7:00 am - 3:00 pm
Staffing (1st / 3rd Year)	7.4 FTEs / 7.4 FTEs
Medical Director	Ramin Mostafavi M.D.
Emergency, In-Patient & Back-up Support Services Agreement and Distance	Staten Island University Hospital 7 miles / 17 minutes
After-hours access	Patient will call the surgeon's service and will be directed to the surgeon or another physician on-call.

Character and Competence

The sole proposed member and manager of Staten Island ASC, LLC is **Ramin Mostafavi, M.D.**

Dr. Ramin Mostafavi, M.D. is a board-certified Ophthalmologist. He is the Chief Executive Officer of the Mostafavi Eye Institute for over 10 years. He was the previous Medical Director of Eye Physicians and Surgeons of New York. He completed his medical degree at Rutgers New Jersey Medical School. He completed his residency in ophthalmology at Boston University School of Medicine He completed his fellowship in cornea/external disease/refractive surgery at Duke University School of Medicine.

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. Mostafavi disclosed one settled and one pending malpractice cases. One claim alleged a negligent eyelid growth removal. The plaintiff consented for the removal of a pterygieum in 2013. After the removal, the patient claimed that they thought a different lid growth, not the pterygieum they had consented to have removed, was being removed. Dr. Mostafavi was the surgeon. The case was dismissed after a summary judgement in 2016. Another claim alleged a negligent consent. The plaintiff alleges that they experience worsening of an already present cataract after undergoing routine, non-invasive, in-office Glaucoma laser procedure. Dr. Mostafavi was the surgeon in this case. She subsequently underwent cataract surgery by another surgeon. She alleges that she was not adequately consented about the possibility of the cataract getting worse after the initial procedure. The case is pending a trial date.

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

The Applicant is committed to serving patients without the ability to pay the full charge or who is uninsured. The Applicant has indicated that as part of its commitment to outreach to serve the underinsured population will include negotiation of contracts with several Medicaid Managed Care plans and development of referral arrangements with two area federally qualified health centers (FQHCs). The proposed Medical Director currently receives referrals from physicians affiliated with the FQHCs. The Applicant will adopt a sliding fee schedule and will promote the financial assistance policy through the website, its information packet, and through the existing Medical Practice. If the patient does not have a relationship with a primary care physician, the Center will provide a list of local primary care physicians, including names and telephone numbers.

The Applicant plans on using an electronic medical record (EMR) 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 (RHIO) and/or Health Information Exchange (HIE).

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:

Date	June 1, 2019
Landlord:	Victory Blvd Medical Holdings, LLC
Tenant:	Staten Island ASC, LLC
Premises:	Approximately 7,719 square feet of space at 3869 Victory Boulevard, Staten Island, NY
Term:	15 Years and two (2) additional consecutive five (5) year renewal periods, with notice not less than twelve (12) months prior to the expiration of the original term
Rental:	Years 1 - 5: $424,545 annually; Year 6 - 15: escalation of 2% annually
Provisions:	Tenant shall pay: utilities including water, heat, gas, electricity and power related to the premises; additional rent equal to Tenant's proportionate share of real estate taxes; and insurance coverages with respect to the premises.

The lease is a non-arm's length lease arrangement. The applicant has submitted an affidavit confirming that he is the sole member of the Company and the Landlord. Letters have been provided from two New York State licensed realtors attesting that the rental rate is of fair market value.

Administrative Services Agreement

The applicant has submitted an executed administrative services agreement:

Date:	June 1, 2019
Facility:	Staten Island ASC, LLC
Contractor:	R. Mostafavi M.D. Ophthalmologist, P.C.
Services Provided:	Billing and collection services including claims submission, collection, resolution and follow-up; tracking of accounts receivable; monthly/annual reporting of collections and receivables; coordinate prior authorizations, pre-determination of benefits; follow Operator's charity care policy; file Department of Health reports including surcharge obligations with the Public Goods Pool (Operator is responsible for remitting funds); administrative services including financial management services, budget preparation, bookkeeping, accounts payable and receivable; assist Operator in negotiating payor contracts; assist with credentialing; provide computer support and HR services.
Term:	Initial 1-Year with negotiated successive 6-month renewals thereafter
Compensation:	$7,000 per month or $84,000 annually

The administrative services provider is a related party to the applicant (the sole member's private medical practice). Staten Island ASC, LLC will operate and maintain governance of the facility and will be responsible for all day-to-day operations and strategic decisions through the operating agreement and scope of the Administrative Service Agreement. An executed attestation has been submitted 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.

Total Project Cost and Financing

Total project costs for construction of the Article 28 FASC space (shell space plus tenant improvements constituting the ASC) and the acquisition of movable equipment is estimated at $5,227,093, broken down as follows:

New Construction	$3,849,851
Design Contingency	396,653
Construction Contingency	198,326
Architect/Engineering Fees	219,100
Other Fees (Consulting)	55,000
Movable Equipment	408,169
Interim Interest Expense	119,140
Application Fee	2,000
Additional Processing Fee	28,854
Total Project Cost	$5,277,093

Project costs are based on a construction start date of September 1, 2020, with a ten-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (applicant)	$1,568,526
Equipment Loan at 5% for 7 years (applicant)	408,169
Construction Bank Loan at 5% for 10 years (landlord)	3,300,398
Total	$5,277,093

BFA Attachment A indicates sufficient liquid resources for the equity contribution. TD Bank has submitted letters of interest for the equipment loan and the landlord's construction loan.

Operating Budget

The applicant has submitted an operating budget in 2019 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
Revenues				
Medicaid FFS & MC	$871.16	$208,207	$873.21	$220,921
Medicare FFS & MC	$969.05	$1,799,530	$968.75	$1,909,415
Commercial FFS & MC	$1,064.97	$509,058	$1,065.37	$540,142
Private Pay	$1,047.44	$28,281	$1,071.71	$30,008
Total Revenues		$2,545,076		$2,700,486
Expenses				
Operating	$511.20	$1,356,222	$513.81	$1,446,374
Capital	$193.86	$514,307	$179.32	$504,783
Total Expenses	$705.06	$1,870,529	$693.13	$1,951,157
Net Income		$674,547		$749,329
Procedures		2,653		2,815

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

	Year One		Year Three	
Payor	Proc.	%	Proc.	%
Medicaid FFS & MC	239	9.0%	253	9.0%
Medicare FFS & MC	1,857	70.0%	1,971	70.0%
Commercial FFS & MC	478	18.0%	507	18.0%
Private Pay	27	1.0%	28	1.0%
Charity Care	52	2.0%	56	2.0%
Total Visits	2,653	100.0%	2,815	100.0%

Revenue is estimated based on the 2019 Medicare Fee Schedule payment rates with Medicaid estimated at 90%, Commercial payors at 110% and Private Pay at 110% of the Medicare rates. The applicant has provided the details of the projections which utilized the applicable payments by CPT code for the ophthalmology and gynecological procedures to be performed in the FASC. For conservative estimates, the budget assumes no change in reimbursement rates for the third year of operation.

Expense and utilization assumptions are based on the combined historical experience of the proposed physician member of Staten Island ASC, LLC and the medical practices of the practicing physicians. The applicant has submitted physician referral letters in support of utilization projections. The Center will draw patients primarily from the Staten Island area.

Capability and Feasibility

Project costs of $5,277,093 will be met with $1,568,526 equity, a $3,300,398 bank loan for a ten-year term at 5% interest (landlord), and a $408,169 bank loan for equipment with a 7-year term at 5% interest. TD Bank has submitted letters of interest for the respective equipment and construction loans at the stated terms. BFA Attachment A indicates sufficient equity exists for the transaction.

Working capital requirements are estimated at $325,193 based on two months of third year expenses and will be provided through $175,193 member's equity and a $150,000 bank loan at 5% interest for a five-year term. TD Bank has submitted a letter of interest for the working capital loan. BFA Attachment A is a summary of the applicant's net worth statement, which indicates the availability of sufficient funds for the stated levels of equity.

BFA Attachment B is an organization chart of Staten Island ASC, LLC. BFA Attachment C is the pro forma balance sheet of Staten Island ASC, LLC as of the first day of operation, which indicates positive members' equity position of $175,193.

The submitted budget indicates a net profit of $674,547 and $749,329 for the first and third year, respectively. The budget appears reasonable.

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.

Richmond University Medical Center -- **No Response**
355 Bard Avenue
Staten Island, New York 10310

Staten Island University Hosp-South -- **No Response**
375 Seguine Avenue
Staten Island, New York 10309

Staten Island University Hosp-North -- **No Response**
475 Seaview Avenue
Staten Island, New York 10305

DOH Comment

In the absence of comments from hospitals in the area of 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

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Members of Staten Island ASC, LLC
BFA Attachment B	Organizational Chart of Staten Island ASC, LLC
BFA Attachment C	Pro Forma Balance Sheet

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191170-B
AIDS Healthcare Foundation

Program: **Diagnostic and Treatment Center** ***County:*** **Kings**
Purpose: **Establishment and Construction** ***Acknowledged:*** **April 5, 2019**

Executive Summary

Description

AIDS Healthcare Foundation (AHF), a California not-for-profit corporation authorized to do business in New York State, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 655 Morris Avenue, Bronx (Bronx County). The D&TC will be housed in 3,568 sq. ft. of leased space on the first floor (ground level) of a 15-story residential and mixed commercial use building. The clinic will have four treatment rooms, a phlebotomy and lab suite, a pharmacy and the requisite support spaces (utility, storage, clerical). The applicant requests certification for Medical Services – Primary Care. Service delivery will be directed to persons living with HIV/AIDS (PLWHA) who are not currently receiving primary medical care and antiretroviral therapy services. The target population includes the newly diagnosed, individuals who have never been in care or have dropped out of care, and those who are currently HIV-positive but have yet to be diagnosed. AHF currently manages five private practices in New York City - one in Brooklyn, three in Manhattan and one in Queens. Bronx was chosen for the Article 28 clinic due to the county's high rate of individuals with HIV/AIDS.

AHF was founded in 1987 and has been addressing the AIDS epidemic for over 30 years. According to the applicant, they are the largest provider of HIV/AIDS medical care in the United States with centers operating in 14 states, Washington, D.C., and Puerto Rico. AHF also has a global footprint, operating in 27 countries world-wide to provide advocacy, improve care coordination and integration of medical care service delivery for this special-needs population.

OPCHSM Recommendation

Contingent Approval

Need Summary

In 2016, Bronx County had the highest number of persons living with diagnosed HIV infection (24,717 persons) among NYC's five boroughs. None of the Article 28 D&TCs in the proposed Center's service area target services to the PLWHA population. Establishment of this facility will help to alleviate the lack of access to primary medical care for PLWHA in the Bronx and provide additional capacity to meet the need for services for those yet undiagnosed.

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 total project cost of $1,072,561 will be met via cash equity. The proposed budget is as follows:

	Year One	Year Three
Revenues	$1,051,164	$1,389,833
Expenses	$786,050	$946,039
Net Income	$265,114	$443,794

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a copy of the amended by-laws of the applicant which are acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 1, 2019 and construction must be completed by May 31, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The applicant must submit the resume or curriculum vitae of the proposed Medical Director, acceptable to the Department. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Description

Proposed Operator	AIDS Healthcare Foundation
Site Address	655 Morris Avenue Bronx, NY 11217 (Bronx County)
Specialties	Medical Services - Primary Care
Hours of Operation	Monday 10 am to 7 pm Tuesday through Friday 8:30 am to 5:30 pm After hours on-call service available 24 hours/day, 7 days/week
Staffing (1st Year / 3rd Year)	6.20 FTEs / 8.00 FTEs
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Lincoln Medical & Mental Health Center 0.3 / 6 minutes away

The primary service area is Bronx County. The population of Bronx County was 1,385108 in 2010. Per projection data from the Cornell Program on Applied Demographics, the population of Bronx County is estimated to grow to 1,567,988 by 2025, an increase of 13.2%.

The center will focus on providing services to those persons livings with HIV/AIDS. In 2016, there were 24,717 persons living with HIV/AIDS in the Bronx, the highest number among the New York City region. While the number of new HIV/AIDS diagnosed has reached an all-time low, the number of persons living with HIV/AIDS continues to rise, due to advances in medical care, the introduction of antiretroviral therapy and the resulting decreases in mortality. AHF currently operates health centers in numerous states, as well as around the world.

Areas of Bronx County are designated as Health Professional Shortage Areas or as a Medically Underserved Area/Population as follows (Source-HRSA):
Health Professional Shortage Area for Primary Care Services:

- Medicaid Eligible - High Bridge
- Medicaid Eligible – Hunts Point/Mott Haven

Medically Underserved Area:

- Morrisania Service Area

The number of projected visits is 6,127 in Year One and 8,100 in Year Three. The applicant is projecting a Medicaid utilization of 60%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of the AIDS Healthcare Foundation are:

Name	Title
William Arroyo, MD	Board Member
Curley Bonds, MD	Board Chair
Steven Carlton, Esq	Board Treasurer
Condessa Curley, MD	Board Member
Cynthia Davis	Domestic Vice Chair
Agapito Diaz	Board Member
Scott Galvin	Board Member
Diana Hoorzuk	Global Vice Chair
Stephen Karau, MD	Board Member
Corey Lyons	Board Member
Gabriel Maldonado	Board Member
Lawrence Peters	Board Member
Kevin Sauls	Board Member
Angelina Wapakhabulo	Board Member
Michael Weinstein	President
Anita Williams	Board Member
Rodney Wright, MD	Secretary

Dr. William Arroyo is a Physician Specialist and Supervising Mental Health Psychiatrist at Los Angeles County. He has developed clinical programs and provides treatment to the mental health patients.

Dr. Curley Bonds serves as the Chief Deputy Director of Clinical Operations of the Los Angeles County Department of Mental Health. He has served as the Medical Director Didi Hirsch Mental Health Services.

Mr. Steve Carlton is an attorney for Constitution Life Insurance Company. He serves as the general counsel and is responsible for legal affairs and compliance for two insurance companies.

Dr. Condessa Curley serves as the Medical Director of Clinic Services at the Los Angeles County Department of Public Health. She formulates and develops public health plans, policies, and programs. She oversees the coordination of bureau operations and activities to ensure the services that are provided meet all applicable federal, state, and local requirements. She collaborates with colleagues associates in all healthcare.

Ms. Cynthia Davis is the Assistant Professor in the Charles R. Drew University College of Medicine and College of Science and Health. She develops and implements HIV, AIDS, and sexually transmitted infection related primary prevention programs. She has implemented an HIV mobile testing project that targets the medically underserved. She has served the on the Board of Directors of AIDS Healthcare Foundation for 30 years.

Mr. Agapito Diaz retired in 2006. He previously was employed in the public transportation industry at the local and state level. He served as the Director of Revenue for the Los Angeles County Metropolitan Transportation Authority. He was also employed for 12 years for the New York City Department of Transportation. He also has obtained a master's degree in Public Administration and Education.

Mr. Scott Galvin is the Director of Wellness and Prosperity at the YWCA of Miami-Dade. He oversees the health and financial literacy programs for low income adults and teens.

Ms. Diana Hoorzuk is a counselor and political strategist in the local government structure of the eThekwini Municipality based in Durban, South Africa. She has served on the Board of Directors of the AIDS Healthcare Foundation for approximately 16 years.

Dr. Stephen Karau is a Public Health and Aviation Medicine physician in Kenya. He has most recently been contracted as an ambassador to the UN Geneva. He spent six years as the Chief Medical Assessor for the Kenya Civil Aviation Authority. He served in the Kenyan Military medical branch for 24 years, reaching the rank of colonel. He also served as the Director of Military Public Health with the U.S. Army Medical Research Unit/Centers for Disease Control and Prevention at the Kenya Medical Research Institute campus. He is the Founder and Executive Chairman of a company that specializes in pharmaceutical and agrovet product distribution, as well as real estate development. He was appointed as Ambassador and Permanent Representative of Kenya to the United Nations and other international organizations in 2014.

Mr. Corey Lyons has been the General Manager of Store Operations of Versace and Lacoste. He has been employed as the General Manager of Store Operations at Versace for approximately six years. He has significant administrative and operational experience.

Mr. Gabriel Maldonado currently serves as the CEO of a community health center. He is the Founder and CEO of a LGBT justice and HIV/AIDS advocacy organization. He has been a community organizer for 10 years. He serves as the Vice-Chair for the Ryan White Planning Council. He has been appointed to the Presidential Advisory Council on HIV/AIDS by the U.S. Secretary of Health & Human Services.

Mr. Lawrence Peters retired in October of 2012. He was a marketing, sales, media, nonprofit consultant/advisor. He has held various management positions. He has been on the board of the AIDS Healthcare Foundation for over 18 years. He has sat on multiple other boards, including AIDS Treatment Registry, Multitasking Systems of New York, and Village care of New York. He holds a master's degree in nonprofit management.

Rev. Kelvin Sauls is an ordained elder in the Methodist Church. He is a mentor, coach, and advocate in transformational, spiritual leadership, social justice ministries, economic equity, and congregational development for community upliftment. He provides health awareness in his communities. He is a former executive and congregational strategist with two General Boards.

Ms. Angelina Wapakhabulo is the High Commissioner of the AIDS Healthcare Foundation. She has been the Ambassador to the Republic of Kenya since 2009 as well as Uganda Permanent Representative

Mr. Michael Weinstein serves as the President and CEO of the AIDS Healthcare Foundation. He was a businessman and graphic designer. He has worked at the foundation for 29+ years. HE oversees a multi-billion dollar organization that serves over one million clients across the world. Under his leadership, the Foundation operates 500 treatment clinics in more than 40 countries; over 60 outpatient clinics in over 15 states.

Ms. Anita Williams is a Public Health RN that specializes in HIV education and surveillance for 30 years. She is the co-founder and the Senior Vice President of Project Africa Global, Inc, a non-profit that emphasizes education, orphans, medical and humanitarian services in both the US and Africa. She is the Vice President of the non-profit The Economic Development Fund Foundation. She is an Advisory Member for both the ZONDLE Boys Home & Orphanage, and McCorkindal's Children Village and Farm. She served as the Principle Investigator for a study on the risk of HIV transmission in neonatal blood and blood transfusion recipients early in the HIV epidemic.

Dr. Rodney Wright is the Director of Obstetrics and Gynecology at Montefiore Medical Center Wakefield Campus. He also serves as a Professor of Obstetrics and Gynecology and Women's Health in the Division of Maternal Fetal Medicine.

> *Dr. Wright disclosed several malpractice cases. One pending malpractice case, currently in the discovery phase of litigation relating to an infant born with low APGAR scores and deficits following abnormal fetal heart tracings. He did not manage the patient in labor, only provided the outpatient prenatal care. He also disclosed two settled malpractice cases, one filed in 2010 (date of incident not provided) that alleged a physician caused an infant shoulder dystocia. Dr. Wright had no contact with the infant and the case against him was dismissed on May 15, 2012. The second malpractice case was filed in July 2014 and alleged the infant had shoulder dystocia, the incorrect documented birth weight, and the infant had normal blood gasses but then suffered a seizure and Erb's palsy. The case was discontinued on August 21, 2018.*

The character and competency of the proposed Medical Director has not been provided because the Medical Director is in the process of being chosen. The character and competency on the proposed Board shows that the members have sufficient healthcare experience such that prior review of the Medical Director is not necessary. The selected Medical Director will be disclosed as part of the pre-opening process.

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.

Conclusion

Approval for this project will provide for the improved access to primary care services for persons living with HIVS/AIDS in Bronx County. 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 Analysis

Total Project Cost and Financing

The total project cost for renovation and the purchase of movable equipment is $1,072,561 broken down as follows:

Renovation and Demolition	$634,389
Design Contingency	63,439
Construction Contingency	63,439
Architect/Engineering Fees	71,400
Other	10,200
Movable Equipment	221,838
Application Fee	2,000
Additional Processing Fee	5,856
Total Project Cost	$1,072,561

The anticipated construction start date is December 1, 2019, with a six-month construction period. The project will be financed via $1,072,561 cash (applicant equity).

Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site to be occupied. The terms are summarized below:

Date:	February 20, 2018
Premises:	3,568 sq. ft. located on the ground floor at 655 Morris Avenue, #2, Bronx, NY
Lessor:	Morris Avenue Master Tenant, LLC
Lessee:	Aids Healthcare Foundation
Rental:	$107,160 annually ($30.03 per sq. ft.) for year 1 with a 2.5% annual increase thereafter.
Term:	5 years with one (1) 5-year renewal option
Provisions:	Included in the base rent is maintenance.

The applicant submitted an affidavit indicating that the lease is an arm's length agreement. The applicant also submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

Operating Budget

The applicant submitted an operating budget, in 2019 dollars, for Years One and Three:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$136.79	$83,855	$136.79	$110,803
Medicare FFS	$92.74	$113,609	$92.74	$150,242
Medicare MC	$253.88	$31,227	$253.88	$41,129
Medicaid MC	$221.42	$813,723	$221.42	$1,076,108
Private Pay/Other	$23.78	$8,750	$23.77	$11,551
Total		$1,051,164		$1,389,833
Expenses				
Operating	$101.00	$618,841	$95.48	$773,405
Capital	$27.29	$167,209	$21.31	$172,634
Total Expenses	$128.29	$786,050	$116.79	$946,039
Net Income		$265,114		$443,794
Utilization (Visits)		6,127		8,100

Utilization by payor source for Years One and Three (identical) is as follows:

Payor	Utilization
Commercial FFS	10.0%
Medicare FFS	20.0%
Medicare MC	2.0%
Medicaid MC	60.0%
Private Pay/ Other	6.0%
Charity Care	2.0%
Total	100.0%

Expense and utilization assumptions are based on the experience of AHF managing five private practices in New York City. Revenues are based on the disease-specific conditions of the target population based on the experience of AHF managing the private practices. Using these known, entity-specific rates that apply to the disease-specific conditions of the target population are believed to be a better approach to project reimbursement than relying on the general D&TC rates of other Article 28 facilities in the area.

Capability and Feasibility

The total project cost of $1,072,561 will be satisfied via cash equity. The working capital requirement is estimated at $157,673 based on two months of Year Three expenses and will be covered by the ongoing operations of AHF.
BFA Attachment A is AHF's consolidated 2016-2017 certified financial statements and their 2018 internals, which indicate the Foundation has sufficient cash to cover the total project costs and working capital needs. The certified financial statements show the Foundation had average positive working capital and net asset positions and an average net income of $47,118,169 for the 2016-2017 period. The 2018 internal financials (unaudited) show positive working capital and net asset positions and net income of $64,278,719 for this 12-month period. AHF has sufficient resources to fund this project.

BFA Attachment B is the pro-forma balance sheet of the AIDS Healthcare Foundation, which indicates a positive net asset position of $387,950,487 as of the first day of operations of the New York facility.

The submitted budget projects a net income of $265,114 and $443,794 during Years One and Three of operations, respectively. Revenues are based on current reimbursement rates of its existing New York State Non-Article 28 clinics. These rates apply to the disease-specific conditions of the target population to be served. The budgets are reasonable.

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

Attachments

BFA Attachment A	AIDS Healthcare Foundation's Consolidated certified for 2016 through 2017 and internal financial statements for the period 1/1/2018-12/31/2018.
BFA Attachment B	Pro-forma balance sheet Aids Healthcare Foundation
BHFP Attachment	Map

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191326-B
Sunrise Med Plus, LLC

Program: **Diagnostic and Treatment Center** ***County:*** **Suffolk**
Purpose: **Establishment and Construction** ***Acknowledged:*** **June 21, 2019**

Executive Summary

Description
Sunrise Med Plus, LLC (the Center), an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 456 Suffolk Avenue, Brentwood (Suffolk County). The D&TC will be housed in approximately 8,100 square feet of leased space in a single-story, strip mall building that houses other existing businesses and will be renovated to create a medical suite with nine exam rooms, and outpatient therapy suite with ten treatment cubicles plus a central gym for exercise specific therapies, a phlebotomy room, an x-ray room and the requisite support spaces. The building is owned by 472 Suffolk Avenue LLC, an unrelated entity, that will lease the clinic space to DHD Enterprise Services, LLC, a property company owned by the members of Sunrise Med Plus, LLC. DHD Enterprise Services, LLC will sub-lease the space to Sunrise Med Plus, LLC.

Ownership of the Center is as follows:

Proposed Operator	
Sunrise Med Plus, LLC	
Class A Members	80%
Hector A. Melgar, PT (40%)	
David Tubens, D.C (40%)	
Class B Member	20%
Danny Fuzaylov, P. A. (20%)	

Joelle Vital, M.D., who specialized in internal medicine, will serve as Medical Director. The proposed Center expects to have a Transfer and Affiliation Agreement for emergency and backup services with Good Samaritan Hospital Medical Center located 7.3 miles (15 minutes' travel time) from the proposed Center.

OPCHSM Recommendation
Contingent Approval

Need Summary
The Center will be certified for Medical Services - Primary Care and Medical Services – Other Medical Specialties. Additionally, the Center will offer physical and occupational therapy and blood draw services. The number of projected visits is 29,545 in Year One and 44,956 in Year Three with Medicaid at 35% and Charity Care at 3%.

Program Summary
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
Total project costs of $1,119,215 will be met with $257,215 members' equity, a $162,000 Landlord Construction Allowance, verified by Amerant Bank for the Landlord, and a $700,000 construction loan for a five-year term with interest at Libor plus 4-5% (estimated at up to 7.17% based on the Libor rate of 2.17% as of August 21, 2019). Bruderman Brothers, LLC has provided a letter of interest for the loan at the stated terms. The proposed budget is as follows:

	Year One	Year Three
Revenues	$3,519,619	$5,352,516
Expenses	3,079,665	4,226,916
Net Income	$439,954	$1,125,600

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed building sublease acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
10. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-01. [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. Construction must start on or before March 1, 2020 and construction must be completed by September 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]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Proposed Operator	Sunrise Med Plus, LLC
To Be Known As	Sunrise Med Plus
Site Address	456 Suffolk Avenue Brentwood, New York 11717 (Suffolk County)
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday - Thursday 9 AM to 7 PM Friday 9 AM to 4 PM
Staffing (1st Year / 3rd Year)	17.2 FTEs / 23.8 FTEs
Medical Director(s)	Joelle VItal, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Good Samaritan Medical Center 7.3 miles / 15 minutes away

The primary service area includes the areas of Brentwood, Huntington Station, Commack, Hauppauge, Central Islip, Islip, Bay Shore and Deer Park. The secondary service area is the rest of Suffolk County. The center will provide initial and follow-up office visits for primary care, allergy, cardiology, endocrinology, orthopedics, physical medicine and rehabilitation, pain management, endoscopy, gastroenterology, dermatology, podiatry, outpatient psychology, diagnostic radiology (X-ray), electrocardiograms (EKGs), blood draws, and physical and occupational therapy services. The proposed center plans to work closely with The Brentwood Health Center, an FQHC, and an affiliate of Hudson River Healthcare to coordinate medical services for the residents within the service area.

The number of projected visits is 29,545 in Year One and 44,956 in Year Three and the Center projects a 35% Medicaid utilization.

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

Character and Competence

The members of Sunrise Med Plus, LLC are:

Name	**Interest**
Hector Melgar, PT, *President*	40.0%
David Tubens, DC, *Treasurer*	40.0%
Danny Fuzalov, PA, *Secretary*	20.0%
Total	100.0%

Mr. Melgar is a licensed Physical Therapist. He is the founder, President, and Chief Financial Officer of a Physical therapy practice. He is responsible for establishment and maintenance of all clinical policies and procedures. He is the clinical director of all therapeutic processes and procedures. He provides management and oversite of all clinical and clerical daily operations. He is the Director of the Billing and Collections Departments. He provided branding, marketing, growth-development and philanthropic activities in the community. Under his leadership, his practice has expanded to four locations.

Mr. Fuzaylov is a Physician Assistant. He has over 7 years of experience treating and managing medical issues. He also serves as the Practice Administrator, managing the schedule of fellow Physician Assistants and staff, managing medical staff inventory, and ordering. He has managed a professional corporation. His duties have included billing, understanding laws and regulation, and meeting necessary deadlines.

Dr. Tubens is a Doctor of Chiropractic. He has served as the President of a chiropractic practice for over 23 years. He has owned and operated six multi-disciplinary practices over 23 years. He has overseen facility operations, employee scheduling, compliance, billing, and the day to day operations for both professional and non-professional staff. Additionally, he has been involved in the Lend a Hand foundation for 10 years.

Dr. Joelle Vital M.D. is the proposed Medical Director. She possesses over 35 years of healthcare experience. She received her medical degree from Benemerita Universidad Autonoma de Puebla. She completed her residency in Internal Medicine at The Brooklyn Hospital Center. She is the Owner and Founder of an Internal Medicine and Aesthetics practice.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide for the improved access to primary care and a variety of specialist services for residents with the Brentwood and the surrounding communities within Suffolk County. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Total Project Cost and Financing

Total project cost for leasehold improvements, renovations and moveable equipment is $1,119,215, broken down as follows:

Renovation & Demolition	$585,820
Design Contingency	58,582
Construction Contingency	58,582
Architect /Engineering Fees	58,582
Construction Manager Fees	14,646
Other Fees	20,000
Moveable Equipment	270,761
Financing Costs	28,000
Interim Interest Expense	16,131
CON Fee	2,000
Additional Processing Fee	6,111
Total Project Cost	$1,119,215

Project costs are based on a construction start date of March 2020, and a six-month construction period.

The applicant's financing plan is as follows:

Member's Equity	$257,215
Landlord Construction Allowance verified by Amerant Bank for the Landlord	$162,000
Construction loan (Libor + 4-5%, 5-year term)	$700,000
Total Financing	$1,119,215

The interest rate is estimated at up to 7.17% based on the Libor rate of 2.17% as of August 21, 2019. Bruderman Brothers, LLC has provided a letter of interest for the construction loan. Bruderman Brothers, LLC is a privately held financial services holding company and is registered as a broker-dealer, investment advisor, a merchant bank, a mutual fund and an insurance agency. BFA attachment A provides the net worth statement of the members of Sunrise Med Plus, LLC, which indicates sufficient resources to meet the equity requirements of this application.

Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Date:	May 9, 2019 (lease letter of interest)
Premises:	8,100 square feet of space at 448-472 Suffolk Avenue, Brentwood New York 11717 (Stores 5B and 5C)
Owner:	472 Suffolk Avenue LLC
Tenant:	DHD Enterprise Services, LLC
Rental:	Base rent $153,900 annually ($12,825 per month) for years one through five, 4% increase thereafter.
Term:	10 years with two five-year renewal options
Provisions:	Lessee shall be responsible for 24% real estate taxes, maintenance, personal property insurance and pro rata share of electricity, water and gas.

The applicant submitted an affidavit that the lease is an arm's length agreement. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

Sublease Agreement

The applicant has submitted a draft sublease for the site that they will occupy, which is summarized below:

Date:	May 9, 2019 (sublease letter of interest)
Premises:	8,100 square feet of space at 448-472 Suffolk Avenue, Brentwood New York 11717 (Stores 5B and 5C)
Owner:	472 Suffolk Avenue LLC
Tenant:	DHD Enterprise Services, LLC
Sub-Tenant:	Sunrise Med Plus, LLC
Sublease Payments:	Base rent $153,900 annually ($12,825 per month) for year one through five, 4% increase thereafter.
Term:	10 years with two five-year renewal options
Provisions:	Sub-Tenant shall be responsible for 24% real estate taxes, maintenance, personal property insurance and pro rata share of electricity, water and gas.

The applicant has attested that the Sublease Agreement is a non-arm's length arrangement as the Lessee and the Sub-Lessor entities have the same members. Letters from two New York real estate brokers were submitted attesting to the reasonableness of the rent.

Operating Budget

The applicant has submitted their first-year and third-year operating budget, in 2019 dollars, as shown below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$93.08	$192,486	$92.63	$291,517
Medicare FFS	$74.44	219,983	$73.66	333,162
Medicaid MC	$139.29	1,440,401	$139.30	2,191,713
Other *	$125.37	1,666,749	$125.36	2,536,124
Total Revenue		$3,519,619		$5,352,516
Expenses				
Operating	$94.64	$2,796,268	$88.11	$3,960,962
Capital	$9.59	283,397	$5.92	265,954
Total Expenses	$104.24	$3,079,665	$126.02	$4,226,916
Net Income		$439,954		$1,125,600
Visits		29,545		44,956
Cost/Visit		$104.24		$94.02

** Other represents Workers' Compensation and No Fault*

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

	Year One		Year Three	
Payor	Visits	%	Visits	%
Commercial FFS	2,068	7.0%	3,147	7.0%
Medicare FFS	2,955	10.0%	4,496	10.0%
Medicaid MC	10,341	35.0%	15,734	35.0%
Charity Care	886	3.0%	1,349	3.0%
Other	13,295	45.0%	20,230	45.0%
Total	29,545	100.0%	44,956	100.0%

The following is noted with respect to the submitted budget:

- The Medicaid rate is based on the Downstate Medicaid APG rate calculation with a CMI of 0.8% to account for the therapy visits and discounted at 75% based on the Medicaid managed care negotiations plus capital.
- Worker's Compensation and No-Fault rates are calculated at 90% of the Medicaid rate.
- The Commercial rate is based on an analysis of the average payment rates for two established D&TCs in the same geographical location as the proposed D&TC, which averaged $93 per visit.
- The Medicare rate is also based on the same analysis for Medicare FFS payments for the two D&TCs, which averaged $74 per visit.
- Projected utilization for the Center is based on a conservative number of visits per square foot, discounted at a rate to account for ramp-up over the first few years of operation.
- The number of FTEs, the mix of staff and related operating expenses were determined based on a combination of the projected utilization, experience of the applicant in providing similar services, industry standards and the experience of similar D&TCs in New York State.

Capability and Feasibility

The total project cost is $1,119,215 funded via $257,215 member's equity, $162,000 Landlord Construction Allowance, verified by Amerant Bank for the Landlord, and a $700,000 construction loan for a five-year term with interest at Libor plus 4-5% (estimated at up to 7.17% based on the Libor rate of 2.17% as of August 21, 2019). Ruderman Brothers, LLC has provided a letter of interest for the loan.

Working capital requirements are estimated at $704,486 based on two months of third-year expenses and will be satisfied via equity from the three members of Sunrise Med Plus, LLC. BFA Attachment A is the net worth of the proposed members which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of $1,123,701.

The submitted budget indicates the facility will generate net income of $439,954 and $1,125,600 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for D&TCs. The budget appears reasonable.

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Sunrise Med Plus, LLC
BFA Attachment B	Pro Forma Balance Sheet, Sunrise Med Plus, LLC

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192007-B
Cayuga Community Services

Program:	**Diagnostic and Treatment Center**	***County:***	**Tompkins**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**July 18, 2019**

Executive Summary

Description

Cayuga Community Services, Inc. (CCS), an existing New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 201 Dates Drive, Ithaca (Tompkins County). The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties. The D&TC will be housed in approximately 2,577 square feet of leased space on the third floor of a three-story medical office building directly adjacent to Cayuga Medical Center at Ithaca (CMC), a 212-bed Sole Community Hospital in Ithaca. The space is currently occupied by CMC for their administrative support services, which will be moving to another building on campus.

Family Health Network of Central New York, Inc. (Family Health Network or FHN), a Federally Qualified Health Center (FQHC) that serves Cortland, Cayuga and Madison counties, has been partnering with CCS to meet the needs of the medically underserved in the community. FHN submitted a New Access Point (NAP) application to Health Resources and Services Administration (HRSA), inclusive of a Change of Scope (COS) request, for FQHC establishment and funding of CCS. The NAP grants were awarded on September 11, 2019, and CCS was not selected as an awardee. However, FHN remains committed to CCS and has provided a letter in support of CCS becoming a sub-grantee, which requires a new filing by FHN of a COS request to HRSA. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), and HRSA's approval for sub-grantee designation, FHN will negotiate the amount of their Section 330 grant funding to provide to CCS as their sub-grantee. HRSA's approval of the COS would also enable CCS to bill the FQHC rates.

Martin Stallone, M.D., who is Board-Certified in Internal Medicine, will serve as Medical Director. Dr. Stallone is the current President and CEO of CMC and will serve on the D&TC's Board of Directors.

OPCHSM Recommendation

Contingent Approval

Need Summary

The Center will be certified for Medical Services - Primary Care and Medical Services – Other Medical Specialties. The number of projected visits is 3,361 in Year One and 6,721 in Year Three.

Program Summary

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

Total project costs of $778,246 will be funded via a $518,246 Community Benefit Grant from CMC and a $260,000 DSRIP PPS Grant from Care Compass Network (CCN) to Cayuga Medical Center. Cayuga Medical Center has provided an affidavit attesting to provide the Community Benefit Grant funds to CCS and documentation confirming the CCN PPS Grant funding to be used to finance project costs.

John Collett, Chief Financial Officer of CMC, has provided an affidavit attesting that Community Benefit Grant funds will be provided to cover the Year One operating losses, and will be awarded annually to cover any ongoing operating losses associated with the D&TC. Approval of FHN's COS request would enable the applicant to obtain Section 330 funding via FHN to help support operations. The projected budget, which includes FQHC rates, is as follows:

	Year One	Year Three
Revenues	$416,388	$832,775
Expenses	$1,069,202	$1,230,684
Gain/(Loss)	($652,814)	($397,909)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease agreement, acceptable to the Department. [BFA]
4. Submission of an executed building sublease agreement, acceptable to the Department. [BFA]
5. Submission of an executed administrative service agreement between Cayuga Medical Center, Inc. and Cayuga Community Services, Inc., acceptable to the Department. [BFA]
6. Submission of an executed administrative service agreement between Cayuga Medical Associates, P.C. and Cayuga Community Services, Inc., acceptable to the Department. [BFA]
7. Submission of documentation confirming Health Resources and Services Administration approval of Family Health Network of Central New York, Inc.'s Change of Scope request for Cayuga Community Services, Inc. to become their sub-grantee, acceptable to the Department of Health. [BFA]
8. Submission of a resolution of the Board of Directors, acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
10. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 15, 2020 and construction must be completed by February 28, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Cayuga Community Services, a not for profit, requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center to be located at 201 Dates Drive in Ithaca (Tompkins County). The facility plans to offer primary care, screenings, voluntary family planning, immunizations, well child services, and basic gynecologic care. The facility plans to provide endocrinology services in the future.

Proposed Operator	Cayuga Community Services
Doing Business As	Cayuga Community Services
Site Address	201 Dates Drive Ithaca, New York 14850 (Tompkins County)
Certified Services	Medical Services - Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday through Friday, 8 AM to 5 PM The facility will have extended hours one day a week and possible weekend hours once a month
Staffing (1st Year / 3rd Year)	6.9 FTEs / 6.9 FTEs
Medical Director(s)	Martin Stallone, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Cayuga Medical Center 0 miles / 0 minutes away (Proposed facility is located in Medical Office adjacent to the Medical Center)

Analysis

The primary service area is Tompkins County. The population of Tompkins County in 2010 was 101,564. Per projection data from the Cornell Program on Applied demographics, the population of Tompkins County is estimated to grow to 107,717 by 2025, an increase of 6.1%.

The number of projected visits is 3,361 in Year One and 6,721 in Year Three, with a projection of 46% Medicaid utilization. Tompkins County is designated as a Health Professional Shortage Area and the applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The proposed Board of Directors of Cayuga Community Services is comprised of:

Name
John Colett
Rob Lawlis
Martin Stallone, M.D.

Mr. John Collett is the Vice President and Chief Financial Officer of Cayuga Health Systems for over 21 years. His areas of oversight include Accounting; Strategic Planning; Compliance; Materials Management; Health Information Management; Admissions/Registration; Billing/Collections; Physical, Occupational, and Speech Therapy; and Cayuga Center for Healthy Living. His responsibilities include administrator on-call rotation, budgets, working with other senior leadership members and the Board of Directors to create a strategic plan, and negotiate payor and other contracts.

Mr. Robert Lawlis is the Executive Director of a Clinically Integrated Network based on a Physician Hospital Organization governance structure. His contributions included leading successful negotiations with the market's largest payer to form second generation value-based purchasing and risk arrangement. He developed innovative physician incentive and goal attribution model that equitably translates network level goals and payer performance requirements to individual provider goals. His responsibilities include understanding anti-trust concerns for integrated network operations and ensuring the program is consistent with the Clinical Integration expectations of the Federal Trade Commission. He developed, implemented, and monitored network systems that evaluates quality of care provided by participating health care professionals and track key outcomes of the health care delivered to patients. He identified and solved problems that would jeopardize the efficient and effective functioning of the network.

Martin Stallone M.D., is a Board Member and proposed Medical Director**,** earned his medical degree from University of Pennsylvania School of Medicine. He completed his residency at the Hospital of the University of Pennsylvania. He is the current CEO of Cayuga Medical Center. As the CEO, Dr. Stallone prepares the annual budget and periodic reports detailing financial activity, selects, employs, controls, and/or discharges all employees serving in positions authorized by the Board. He successfully reorganized the entire senior leadership team during the transition of numerous senior leaders. He maintains awareness of community requirements by regular assessment and evaluation of relative need. He collaborates with the Board of Directors to develop meeting schedules and agendas that meet the needs of the Board and management. He has held numerous other leadership roles in the organization and in the military.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide for the improved access to a variety of medical services for residents within Tompkins County. 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 Analysis

Lease Rental Agreement

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

Premises:	2,577 sq. ft. on the third floor of 201 Dates Drive, Ithaca, NY (known as Suite 300)
Lessor:	Cayuga Medical Office Building, L.P.
Tenant:	Cayuga Medical Center at Ithaca
Term:	1 year with (1) 3-year renewal period
Rental:	$88,597 annually ($34.38 per sq. ft., includes utilities and general maintenance)
Provisions:	The lessee shall be responsible for insurance

The lessor is a subtenant under a ground lease between Cayuga Medical Office Building Associates (CMOBA) as tenant and Cayuga Medical Center at Ithaca as owner of certain real property at 201 Dates Drive, Ithaca. CMOBA is a for-profit entity with eight members, one of which is CMC. The applicant submitted an affidavit indicating that there is a business relationship between the entities but deem the lease to be an arm's length lease arrangement. Letters form two New York licensed realtors have been provided attesting that the lease cost per square foot is at fair market value.

Sublease Rental Agreement

A draft sublease rental agreement for the site has been provided, summarized below:

Premises:	2,577 sq. ft on the third floor of 201 Dates Drive, Ithaca, NY known as Suite 300
Sublessor:	Cayuga Medical Center at Ithaca, Inc.
Sublessee	Cayuga Community Services, Inc.
Term:	1 year with (1) 3-year renewal period
Rental:	$88,597 annually ($34.38 per sq. ft, includes utilities and general maintenance) with a 2.5% rent inflation factor in year 3.

There is a business relationship between the parties to the sublease arrangement, deemed to be an arm's length lease arrangement by the applicant. Dr. Stallone and John Collett are CEO and CFO, respectively, of CMC and both serve on the Board of Directors of CCS.

Administrative Services Agreement

The applicant submitted a draft Administrative Services Agreement, summarized as follows:

Provider:	Cayuga Medical Center, Inc.
Company:	Cayuga Community Services, Inc.
Services:	Administrative services - Information Services
Term:	From Effective Date with automatic unlimited 1-year renewals.
Fee:	$24,983 year 1, $51,216 year 2 and $51,216 year 3, with annual escalation determined at the end of the previous year.

Administrative Services Agreement

The applicant submitted a draft Administrative Services Agreement, summarized as follows:

Provider:	Cayuga Medical Associates, P.C.
Company:	Cayuga Community Services, Inc.
Services:	Administrative services - Billing, Coding and Medical records
Term:	From Effective Date with automatic unlimited 1-year renewals.
Fee:	$20,819 year 1, $42,680 year 2 and $42,680 year 3, with annual escalation determined at the end of the previous year.

Although Cayuga Medical Center, Inc and Cayuga Medical Associates, P.C. will be performing the above services, Cayuga Community Services, Inc. will retain ultimate authority, responsibility, and control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that they understand and acknowledge that there are powers that must not be delegated, they will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Total Project Cost and Financing

Total project cost of $778,246 is broken down as follows:

Renovation & Demolition	$510,000
Design Contingency	$51,000
Construction Contingency	$51,000
Planning Consultant Fees	$25,000
Architect/Engineering Fees	$42,000
Moveable Equipment	$80,000
Telecommunications	$13,000
CON Fee	$2,000
Additional Processing Fee	$4,246
Total Project Cost	$778,246

The applicant will finance the total project cost via two grants, a $518,246 Community Benefit Grant from Cayuga Medical Center and a $260,000 DSRIP PPS Grant from Care Compass Network to Cayuga Medical Center that has been specifically designated for this project. Cayuga Medical Center has provided an affidavit committing to provide the Community Benefit Grant funds to CCS and documentation confirming the CCN PPS Grant funding to be used to finance project costs.

Operating Budget

The operating budget, in 2019 dollars, for the first and third years of operation, is summarized below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Medicare	$158.00	$53,088	$158.00	$106,176
Medicaid	$115.97	$179,290	$115.97	$358,580
Private Pay	$58.08	$17,539	$57.98	$35,078
Commercial	$157.77	$174,969	$157.77	$349,937
Bad Debt		($8,498)		($16,996)
Total Revenues		$416,388		$832,775
Expenses				
Operating	$279.46	$939,252	$163.45	$1,098,520
Capital	$38.66	$129,950	$19.66	$132,164
Total Expenses	$318.12	$1,069,202	$183.11	$1,230,684
Net Income/(Loss)		($652,814)		($397,909)
Utilization (Visits)		3,361		6,721

The following is noted with respect to the submitted budget:

- Revenue projections for Years One and Three were based on receiving FQHC rates. The Medicare and Medicaid FQHC rates were estimated based on FHN's knowledge of FQHC reimbursement structure. The projected Medicaid FQHC rate is consistent with the 2018 Medicaid FQHC per visit ceiling limitations for administration, medical, patient transportation and ancillary costs. The current Medicare FQHC rate is $165.87 per visit. The budget assumes the FQHC wrap-around rate for managed care services.
- The estimated commercial rate is based on historical estimates received by Cayuga Medical Associates, P.C.

- Private Pay is estimated as 50% of the Medicaid Rate based on a slide fee scale basis to the poverty level and insurance status of patient's in the service area.
- Expense assumptions are based on the historical experiences of Cayuga Medical Associates, P.C and an annual inflation factor. Direct care staffing includes: 1.0 FTE physician, 1.0 FTE physician's assistant, 2.0 FTE licensed practical nurses and 0.3 FTE social workers.
- Estimated utilization is based upon the projected need for primary care services in the community as well as FHN's historical experience with physician productivity.

The NAP application and COS request submitted by Family Health Network on behalf of CCS did not receive HRSA approval. Family Health Network intends to file a new COS request for CCS to become a sub-grantee of FHN. If approved, FHN and CCS will negotiate an amount of FHN's Section 330 funding to be provided to CCS as their sub-grantee. The above budget does not include any additional Section 330 funding allocation from FHN. HRSA's approval of the COS would also enable CCS to bill the FQHC rates. BFA Attachment C presents a sensitized budget to reflect reimbursement under Medicaid APG and Medicare OPPS rate structures should the COS request be denied.

Utilization broken down by payor for the first and third years is as follows:

Payor	Years One and Three
Medicare	10%
Medicaid	46%
Private Pay/Other	10%
Commercial	33%
Charity Care	1%

Capability and Feasibility

Total project cost of $778,246 will be met via a $518,246 Community Benefit Grant from CMC and a $260,000 DSRIP PPS grant from CCN to CMC that is specifically designated for this project. CMC has provided an affidavit attesting to provide the Community Benefit Grant funds to CCS and documentation confirming the CCN PPS Grant funding to be used to finance project costs.

Working capital requirements are estimated at $205,114 based on two months of third year expenses. Cayuga Medical Center will be providing additional funds via the Community Benefit Grant to meet the working capital requirements. BFA Attachment A is the 2017-2018 certified financial statements of Cayuga Medical Center at Ithaca, Inc., which indicates average positive working capital and net asset positions and an average positive net income position of $19,317,958.

BFA Attachment B is CCS's Pro Forma Balance Sheet, which shows the facility will have an equity position of $1,371,928 as of the first day of operation.

The submitted budget indicates net losses of $652,814 and $397,909 for Years One and Three, respectively, prior to receiving operating support via Community Benefit Grant funding for breakeven operations. Revenues are based on achieving FQHC status as sub-grantee under FHN that will enable the D&TC to receive FQHC reimbursement, including the wrap-around rate for managed care services. The applicant has not included any sub-grantee funding estimates in the budget.

The submitted budget indicates ongoing Community Benefit Grant funding from Cayuga Medical Center will be needed to maintain feasibility. BFA Attachment C is a sensitized budget, reflecting revenues estimated at the current Medicaid APG and Medicare Fee-for-Service rates, which indicates ongoing net losses ($628,768 and $340,256 for Years One and Three, respectively) prior to receiving operational support via Community Benefit Grant funding that would allow the facility to be breakeven. Cayuga Medical Ceneter has provided documentation that they will cover any losses associated with the operations of CCS. As shown on BFA Attachment A, Cayuga Medical Center has sufficient resources to cover the losses.

With ongoing Community Benefit Grant support from Cayuga Medical Center, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BHFP Attachment	Map
BFA Attachment A	2017-2018 Certified Financial Statements of Cayuga Medical Center at Ithaca, Inc.
BFA Attachment B	Pro Forma Balance Sheet of Cayuga Community Services, Inc.
BFA Attachment C	Years One and Three sensitized budget for Cayuga Community Services, Inc.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192012-B
Hollis AK, LLC d/b/a Hollis Diagnostic & Treatment Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Queens**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**July 15, 2019**

Executive Summary

Description
Hollis AK LLC d/b/a Hollis Diagnostic & Treatment Center requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 190-02 Jamaica Avenue, Hollis (Queens County). The members of Hollis AK LLC are Ari Kalontarov (50%) and Natella Mullokandova (50%). The applicant will lease approximately 3,000 square feet on the first floor of an existing two-story building. The space is currently vacant and will undergo interior gut renovation with construction of the Article 28 clinic space (entire first floor) to be funded by the property owner, 190-02 Jamaica LLC. There is a relationship between landlord and tenant in that there is a familial relationship between a member of 190-02 Jamaica LLC and a member of Hollis AK LLC. The D&TC will include six exams room, one X-Ray room, a nurse station, a medicine room and the requisite support spaces. The D&TC will be certified for Medical Services – Primary Care and Medical Services – Other Medical Specialties.

Ari Bernstein, M.D., who is Board-certified in Internal Medicine, will serve as Medical Director. The applicant intends to enter into a Transfer and Affiliation Agreement with Jamaica Hospital, located 2.9 miles (12 minutes travel time) from the proposed site, for backup and emergency services.

OPCHSM Recommendation
Contingent Approval

Need Summary
The Center will be certified for Medical Services - Primary Care and Medical Services – Other Medical Specialties. The number of projected visits is 4,717 in Year One and 9,337 in Year Three with 2% Charity Care and 36% Medicaid by Year Three.

Program Summary
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
Project costs of $1,130,097 will be met with accumulated funds of the landlord. The landlord has provided documentation attesting to the availability of sufficient liquid resources to fund project costs. The project budget is as follows:

	Year One	Year Three
Revenues	633,625	1,224,290
Expenses	704,967	1,105,866
Gain/ (Loss)	(71,342)	118,424

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of a copy of the applicant's Articles of Organization, acceptable to the department. [CSL]
5. Submission a copy of the applicant's lease, acceptable to the department. [CSL]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 1, 2020 and construction must be completed by January 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Hollis AK LLC d/b/a Hollis Diagnostic & Treatment Center seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 190-02 Jamaica Avenue in Hollis (Queens County). The proposed center will provide primary medical care services, mental health visits, nutrition, and diagnostic radiology.

Proposed Operator	Hollis AK, LLC
To Be Known As	Hollis Diagnostic & Treatment Center
Site Address	190-02 Jamaica Avenue Hollis, NY 11427 (Queens County)
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday through Friday 8:00 AM to 6:00 PM
Staffing (1st Year / 3rd Year)	7.87 FTEs / 13.21 FTEs
Medical Director(s)	Ari Bernstein, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Jamaica Hospital 2.9 miles / 12 minutes away

Analysis

The primary service area is the neighborhoods of Hollis and Jamaica in the southeastern section of Queens County. The population of Queens County was 2,230,772 in 2010 and is projected to grow to 2,508,764 by 2025, an increase of 12.5%.

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is slightly higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2016	Service Area	New York State
All PQI's	1,593	1,363

Source – DOH data, 2019

The number of projected visits is 4,717 in Year One and 9,337 in Year Three. The center is projecting Medicaid utilization of 36% by the third year. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of Hollis AK, LLC are:

Name	**Interest**
Ari Kalontarov, *Manager/Member*	50.0%
Natella Mullokandoa, *Manager/Member*	50.0%

Mr. Ari Kalontarov is a Certified Public Accountant. He is currently employed at a management company that provides management services to healthcare facilities and dental offices. He ensures these facilities improve their overall processes to become more effective and efficient. He provides training to classes to the staff on how to better sell cases to patients.

Mr. Natella Mullokandova is a cosmetologist. He is a hairdresser and salon owner of Salon Nouvelle for 14 years.

Dr. Ari Bernstein is the proposed Medical Director. He is currently an Internal Medicine and Urgent Care Physician of an Article 28 Diagnostic and Treatment Center. He assists the current Medical Director with the day to day responsibilities and oversight of the facility. He was previously employed as an Emergency Medicine Physician. His responsibilities included supervising medical staff, physician assistants, and medical residents. He was the physician in charge of the Emergency Department during his scheduled shifts. He is Board Certified in Internal Medicine. He graduated with his medical degree from St. George's University School of Medicine in Grenada. He completed his Internal Medicine residency at New York Presbyterian Queens.

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. Bernstein disclosed being named in a malpractice cased filed in the summer (July/August) of 2017 which alleged misdiagnosis of a bowel perforation post op. Dr. Bernstein was the Emergency Department physician when the patient arrived at complaining of abdominal pain and surgical site pain one post op from abdominal surgery. Dr. Bernstein called the surgeon down to see the patient immediately. The surgeon did an official consult and the patient was discharged with post-op pain. The patient alleges that they went to another hospital later in the day and required surgery for a bowel perforation. The case against Dr. Bernstein (and the surgeon) is pending.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval of this project will provide for improved access for primary and specialty care. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease agreement summarized below:

Date	December 30, 2018 (draft date)
Premises:	Entire ground floor space (approx. 3,000 sq. ft.) at 190-02 Jamaica Avenue, Hollis, NY
Landlord:	190-02 Jamaica LLC
Tenant:	Hollis AK LLC
Term:	10 Years with an option to extend an additional 5 years
Rental:	1st Year $14,500 monthly 2nd Year – 10th Year increasing 5% annually
Provisions:	All utilities furnished to the Premises (water, heat, gas, electricity, power); Tenant shall pay as Additional Rent an amount equal to Tenant's Proportionate Share of Real Estate Taxes, prorated for any partial lease years hereunder. Tenant shall provide at its own expense insurance coverages with respect to the Premises.

There is a relationship between the parties in that there is a familial relationship between a member of 190-02 Jamaica LLC and a member of Hollis AK LLC and as such the lease is a non-arm's length arrangement. The lease reflects current rates for property similar to the clinic space in the area in terms of location and price and the applicant has submitted letters from two NYS licensed realtors attesting to the rent reasonableness.

Total Project Cost and Financing

Total project costs for construction and the acquisition of movable equipment is estimated at $1,130,097; broken down as follows:

Renovation & Demolition	$ 721,252
Design Contingency	70,655
Construction Contingency	70,655
Planning Consultant Fees	14,005
Architect/Engineering Fees	56,020
Other Fees (Consulting)	50,000
Movable Equipment	124,340
Telecommunications	15,000
Application Fee	2,000
Additional Processing Fee	6,171
Total Project Cost	$ 1,130,097

Project costs are based on a construction start date of July 2020, with a six-month construction period.

The landlord will finance the project costs with $1,130,097 equity and has provided documentation confirming the availability of sufficient liquid resources to fund the construction cost.

Operating Budget

The applicant has submitted an operating budget in 2019 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Revenues				
Medicaid FFS	$168.93	$39,867	$168.78	$31,561
Medicaid MC	$126.77	$173,422	$126.78	$402,408
Medicare FFS	$134.93	$63,685	$134.95	$63,022
Medicare MC	$108.03	$127,371	$108.00	$302,506
Commercial FFS	$155.20	$153,800	$155.25	$275,406
Private Pay	$200.21	$75,479	$199.98	$149,386
Total Revenues		$633,624		$1,224,289
Expenses				
Operating	$108.76	$513,004	$95.80	$894,490
Capital	$40.70	$191,963	$22.64	$211,376
Total Expenses	$149.45	$704,967	$118.44	$1,105,866
Net Income or (Loss)		($71,343)		$118,423

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

	Year One		Year Three	
Payor	Visits	%	Visits	%
Medicaid FFS	236	5.0%	187	2.0%
Medicaid MC	1,368	29.0%	3,174	34.0%
Medicare FFS	472	10.0%	467	5.0%
Medicare MC	1,179	25.0%	2,801	30.0%
Commercial FFS	991	21.0%	1,774	19.0%
Private Pay	377	8.0%	747	8.0%
Charity Care	94	2.0%	187	2.0%
Total	4,717	100%	9,337	100%

The following is noted with respect to the submitted budget:

- The Medicaid FFS rate is based on the Medicaid APG rate methodology's base rate ($169.02) plus capital. The base rate was obtained from the Department of Health's Bureau that establishes D&TC reimbursement and has been conservatively estimated in the budget.
- Medicaid MC is assumed to be 75% of the Medicaid APG FFS payment rate.
- Commercial and Medicare FFS rates are based on the Medicare Part B Fee Schedule and Medicare MC is based on 80% of the Medicare Part B Fee Schedule rate.
- Expense assumptions are based on the staffing pattern for the D&TC with ramp-up to Year Three.
- Utilization projections take into consideration the target population and sections of Queens County from which the clinic will draw its patients.

Capability and Feasibility

Project costs of $1,130,097 will be met with accumulated funds of the landlord ($1,130,097 in cash). The landlord has provided documentation showing sufficient funds.

Working capital requirements are estimated at $184,311 based on two months of third year expenses and will be provided via members' equity. BFA Attachments A is a summary of the net worth statements of the proposed members of Hollis AK LLC, which indicates the availability of sufficient funds for the stated levels of equity. BFA Attachment B is an organizational chart of Hollis AK LLC showing the ownership percent of the proposed members of the operating entity. BFA Attachment C is the pro forma balance sheet of Hollis AK LLC as of the first day of operation, which indicates positive members' equity position of $184,311.

The submitted budget indicates a deficit in Year One of ($71,342) and a net profit of $118,424 in Year Three. The minor projected deficit in Year One of operations will be mitigated by member's equity. The budget appears reasonable.

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Members of Hollis AK LLC
BFA Attachment B	Organizational Chart of Hollis AK LLC
BFA Attachment C	Pro Forma Balance Sheet

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191284-E
Citadel Renal Center LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**Bronx**
Purpose:	**Establishment**	***Acknowledged:***	**June 5, 2019**

Executive Summary

Description

Citadel Renal Center LLC, a New York limited liability company, requests approval to be established as the new operator of Bronx River Nephro Care at the Plaza Rehab & Nursing Center, a 15-station, Article 28 chronic renal dialysis clinic located at 100 West Kingsbridge Road, Bronx (Bronx County). Bronx River Nephro-Care, Inc., a proprietary business corporation, is the current operator of the clinic which is located within The Plaza Rehab and Nursing Center, a 744-bed, proprietary, Article 28 Residential Health Care Facility (RHCF).

On March 13, 2019, Bronx River Nephro-Care, Inc. entered into an Asset Purchase Agreement (APA) with TCPRNC, LLC for the sale and acquisition of the dialysis clinic's operating interest for a purchase price of $2,410,000. On April 18, 2019, TCPRNC, LLC entered into an Assignment and Assumption of APA (Assignment Agreement) with the applicant to assign all of the Purchaser's rights, title and interest under the APA to the Citadel Renal Center LLC for a fee of $10 (paid). The Assignment Agreement provides that the Citadel Renal Center LLC assumes all obligations and liabilities under the APA. Finalization of the transactions will be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The real property is owned by TCPRNC Real Estate, LLC, a related entity to the RHCF operator in that several members are common to both entities. The applicant will enter into a lease agreement with the property owner for site control. There is also a relationship between TCPRNC Real Estate, LLC and Citadel Renal Center LLC in that there are common members between the entities.

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

Current Operator	
Bronx River Nephro-Care, Inc.	
Members	
Jinil Yoo, M.D.	16.75%
Robin Russell, M.D.	16.75%
Philip Calderone, M.D.	16.50%
Thiruvinvamalai Dharmarajan, M.D.	16.75%
Marion DiFiglia, M.D.	16.75%
Henry Steffens, M. D.	16.50%

Proposed Operator	
Citadel Renal Center LLC	
Members	
Malky Friedman	50%
Avi Philipson	25%
Sheya Landa	25%

Peter Bryan Schrier, M.D., who is Board Certified in Nephrology and Internal Medicine, will continue to serve as Medical Director. The applicant expects to continue the current Transfer Agreement for backup and emergency services with Montefiore Medical Center, which is located 1.7 miles (12 minutes travel time) from the dialysis center.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes in the number of dialysis stations in Bronx County as a result of this application.

Program Summary

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

The $2,410,000 acquisition price will be met via equity from members of Citadel Renal Center LLC. There are no project costs associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$3,883,912	$4,000,303
Expenses	3,781,831	3,928,818
Net Income	$102,081	$71,485

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

Citadel Renal Center intends to continue to offer all current existing services without change to staffing, operating times, or the backup hospital.

Proposed Operator	Citadel Renal Center LLC
Doing Business As	Citadel Renal Center
Site Address	100 West Kingsbridge Road Bronx, New York 10468 (Bronx County)
Shift/Hours/Schedule	Monday-Saturday 6:00 AM to 8:00 PM
Approved Services	Renal Dialysis-Chronic O/P
Staffing (1st Year/3rd Year)	19.5 FTES/19.5 FTES
Medical Director(s)	Peter Schrier M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Montefiore Medical Center 1.7 mile/12 minutes

Character and Competence

The proposed membership of Citadel Renal Center LLC is:

Member Name/Title	Interest
Malky Friedman, Manager/Member	50.0%
Avi Phillipson, Member	25.0%
Sheya Landa, Member	25.0%
Total	100.0%

Mr. Sheya Landa is a part-time Emergency Medical Technician. He participates in patient care activities. He has partial ownership in multiple healthcare entities.

Mr. Malky Friedman is the Office Manager of a staffing agency. He oversees various internal departments. He troubleshoots issues or concerns when needed. He is involved in numerous community based philanthropic events.

Mr. Avi Phillipson is a managing member of multiple nursing home facilities. He has an active role in the operation of the facilities.

The proposed Medical Director is **Peter Schrier M.D.** Dr. Schrier is the current owner, President, and Head Nephrologist of a private clinic. He is a board-certified in Internal Medicine with a sub-specialty in Nephrology. He cares for patients with chronic kidney disease on all modes of dialysis and that have received kidney transplant. He is also the Medical Director of a chronic renal dialysis facility where he responsible for all patients on in-center hemodialysis and peritoneal dialysis. Dr. Schrier is the Director of Inpatient Dialysis of an inpatient unit of a hospital in the Northwell Health System. He provides education to medical residents and medical students. He completed his residency at Long Island Jewish Medical Center and his fellowship at North Shore University Hospital.

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.

Compliance with Applicable Codes, Rules and Regulations

Staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

There will be no change in services as a result of this application. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA that will become effective upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	March 13, 2019
Seller:	Bronx River Nephro-Care, Inc.
Buyer:	TCPRNC, LLC
Asset Acquired:	Seller's right, title and interest in the assets and properties used by the seller to operate the dialysis business whether tangible or intangible, including but not limited to: the hard assets furniture, fixtures, equipment, instruments, supplies, inventory, vehicles, artwork, leasehold improvements, phone systems, computer hardware, computer software, databases, machinery, tools, patient records, goodwill, intellectual property, prepaid expense, applicable deposits, assigned contracts, books/records, policy/procedures, transferable license and permits.
Excluded Assets:	All assets that are not part of the acquired assets and not specified in the APA. All cash, cash equivalents, bank deposits, funds on deposit, accounts receivable prior to closing. Seller's company seal, minute books, tax returns, company's books and records and utility deposits.
Assumed Liabilities:	All liabilities that buyer agreed to assume per the APA. Those obligations arising on or after the closing date.
Excluded Liabilities:	All excluded liabilities listed in Asset Purchase Agreement
Purchase Price:	$2,410,000
Payment:	$241,000 Cash Deposit held in Escrow $2,169,000 Balance due at Closing

Assignment and Assumption of Asset Purchase Agreement

The applicant has submitted an executed Assignment Agreement, which is summarized as follows:

Date:	April 18, 2019
Assignor:	TCPRNC, LLC
Assignee:	Citadel Renal Center LLC
Assignment:	All of the assignor's rights, title, interest, obligations and liabilities under the APA, including all deposits delivered to the Seller toward the purchase of the assets.
Price:	$10.00

The acquisition price will be met via equity from the members of Citadel Renal Center LLC. BFA Attachment A is the personal net worth statements for the members, which show sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest in the operating entity. Malky Freidman has provided an affidavit stating willingness to contribute the necessary resources disproportionate to her membership interest in the entity.

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 transferor to the contrary, to be liable and for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller 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 Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

Administrative Services Agreement

The applicant has submitted an executed Administrative Services Agreement, summarized as follows:

Date:	April 1, 2019
Consultant:	Geripro Dialysis Consultants, LLC (Sole Member Miles Davis)
Licensed Operator:	Citadel Renal Center LLC
Term:	Commence on effective date for 3 years. Automatically renewed for successive one-year term. Upon termination other than cause, the Facility shall Consultant amount due plus one (1) year's aggregate fees.
Services:	Administrative and quality management services including policy and procedures related to compliance and infection control, quality assistance, staffing, patient care, purchasing inventory, SNF integration, address operational issues, monitor daily census, monthly financial analysis.
Compensation:	$7,000 per month.

While Geripro Dialysis Consultants, LLC will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Agreement

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

Premises:	Room 704 & 726 located on premises at 100 West Kingsbridge Rd, Bronx, NY
Landlord:	TCPRNC Real Estate, LLC
Lessee:	Citadel Renal Center LLC
Term:	Commence on 1st day of Operation after PHHPC approval until December 31, 2027. Option to renew for 2 additional 5-year terms
Rental:	$18,300 per annum ($1,525 per month).
Provisions:	Tenant will be responsible for taxes, utilities, insurance and maintenance.

The lease agreement is non-arm's length. The applicant has submitted an affidavit attesting there is relationship between the landlord and tenant in that there is common membership between the entities.

Operating Budget

The applicant has submitted the facility's current year (2018) and projected operating budget for year one and year three, in 2019 dollars, as shown below:

	Current Year		Year One		Year Three	
Revenues	Per Treat.	Total	Per Treat.	Total	Per Treat.	Total
Medicaid FFS	$207.60	$413,953	$207.58	$426,372	$201.54	$439,163
Medicare FFS	$271.24	2,091,515	$271.28	2,154,260	$271.22	2,218,888
Commercial FFS	$277.20	1,237,438	$277.20	1,274,561	$269.13	1,312,798
Commercial MC	$410.34	23,800	$401.87	24,514	$394.52	25,249
Other		$4,205		$4,205		$4,205
Total		$3,770,911		$3,883,912		$4,000,303
Expenses						
Operating	$253.18	$3,601,958	$250.67	$3,673,296	$249.66	$3,820,283
Capital	$7.63	$108,535	$7.41	$108,535	$7.09	$108,535
Total	$260.81	$3,710,493	$258.08	$3,781,831	$256.75	$3,928,818
Net Income		$60,418		$102,081		$71,485
Treatments		14,227		14,654		15,302

Utilization and revenue assumptions are based on the current operator's experience. The applicant projected a 3% increase in utilization for Year One over the current year, and a 4% increase in Year Three over Year One. Overall per visit revenue is conservatively estimated as reimbursement rates are expected to remain relatively flat. The volume growth and revenue assumptions appear reasonable.

Expenses are based on the current operator's experience plus an adjustment for inflation.

Utilization by payor source for the Current Year, and Years One and Three subsequent the ownership change, is summarized below:

	Current Year		Year One		Year Three	
Payor	Treat.	%	Treat.	%	Treat.	%
Medicaid FFS	1,994	14.0%	2,054	14.0%	2,179	14.2%
Medicare FFS	7,711	54.2%	7,941	54.2%	8,181	53.5%
Commercial FFS	4,464	31.4%	4,598	31.4%	4,878	31.9%
Commercial MC	58	0.4%	61	0.4%	64	0.4%
Total	14,227	100%	14,654	100%	15,302	100%

Breakeven utilization is expected to be 97.37% or 14,268 treatments in the first year.

Capability and Feasibility

The $2,410,000 acquisition price will be met via equity from the members of Citadel Renal Center, LLC.

The working capital requirement is estimated at $630,305 based upon two months of Year One expenses and will be provided from members' equity. BFA Attachment A is the personal net worth statements for the members of Citadel Renal Center LLC, which show sufficient resources to meet the working capital equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest in the operating entity. Malky Freidman, managing member, has provided an affidavit stating willingness to contribute resources disproportionate to her membership interest in the entity.

Citadel Renal Center LLC projects an operating income of $102,081 in the first year and $71,485 in the third year of operation. The budget appears reasonable. BFA Attachment B is Citadel Renal Center LLC's Pro Forma Balance Sheet, which shows operations will start off with $3,040,305 in equity. It is noted that assets include $2,294,644 in goodwill which is not a liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position is $745,661.

BFA Attachments C is the financial summary of Bronx River Nephro-Care, Inc. for 2016 through 2018, the entity's 2017 certified financial statements and their internal financial statements as of December 31, 2018. As shown, the facility had an average positive working capital position, an average net assets position and average negative net income of $44,160 for the period. BFA Attachment D is the internal financial statements of Bronx River Nephro Care, Inc. as of April 30, 2019, which shows an operating income of $47,916 plus positive working capital and net assets.

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

Attachments

BFA Attachment A	Net Worth of Proposed Members of Citadel Renal Center, LLC
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary 2016-2018 and 2017-2018 Financial Statement of Bronx River Nephro Care at the Plaza Rehab & Nursing Center
BFA Attachment D	Internal Financial of Bronx River Nephro Care at the Plaza Rehab & Nursing Center as of April 30, 2019.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191264-E
Freedom Center of Troy, LLC
d/b/a Fresenius Kidney Care - Troy

Program:	**Diagnostic and Treatment Center**	***County:***	**Rensselaer**
Purpose:	**Establishment**	***Acknowledged:***	**May 28, 2019**

Executive Summary

Description

Freedom Center of Troy, LLC, a New York limited liability company, requests approval to be established as the new operator of Fresenius Kidney Care - Troy, a 12-station, Article 28 chronic renal dialysis center located in leased space at 16 North Greenbush Road, Troy (Rensselaer County). The facility is currently an extension clinic of FMS-Southern Manhattan Dialysis Center. FMS-Southern Manhattan Dialysis Center is operated by New York Dialysis Services, Inc., a New York proprietary corporation wholly owned by Fresenius Medical Care Holdings, Inc. and operates outpatient dialysis clinics at various locations in New York State.

On November 21, 2018, New York Dialysis Service, Inc. entered into an Asset Purchase Agreement (APA) with Freedom Center of Troy, LLC for the sale and acquisition of the Center's operating interest for $24,299. The APA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). Pursuant to the operating agreement of Freedom Center of Troy, LLC, the members of Troy Renal Venture Group LLC have already paid $1,178,739 as a capital contribution in return for a 49% membership Interest.

Ownership before and after the requested change is as follows:

Current Operator
New York Dialysis Services, Inc.

Proposed Operator		
Freedom Center of Troy, LLC		
Members		
New York Dialysis Services, Inc.		51%
Troy Renal Venture Group LLC		49%
Vincent J Carsillo II, D.O.	13.6%	
Jorge Cerda, M.D.	9.6%	
Michael Gallichio, M.D.	9.6%	
Mohammed A. Monzur, M.D.	9.6%	
Thomas C Schumacher, D.O.	9.6%	
Darshan S. Arora, M.D.	9.6%	
Rahim Dhanani, M.D.	9.6%	
Michael DiRusso, M.D.	9.6%	
Mujtaba Hasnain, M.D.	9.6%	
Joseph M. Roglieri, M.D.	9.6%	

Darshan Arora, M.D., a member of the applicant who is Board-Certified in Internal Medicine and Nephrology, will serve as the Center's Medical Director. The facility has an Affiliation Agreement for backup and emergency services with Albany Medical Center, which is located 8.6 miles (22 minutes travel time) from the Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes in the number of dialysis stations for Rensselaer County as a result of this project.

Program Summary

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

The purchase price of $24,299 will be provided from the liquid resources of Freedom Center of Troy, LLC. There are no project costs associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$2,484,778	$4,703,329
Expenses	2,114,455	3,351,666
Net Income	$370,323	$1,351,663

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed assignment and assumption of the building lease, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's amended and executed Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended and executed Lease Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and restated Certificate of Incorporation for New York Dialysis Services, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Articles of Organization for Troy Renal Venture Group LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Operating Agreement for Troy Renal Venture Group LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

October 10, 2019

Need and Program Analysis

Need Analysis

There will be no changes to services, staffing, operating times, or backup hospital. Currently there are two operating dialysis clinics in zip code 12180. These two facilities are the subject facility and DCI Rubin Dialysis, a 19-station clinic. Rensselaer County has a projected need for 62 stations and there are currently 48 existing stations and six approved stations (pipeline).

Program Description

Proposed Operator	Freedom Center of Troy. LLC
Doing Business As	Fresenius Kidney Care-Troy
Site Address	16 North Greenbush Road Troy New York 12180 (Rensselaer County)
Shift/Hours/Schedule	Monday-Saturday 6 AM to 4:30 PM
Approved Services	Renal Dialysis-Chronic O/P Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	4.6 FTES/13.4 FTEs
Medical Director(s)	Darshan Arora, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Albany Medical Center 8.6 miles/ 22 minutes

Character and Competence

The proposed membership of Freedom Center of Troy, LLC are:

Member Name/Title	**Interest**
New York Dialysis Service, Inc	**51.0%**
Kenneth R. Finnegan, President/Director	
Lane McCarthy, Vice President	
Anthony Buglisi, Vice President	
Thomas Brouillard, Treasurer	
Domenic Gaeta, Secretary	
Bryan Mello, Assistant Secretary	
Troy Renal Venture Group LLC	**49.0%**
Darshan Arora, M.D. (9.60%)	
Vincent Carsillo II, D.O. (13.6%)	
Jorge Cerda, M.D. (9.60%)	
Rahim Dhanani, M.D. (9.60%)	
Michael DiRusso, M.D. (9.60%)	
Mujtaba Hassain, M.D. (9.60%)	
Michael Gallichio, M.D. (9.60%)	
Mohammed Monzur, M.D. (9.60%)	
Joseph Roglieri, M.D (9.60%)	
Thomas Schumacher, D.O (9.60%)	
Total	**100.0%**

The members of Troy Renal Venture Group LLC are all physicians who are board-certified in Internal Medicine and Nephrology, with the exception of Dr. Gallichio, who is board certified in Surgery.

The managers of Freedom Center of Troy, LLC will be Tiffany Watts, Kenneth R. Finnegan, Lane McCarthy, Vincent J. Carsillo M.D., and Rahim Dhanani, M.D.

The proposed Medical Director is **Dr. Darshan Arora**. Dr. Arora is board certified in Internal Medicine with a sub-specialty in Nephrology. He has been in private practice for 19 years. He completed his Internal Medicine residency at Guwahati College in India. He completed his Renal Fellowship at Rutgers New Jersey Medical School.

Mr. Thomas Brouillard, Jr is a Certified Public Accountant. He has been employed by Fresenius Medical Care for eight years. He has held various positions, the most current being Senior Vice President of Finance.

Mr. Anthony Buglisi is a Regional Vice President of the Metro New York area for Fresenius Medical Care for over 15 years. He is a Registered Nurse.

Mr. Kenneth Finnegan is the General Manager of Fresenius Medical Care. He is responsible for operations, quality, teammate engagement, and patient experience for approximately 7,000 teammates in 350 clinics that serve almost 27,000 patients across seven regions. As the previous Chief Operating Officer, Mr. Finnegan was successful in the integration of MedSpring and ChoiceOne Urgent Cares, including restructuring of the MedSpring business anda complete organizational realignment. He has lowered patient acquisitional costs by migrating from a pure retail and digital marketing model to a balanced approach of direct sales and community-based marketing.

Mr. Domenic Gaeta is the Vice President, Deputy General Counsel for Fresenius Medical Care North America since January 2019. He has been employed at Fresenius Medical Care for over 21 years and has held various positions. In his current position he provides counsel to senior management across all company divisions on complex legal and regulatory issues in existing and proposed transactions. He negotiates, drafts, and interprets strategic procurement agreements (pharmaceutical and raw materials), supply chain agreements (finished goods), and distribution agreements for both the products and service divisions. He develops and implements policies with the Compliance Department to minimize regulatory risk.

Mr. Lane McCarthy has been employed by Fresenius Medical Care for over four years. He is the current Regional Vice President. He has increased profitability and impacted the culture of the clinics. He held the position of Technical/Facility Manager at Hortense and Louis Rubin Dialysis Center for over 11 years. He created the home hemodialysis program by assisting with the water treatment, process improvement, and system design of the home facility set up and maintenance schedule.

Mr. Bryan Mello is the Vice President of Tax. He has been employed with Fresenius Medical Care for 30 years. He is the Assistant Treasurer of New York Dialysis Services, Inc.

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. Arora disclosed being named in a malpractice case filed on October 26, 2018. The plaintiff alleges that wrongful death, personal, injury, conscious pain and suffering, expense, losses and damages sustained by the decedent and the decedent's family arising from negligence. No trial date has been set.

Compliance with Applicable Codes, Rules and Regulations

Staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

The Department issued a Stipulation and Order dated October 5, 2018 and fined FMS Clinton Crossing $2,000 based on deficiencies found during an inspection completed on April 16, 2018. Deficient practice was found in the area of Infection Control.

On January 3, 2017, the Company received a subpoena from the United States Attorney for the District of Massachusetts under the False Claims Act inquiring into the Company's interactions and relationships with the AKF, including the Company's charitable contributions to the Fund and the Fund's financial assistance to patients for insurance premiums. FMCH is cooperating in the investigation, which the Company understands to be part of a broader investigation into charitable contributions in the medical industry.

The Department issued a Stipulation and Order dated April 19, 2017 and fined FMS Soundshore Dialysis Center $8,000 based on deficiencies found during an allegation completed on March 18, 2016. Deficient practices were found in the areas of Infection Control and Responsibilities of the Medical Director. Specifically, the facility failed to have a system in place for the medical and nursing staff to clearly document the HBV status of a patient prior to admission which resulted in a HBV positive patient not being placed on isolation.

In May 2017, the United States Attorney for the Middle District of Tennessee (Nashville) issued identical subpoenas to Fresenius Medical Care Holdings and two subsidiaries under the False Claims Act concerning the Company's retail pharmaceutical business. The investigation is exploring allegations of improper inducements to dialysis patients to fill oral prescriptions through FMCH's pharmacy service and of improper billing for returned pharmacy products. FMCH is cooperating in the investigation.

The Department issued a Stipulation and Order dated December 6, 2016 and fined FMS Living Center $10,000 based on deficiencies found during an inspection completed on March 17, 2016. Deficient practice was found in the area of Water and Dialysate Quality. Specifically, the facility failed to ensure the staff were appropriately trained on the water system and that the staff was able to demonstrate competency related to water testing.

On December 14, 2016, the Center for Medicare & Medicaid Services ("CMS"), which administers the federal Medicare program, published an Interim Final Rule ("IFR") titled "Medicare Program; Conditions for Coverage for End-Stage Renal Disease Facilities-Third Party Payment." The IFR would have amended the Conditions for Coverage for dialysis providers, like FMCH and would have effectively enabled insurers to reject premium payments made by or on behalf of patients who received grants for individual market coverage from the American Kidney Fund ("AKF" or "the Fund"). The IFR could thus have resulted in those patients losing individual insurance market coverage. The loss of coverage for these patients would have had a material and adverse impact on the operating results of FMCH.

On January 25, 2017, a federal district court in Texas responsible for litigation initiated by a patient advocacy group and dialysis providers including FMCH preliminarily enjoined CMS from implementing the IFR. Dialysis Patient Citizens v. Burwell, 2017 Civ. 0016 (E.D. Texas, Sherman Div.). The preliminary injunction was based on CMS' failure to follow appropriate notice and comment procedures in adopting IFRR. The preliminary injunction remains in place in the absence of a contrary ruling by the district or appellate courts. On June 22, 2017, CMS requested a stay of proceedings in the litigation pending further rulemaking concerning the IFR. CMS stated, in support of its request that it expects to publish a Notice of Proposed Rulemaking in the Federal register and otherwise pursue a notice and comment process in the process in the fall of 2017. Plaintiffs in the litigation, including FMCH, consented to the stay, which was granted by the court.

On November 18, 2016, Fresenius Medical Care Holdings received a subpoena under the False Claims Act from the United States Attorney for the Eastern District of New York seeking documents and information relating to the operations of Shiel Medical Laboratory, Inc., which FMCH acquired in October 2013. In the course of cooperating with the investigation and preparing to respond to the subpoena, FMCH identifies falsifications and misrepresentations in documents submitted by a Shiel salesperson that relate to the integrity of certain invoices submitted by Shiel for laboratory testing for patients in long term care facilities. On February 21, 2017, FMCH terminated the employee and notified the United States Attorney of the termination and the circumstances. The terminated employee's conduct may subject the

Company to liability for overpayments and penalties under applicable laws. FMCH continues to cooperate in the government's ongoing investigation.

On June 30, 2016, FMCH received a subpoena from the United States Attorney for the Northern District of Texas (Dallas) seeking information under the False Claims Act about the use and management of pharmaceuticals including Velphoro® as well as FMCH's interactions with DaVita Healthcare Partners, Inc. The Company understands that the subpoena relates to an investigation previously disclosed by DaVita and that the investigation encompasses DaVita, Amgen, and Sanofi. FMCH is cooperating in the investigation.

On October 16, 2015, a dialysis facility located in Lindenhurst, New York, operated by Vestal Healthcare, LLC was terminated as a supplier of End Stage Renal Disease services under Medicare by the Centers for Medicare & Medicaid Services. New York Dialysis Services, Inc., a subsidiary of FMCH, provided certain administrative and consulting under contract with Vestal.

On October 6, 2015, the Office of Inspector General of the United States Department of Health and Human Services ("OIG") issued a subpoena under the False Claims Act to the Company seeking information about utilization and invoicing by Fresenius Vascular Care, now known as Azura Vascular Care, facilities as a whole for a period beginning after the Company's acquisition of American Access Care LLC in October 2011. On August 24, 2017, an additional and more detailed subpoena on the same topics was issued by the United States Attorney for the Eastern District of New York (Brooklyn), which has managed the Azura investigation from its outset. The Company is cooperating in the government's inquiry. Allegations against AAC arising in districts in Connecticut, Florida and Rhode Island relating to utilization and invoicing were settled in 2015.

On August 31 and November 25, 2015 respectively, Fresenius Medical Care Holdings received subpoenas under the False Claims Act from the United States Attorney for the District of Colorado and the Eastern District of New York inquiring into FMCH's participation in and management of dialysis facility joint ventures in which physicians are partners. FMCH is cooperating in these investigations.

In July 2015, the Attorney General for Hawaii issued a civil complaint under the Hawaii False Claims Act alleging a conspiracy pursuant to which certain Liberty Dialysis subsidiaries of Fresenius Medical Care Holdings overbilled Hawaii Medicaid for Liberty Epogen administrations to Medicaid patients during a period from 2006 to 2010, prior to the FMCH acquisition of Liberty. Hawaii v. Liberty Dialysis-Hawaii LLC et al. Case No. 15-1-1357-07 (Hawaii 1st Circuit). The State alleges that Liberty acted unlawfully by relying on incorrect and unauthorized billing guidance provided to Liberty by Xerox State Healthcare LLC, which acted as Hawaii's contracted administrator for its Medicaid program reimbursement operations during the relevant period. The amount of the overpayment claimed by the State is approximately $8,000. The State seeks civil remedies, interest, fines, and penalties against Liberties and FMCH under the Hawaii False Claims Act. FMCH filed third-party claims for contribution and indemnifications against Xerox. The State's False Claims Act complaint was filed after Liberty initiated an administrative action challenging the State's recoupment of alleged overpayments from sums currently owed to Liberty. The civil litigation and administrative action are proceeding in parallel.

In August 2014, Fresenius Medical Care Holdings received a subpoena from the United States Attorney for the District of Maryland inquiring into FMCH's contractual arrangements with hospitals and physicians, including contracts relating to the management of in-patient acute dialysis services. FMCH is cooperating with the investigation.

On April 5, 2013, the U.S. Judicial Panel on Multidistrict Litigation ordered that the numerous lawsuits alleging wrongful death and personal injury claims against Fresenius Medical Care Holding and certain of its affiliates relating to Fresenius Medical Care Holding's acid concentrate products, NaturaLyte and GranuFlo, be transferred and consolidated for pretrial management purposes into an consolidated multidistrict litigation in the United States District Court for the District of Massachusetts. The Massachusetts federal and state courts and the St. Louis City (Missouri) court were responsible, together, for more than 95% of all cases. The lawsuits alleged that inadequate labeling and warning for these products caused harm to patients. On February 17, 2016, the Company reached with a committee of plaintiff's counsel and reported to the court's an agreement in principle for settlement of all potential

cases. The agreement in principle calls for the Company to pay $250,000 into a settlement fund in exchange for release of substantially all the plaintiff's claims, subject to the Company's right to void the settlement under certain conditions. As subsequently agreed and refined by the Company and plaintiff committee, and ordered by the courts, plaintiffs may enforce the settlement and compel payment by the Company if the total cases electing to participate in the settlement and dismissed by the courts with prejudiced, voluntarily or involuntarily, comes to comprise 97% of all cases as defined under the agreement. The three primary courts entered "Lone Pine" orders requiring plaintiffs, on pain of dismissal, who have not elected to participate in the settlement to submit specific justification satisfactory to the courts for their complaints, including attorney verification of certain material factual representations and expert medical opinions relating to causation. The Company may elect to void the settlement if the 97% threshold is not achieved or if plaintiffs' nonparticipation falls into suspect patterns. The deadlines for plaintiffs to elect participation in the settlement or comply with Lone Pine orders have passed. Based on participation, elections already received and Lone Pine dismissal orders already entered, the plaintiff committee and FMCH expect and have advised the courts that they expect, the settlement to be consummated. However, in the Middlesex County coordinated proceeding, many counsel for many plaintiffs have moved to withdraw from representing their clients and the court has granted extensions of time to allow the plaintiffs to obtain new counsel or proceed pro se. In addition, difficulties and delays have occurred in the plaintiff committee's assembling and verifying individual participation elections. The plaintiff committee and FMCH have therefore agreed, with court approval, that consummation will occur promptly upon sufficient verification of fulfillment of the participation threshold, providing only that consummation must occur by February 28, 2018.

Four institutional plaintiffs have filed complaints against FMCH or its affiliates under state deceptive practices statutes resting on certain background allegations common to the GranuFlo/NaturaLyte personal injury litigation but seeking as remedy the repayment of sums paid to FMCH attributable the GranuFlo/NatruLyte products. These cases implicate different legal standards, theories of liability and forms of potential recovery from those in the personal injury litigation and their claims will not be extinguishable by the personal injury settlement described above. The four plaintiffs are the Attorneys General for the States of Kentucky, Louisiana, and Mississippi, and the commercial insurance company Blue Cross Blue Shield of Louisiana in its private capacity. State of Mississippi ex rel. Hood, v. Fresenius Medical Care Holdings, Inc., No. 14-cv-152 (Chancery Court, Desoto County); State of Louisiana ex re. Caldwell and Louisiana Health Service & Indemnity Company v. Fresenius Medical Care Airline, 2016 Civ. 11035 (U.S.D.C. D. Mass.); Commonwealth of Kentucky ex rel. Beshear v. Fresenius Medical Care Holdings, Inc. et al., No. 16-CI-00946 (Circuit Court, Franklin County).

On February 15, 2011, a whistleblower (relator) action under the False Claims Act against FMCH was unsealed by order of the United States District Court for the District of Massachusetts and served by the relator. United States ex rel. Chris Drennen v. Fresenius Medical Care Holdings, Inc., 2009 Civ. 10179 (D. Mass.). The realtor's complaint, which was first filed under seal in February 2009, alleged that the Company sought and received reimbursement for government payors for serum ferritin and multiple forms of hepatitis B laboratory tests that were medically unnecessary or not properly ordered by a physician. Discovery on the realtor's complaint closed in May 2015. Although the United States initially declined to intervene in the case, they subsequently changed position. On April 3, 2017 the court allowed the government to intervene with respect only to certain hepatitis b surface antigen tests performed prior to 2011, when Medicare reimbursement rules for such test changed. The court rejected the government's request to take discovery against the government as if the government had intervened at the outset.

In 2011, FMCH received a subpoena from the United States Attorney for the Eastern District of New York (Brooklyn) requesting information under the False Claims Act concerning an assay manufactured by Bayer Diagnostics. Bayer Diagnostics was later acquired by Siemens. The assay is used to test for the serum content of parathyroid hormone (PTH). The assay has been widely used by FMCH and others in the dialysis industry for assessment of bone mineral metabolism disorder, a common consequence of kidney failure. FMCH responded fully and cooperatively to the subpoena but concluded that it was not the focus or target of the US Attorney's investigation. On March 16, 2017, the US Attorney elected not to intervene on a sealed relator (whistleblower) complaint first filed in January 2011 that underlay the investigation. After the US Attorney declined intervention, the United States District Court for the Eastern District unsealed the complaint and ordered the relator to serve and otherwise proceed on his own. FMCH was served on June 15, 2017. The plaintiff-relator is a salesperson employed by Scanitbodies, a

company that manufactures a competing PTH assay. Relator alleges, in essence that Siemens improperly colluded with Fresenius, DaVIta, and another dialysis provider to bar the Scantibodies product from the market in favor of the allegedly inferior Siemens product. On August 14, 2017, FMCH was dismissed with prejudice from the litigation on relator's motion. The litigation continued against other defendants Patriarca v. Bayer Diagnostics n/k/a Siemens et alia, 2011 Civ. 00181 (E.D.N.Y.).

The Company has received communications alleging conduct in countries outside the United States that may violate the U.S Foreign Corrupt Practices Act and other anti-bribery laws. The Company's Supervisory Board, through its Audit and Corporate Governance Committee, has been conducting investigations with the assistance of independent counsel. The Company voluntarily advised the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ). The Company's investigations and dialogue with the SEC and DOJ are ongoing. The Company is cooperating with government investigations.

Conclusion

There will be no change in services as a result of this application. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to be effectuated upon PHHPC approval of this application. The terms are summarized below:

Date:	November 21, 2018
Buyer:	Freedom Center of Troy, LLC
Seller:	New York Dialysis Services, Inc.
Business:	Outpatient Dialysis Center located at 16 North Greenbush Road, Troy, New York 12180
Transferred Assets:	All assets, rights and properties of the Seller used or useable exclusively in connection with the Business, including cash and cash equivalents; equipment, leasehold improvements, A/R; patient lists, appointment books & other medical records.
Excluded Assets:	Contracts that are not assumable; software that is not assignable to the company; income tax refunds and deposits; minute books and tax returns of the seller; insurance policies; and assets not used exclusively in the business.
Assumed Liabilities:	Obligations under assumed contracts.
Purchase Price	$24,299, plus the value of usable inventory and prepaid expenses and further adjusted for certain de minimis balance sheet items.

The purchase price will be funded from the liquid resources of Freedom Center of Troy, LLC. Pursuant to the operating agreement of Freedom Center of Troy, LLC, the members of Troy Renal Venture Group LLC have already contributed $1,178,739 as a capital contribution in return for the 49% membership Interest.

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 transferor to the contrary, to be liable and for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller 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 Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

Master Administrative Services Agreement

The applicant submitted an executed Master Administrative Services Agreement (MASA):

Effective Date:	November 21, 2018
Business:	Outpatient dialysis center located at 16 North Greenbush Road, Troy, New York 12180
Company:	Freedom Center of Troy, LLC
Current Owner:	New York Dialysis Services, Inc.
Consultant:	Fresenius Management Services, Inc., subject to the limited administrative services agreement
Term:	20-years unless terminated sooner per agreement
Services:	Consultant will provide certain administrative and non-physician services including assisting with functions relating to: facilities and equipment, billing and collections, accounting and financial services, policy and procedures, proprietary materials, patient safety program, service contracts, project development services, real estate services, quality and utilization controls, develop and maintain a program for a home dialysis, access to the patient statistical profile database, maintain required insurance coverage.
Compensation:	$1,000 per month (1st 12 months), adjusted annually, plus applicable direct expenses.

Limited Administrative Services Agreement

The applicant submitted an executed Limited Administrative Services Agreement (LASA):

Effective Date:	November 21, 2018
Business:	Outpatient dialysis center located at 16 North Greenbush Road, Troy, New York 12180
Current Owner:	New York Dialysis Services, Inc.
Administrator:	Freedom Center of Troy, LLC
Consultant:	Fresenius Management Services, Inc. affiliate of Fresenius Medical care
Term:	10 years
Services:	All administrative services as identified in the master services agreement, plus if requested, provide full-time and part-time personnel necessary to operate the non-physician aspects of the business
Compensation:	$5,950 per month, adjusted annually, plus applicable direct expenses. When applicable 7% development fee on total project costs.

Although Fresenius Management Services, Inc. will be performing the above services, Freedom Center of Troy, LLC will retain ultimate authority, responsibility, and control in all final decisions associated with the services. Upon PHHPC approval of the change in ownership, the MASA will be replaced by the LASA and the Administrator will become the Business Owner. Common ownership exists between the LASA provider (Fresenius Management Services, Inc.) and a member of the applicant (Fresenius Medical Care Holdings, Inc.).

Lease Rental Agreement

The applicant submitted an executed Lease Agreement for the site:

Date:	October 4, 2016
Premises:	8,234 sq. ft. premise located at 16 North Greenbush Road, Troy, New York 12180
Landlord:	16 North Development, LLC
Lessee:	New York Dialysis Services, Inc.
Term:	15 years. Options to renew for three (5 year each) consecutive terms.
Rental:	Year 1: $205,850 ($17,154.17 per month); Years 2-4: $202,968 per year (16,914.01 per month); Years 5-10: $205,850 per year ($17,154.17 per month); and Years 11-15: $247,020 per year ($20,585 per month) Plus, proportionate share of common area maintenance expenses each year.
Provisions:	Tenant is responsible for maintenance, utilities and real estate taxes, insurance

Assignment and Assumption of Lease Agreement

The applicant submitted a draft Assignment and Assumption Agreement for the Center's lease, as shown below:

Assignor:	New York Dialysis Services, Inc.
Assignee:	Freedom Center of Troy, LLC
Lease Assigned:	Lease associated with premises located at 16 North Greenbush Road, New York
Lease Terms / Payment Provisions:	No Change

The applicant has provided an affidavit stating the lease is an arm's length transaction. The applicant has submitted letters from two New York State licensed realtors attesting to the reasonableness of the per square foot rental rate.

Operating Budget

The applicant submitted the facility's year one and year three operating budgets, in 2019 dollars, as shown below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per visit	Total
Medicaid-FFS	$226	$2,937	$222	$5,560
Medicare-FFS	$293	$1,466,368	$293	$2,775,624
Commercial-FFS	$988	$1,015,473	$988	$1,922,145
Total Revenues		$2,484,778		$4,703,329
Expenses				
Operating	$277	$1,673,194	$254	$2,902,735
Capital	$73	$441,261	$39	$448,931
Total Expenses	$350	$2,114,455	$293	$3,351,666
Net Income		$370,323		$1,351,663
Treatments		6,048		11,448

The Troy facility became operational effective September 9, 2018. Partial year operating results are not expected to be representative of the future operations. Revenues are projected based on the current rates of reimbursement for the facility. Utilization and expenses assumptions are based on the proposed members' extensive experience in the local dialysis markets where they operate several facilities. The assumptions appear reasonable.

Utilization by payor for Years One and Three subsequent the ownership change, are summarized below:

	Year One		Year Three	
Payor	Treat.	%	Treat.	%
Medicaid-FFS	13	0.22%	25	0.22%
Medicare-FFS	5,007	82.79%	9,477	82.78%
Commercial-FFS	1,028	17.00%	1,946	17.00%
Total	6,048	100%	11,448	100%

Breakeven utilization is expected at 5,146 treatments in the first year.

Capability and Feasibility

The purchase price of $24,299 will be met via liquid resources from Freedom Center of Troy, LLC. The working capital requirement is estimated at $352,409 based upon two months of Year One expenses and will be funded from the Center's existing liquid assets, and if needed the facility has an existing revolving line of credit for $2,950,000.

Freedom Center of Troy, LLC projects operating income of $370,323 in the first year and $1,351,663 in the third year of operations. BFA Attachment B is Freedom Center of Troy, LLC's Pro Forma Balance

Sheet, which shows operations will start off with negative $262,893 in equity. The budget appears to be reasonable.

BFA Attachment C is the internal financial statements of Fresenius Kidney Care - Troy as of April 30, 2019, which shows the Troy facility had a net operational loss of $93,624. BFA Attachment D is the 2016-2018 financial summary of New York Dialysis Services, Inc., which shows positive working capital position, negative net asset position, and positive operating income. The negative net asset position is due to related party transactions including the amount due to Fresenius Medical Care for services performed and products purchased between affiliates. BFA Attachment E is the internal financial statements of New York Dialysis Services, Inc. as of May 31, 2019, which shows the entity generated $7,839,613 in net income. Review of the above financial summaries shows the members have sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachments F and G are Fresenius Medical Care North America's 2016-2018 Financial Summary and 2018 certified financial statement, which indicate that during this period Fresenius Medical Care maintained a positive working capital and net asset positions, and generated net operating income of $3,037,798,000 in 2018.

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

Attachments

BFA Attachment A	Post-Closing Organizational Chart
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Fresenius Kidney Care -Troy Internal Financial Statements as of April 30, 2019
BFA Attachment D	2016-2018 Financial Summary and 2018 Certified Financial Statements of New York Dialysis Services, Inc
BFA Attachment E	New York Dialysis Services, Inc's Consolidated Internal Financial Statement as of May 31, 2019
BFA Attachment F	2016-2018 Financial Summary of Fresenius Medical Care North America and Subsidiaries
BFA Attachment G	2018 Financial Statements of Fresenius Medical Care North America and Subsidiaries
Programmatic Attachment A	Star Ratings

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191288-E
Freedom Center of Rockland County, LLC d/b/a Fresenius Kidney Care Valley Cottage

Program:	**Diagnostic and Treatment Center**	***County:***	**Rockland**
Purpose:	**Establishment**	***Acknowledged:***	**June 6, 2019**

Executive Summary

Description

Freedom Center of Rockland County, LLC, a New York limited liability company, requests approval to be established as the new operator of Renal Care of Rockland, an 18-station, proprietary, Article 28 chronic renal dialysis center located at 131 Route 303, Valley Cottage (Rockland County), and its 31-station extension clinic, Renal Care of Suffern, located at 30 Route 59, Suffern (Rockland County). Both facilities are currently operated by Renal Care of Rockland, Inc., a proprietary business corporation. The proposed members of Freedom Center of Rockland County, LLC are New York Dialysis Services, Inc. (95%) and RCR Freedom Holdings LLC (5%). New York Dialysis Services, Inc. is a wholly-owned subsidiary of Fresenius Medical Care Holdings, Inc., which operates numerous outpatient dialysis facilities at various locations in New York State and around the country. Upon approval, the Valley Cottage facility will be called Fresenius Kidney Care Valley Cottage, and the Suffern facility will be called Fresenius Kidney Care Montebello. There will be no change in services provided.

On December 1, 2018, Renal Care of Rockland County, Inc. entered into an Asset Purchase Agreement (APA) with Freedom Center of Rockland, LLC for the sale and acquisition of the Center's operating interest for $1,600,000. The APA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Ownership before and after the requested change is as follows:

Current Operator	
Renal Care of Rockland, Inc.	
Shareholders	
Andrew Moriber	25%
Sara Moriber	25%
Steven Yablon, M.D.	10%
Kenneth Shapiro, M.D.	10%
Jonathan Wolfe, M.D.	10%
Robert Curreri, M.D.	10%
Arthur Kozin, M.D.	10%

Proposed Operator	
Freedom Center of Rockland, Inc	
Members	
New York Dialysis Services, Inc.	95%
RCR Freedom Holdings LLC:	5%
Andrew Moriber (22.34%)	
Sara Moriber (22.33%)	
Steven Yablon, M.D. (8.93%)	
Kenneth Shapiro, M.D. (8.93%)	
Jonathan Wolfe, M.D. (8.93%)	
Robert Curreri, M.D. (8.93%)	
Arthur Kozin, M.D. (8.93%)	
Lalitha Ravichandran, M.D. (5.34%)	
Sadish Reddy, M.D. (5.34%)	

Michael Tracz, M.D. is the proposed Medical Director for the Valley Cottage site, and Sri Bonam, M.D. is the proposed Medical Director for the Suffern site. The applicant will enter into an administrative services agreement with Fresenius Management Services, Inc. for certain consulting and administrative services.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of dialysis stations for Rockland County as a result of this application.

Program Summary

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

The purchase price of $1,600,000 will be met via equity from the proposed members of Freedom Center of Rockland County, LLC. The projected budget is as follows:

	Year One	Year Three
Revenues	$14,250,059	$15,045,295
Expenses	11,442,304	12,071,041
Net Income	$2,807,755	$2,974,254

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of a photocopy of the applicant's amended and executed Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Certificate of Assumed Name for Fresenius Kidney Care Valley Cottage, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Certificate of Assumed Name for Fresenius Kidney Care Montebello, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's amended Lease Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and restated Certificate of Incorporation for New York Dialysis Services, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Articles of Organization for RCR Freedom Holdings LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Operating Agreement for RCR Freedom Holdings LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

October 10, 2019

Need and Program Analysis

Program Description

The two sites will continue to offer all existing services. There will be no changes to staffing, operating times, or backup hospitals. Currently Renal Care of Rockland is the only facility in zip code 10989. Renal Care of Suffern is the only facility located in zip code 10901.

Proposed Operator	Freedom Center of Rockland County, Inc
Doing Business As	Fresenius Kidney Care Valley Cottage
Site Address	131 Route 303 Valley Cottage, New York 10989 (Rockland County)
Shift/Hours/Schedule	Monday to Saturday from 5:30 AM-11:30 PM
Approved Services	Renal Dialysis-Chronic O/P Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	30.2 FTEs/32.4 FTEs
Medical Director(s)	Michael Tracz, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Montefiore Nyack Hospital 2.5 miles/8minutes

Proposed Operator	Freedom Center of Rockland County, Inc
Doing Business As	Fresenius Kidney Care Montebello
Site Address	30 Route 59 Suffern, New York 10901 (Rockland County)
Shift/Hours/Schedule	Monday to Saturday from 6:00 AM-10:30PM
Approved Services	Renal Dialysis-Chronic O/P Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	35.4 FTEs/38.0 FTEs
Medical Director(s)	Sri Bonam, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Montefiore Nyack Hospital 11.7 miles/25 minutes

The two members of Freedom Center of Rockland County, LLC are New York Dialysis Service, Inc and Renal Care of Rockland Holdings LLC. New York Dialysis Services, Inc is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc. Fresenius Medical Care Holdings, Inc operates out-patient dialysis facilities at various locations in New York State.

Character and Competence

The proposed membership of Freedom Center of Rockland County, LLC are:

Member Name/Title	Interest
New York Dialysis Services, Inc	**95.00%**
Kenneth R. Finnegan, President	
Lane McCarthy, Vice President	
Anthony Buglisi, Vice President	
Patrick Odom, Regional Vice President	
Thomas Brouillard, Treasurer	
Bryan Mello, Assistant Treasurer	
Domenic Gaeta, Secretary	
RCR Freedom Holdings, LLC	**5.00%**
Rober Curreri, M.D.	
Arthur Kozin, M.D.	
Andrew H. Moriber	
Sara Moriber	
Lalitha Ravichandran, M.D.	
Satish G. Reddy, M.D.	
Kenneth S. Shapiro, M.D.	
Jonathon S. Wolf, M.D.	
Steven Yablon, M.D.	
Total	**100.0%**

A Character and Competence review was conducted on the directors of New York Dialysis Services, Inc. and the members of RCR Freedom Holding, LLC.

Dr. Robert Curreri is a retired Nephrologist who served in both private practice and chronic renal dialysis facilities. He cared for both pre-dialysis patients and patients on dialysis. He has a comprehensive understanding of how dialysis facilities operate**.**

Dr. Arthur Kozin is the owner of Rockland Renal Associates. He is board-certified in Internal Medicine with a sub-specialty in Nephrology and Critical Care Medicine. He received his medical degree from Albert Einstein College of Medicine. He has been a practicing nephrologist for over 25 years. He also serves as the full-time Attending Physician at two hospitals and dialysis units.

Mr. Andrew Moriber has served as the Chief Executive Officer and a member of the Governing Body of multiple dialysis facilities for over 21 years. His duties as the Chief Executive Officer include following the Conditions of Participation of the Medicare program. He also serves as an attorney who specializes in health care matters in Florida for over 30 years. He understands legal issues that impact dialysis facilities including Medicare, HIPPA, and labor laws.

Mrs. Sara Moriber has served as the Vice President and a member of the Board of Directors of a chronic renal dialysis facility for over 21 years. In these roles, she has participated in major discussions of the provider and as a “sounding board” to the officer of the corporation on business and industry issues. She has assisted and counseled the CEO with analysis, review, negotiations of contracts, and labor negotiations. She also serves as an attorney who represents and advises healthcare clients in Florida and Pennsylvania. She understands legal issues that impact dialysis facilities. She attends health law seminars to maintain current licensure.

Dr. Lalitha Ravichandran is a physician board-certified in Internal Medicine and Nephrology. She completed her residency at North General Hospital and her fellowship at Mount Sinai Medical Center in New York. She has served in various positions, Medical Director, Department Chief, and on boards and committees in hospitals and dialysis facilities.

Dr. Satish Reddy is a physician board-certified in Internal Medicine with a sub-specialty in Nephrology. He completed his fellowship in nephrology at Montefiore Medical Center in New York. He has served in various positions, on boards and committees, in hospital and dialysis facilities.

Dr. Kenneth Shapiro is a Nephrologist. He served as the Medical Director of Renal Care of Rockland for over 21 years. He received his medical degree from Rush Medical College. He is board-certified in Internal Medicine with a sub-specialty in Nephrology.

Dr. Steven Yablon is a physician board-certified in Internal Medicine with a subspecialty in Nephrology. He graduated with his medical degree from Rutgers New Jersey Medical School. He is an Assistant Professor of Medicine at New York Medical College Westchester County Medical Center.

Dr. Jonathon Wolf is a physician board-certified in Critical Care Medicine and Internal Medicine with a subspecialty in Nephrology. He received his medical degree from University of Massachusetts Medical School. He completed his residency in Internal Medicine at St. Vincent Hospital and his residency in Nephrology at University of Pennsylvania Health System.

The proposed Medical Director, **Sri Ranga Bonam M.D.,** is board-certified in Internal Medicine and Nephrology. He completed his residency at Eastern Hospital in Pennsylvania and his fellowship at Jacobi Medical Center in New York, and has been in the private practice of Nephrology for ten years.

The proposed Medical Director, **Michal Jerzy Tracz, M.D.,** graduated with his medical degree from State University of New York Stony Brook. He completed his residency in Internal Medicine and fellowship in Nephrology at Mayo Graduate School of Medicine. He is board-certified in Internal Medicine with a sub-specialty in Nephrology. He is an Attending Physician at Good Samaritan and Nyack Hospital.

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 Shapiro disclosed being named in a malpractice case filed on January 23, 2013 which alleged negligence in supervising, treating, caring and advising the patient. In failing to provide adequate care and appropriate preventative care the patient was caused severe wounds. These wounds required inpatient care, multiple surgeries, and on-going care. The patient alleges that he incurred medical expenses, physical pain, and suffered detriment to his mental health. The case was settled on March 23, 2016.

Dr. Yablon disclosed being named in a malpractice case filed on January 23, 2013 which alleged negligence in supervising, treating, caring and advising the patient. In failing to provide adequate care and appropriate preventative care the patient was caused severe wounds. These wounds required inpatient care, multiple surgeries, and on-going care. The patient alleges that he incurred medical expenses, physical pain, and suffered detriment to his mental health. The case was settled on March 23, 2016.

Dr. Wolf disclosed being named in a malpractice case filed in December 2018 which alleged an adverse event relating to a kidney stone. The case is pending.

Compliance with Applicable Codes, Rules and Regulations

Staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

The Department issued a Stipulation and Order dated October 5, 2018 and fined FMS Clinton Crossing $2,000 based on deficiencies found during an inspection completed on April 16, 2018. Deficient practice was found in the area of Infection Control.

On January 3, 2017, the Company received a subpoena from the United States Attorney for the District of Massachusetts under the False Claims Act inquiring into the Company's interactions and relationships with the AKF, including the Company's charitable contributions to the Fund and the Fund's financial assistance to patients for insurance premiums. FMCH is cooperating in the investigation, which the Company understands to be part of a broader investigation into charitable contributions in the medical industry.

The Department issued a Stipulation and Order dated April 19, 2017 and fined FMS Soundshore Dialysis Center $8,000 based on deficiencies found during an allegation completed on March 18, 2016. Deficient practices were found in the areas of Infection Control and Responsibilities of the Medical Director. Specifically, the facility failed to have a system in place for the medical and nursing staff to clearly document the HBV status of a patient prior to admission which resulted in a HBV positive patient not being placed on isolation.

In May 2017, the United States Attorney for the Middle District of Tennessee (Nashville) issued identical subpoenas to Fresenius Medical Care Holdings and two subsidiaries under the False Claims Act concerning the Company's retail pharmaceutical business. The investigation is exploring allegations of improper inducements to dialysis patients to fill oral prescriptions through FMCH's pharmacy service and of improper billing for returned pharmacy products. FMCH is cooperating in the investigation.

The Department issued a Stipulation and Order dated December 6, 2016 and fined FMS Living Center $10,000 based on deficiencies found during an inspection completed on March 17, 2016. Deficient practice was found in the area of Water and Dialysate Quality. Specifically, the facility failed to ensure the staff were appropriately trained on the water system and that the staff was able to demonstrate competency related to water testing.

On December 14, 2016, the Center for Medicare & Medicaid Services ("CMS"), which administers the federal Medicare program, published an Interim Final Rule ("IFR") titled "Medicare Program; Conditions for Coverage for End-Stage Renal Disease Facilities-Third Party Payment." The IFR would have amended the Conditions for Coverage for dialysis providers, like FMCH and would have effectively enabled insurers to reject premium payments made by or on behalf of patients who received grants for individual market coverage from the American Kidney Fund ("AKF" or "the Fund"). The IFR could thus have resulted in those patients losing individual insurance market coverage. The loss of coverage for these patients would have had a material and adverse impact on the operating results of FMCH.
On January 25, 2017, a federal district court in Texas responsible for litigation initiated by a patient advocacy group and dialysis providers including FMCH preliminarily enjoined CMS from implementing the IFR. Dialysis Patient Citizens v. Burwell, 2017 Civ. 0016 (E.D. Texas, Sherman Div.). The preliminary injunction was based on CMS' failure to follow appropriate notice and comment procedures in adopting IFRR. The preliminary injunction remains in place in the absence of a contrary ruling by the district or appellate courts. On June 22, 2017, CMS requested a stay of proceedings in the litigation pending further rulemaking concerning the IFR. CMS stated, in support of its request that it expects to publish a Notice of Proposed Rulemaking in the Federal register and otherwise pursue a notice and comment process in the process in the fall of 2017. Plaintiffs in the litigation, including FMCH, consented tot eh stay, which was granted by the court.

On November 18, 2016, Fresenius Medical Care Holdings received a subpoena under the False Claims Act from the United States Attorney for the Eastern District of New York seeking documents and information relating to the operations of Shiel Medical Laboratory, Inc., which FMCH acquired in October 2013. In the course of cooperating with the investigation and preparing to respond to the subpoena, FMCH identifies falsifications and misrepresentations in documents submitted by a Shiel salesperson that relate to the integrity of certain invoices submitted by Shiel for laboratory testing for patients in long term care facilities. On February 21, 2017, FMCH terminated the employee and notified the United States Attorney of the termination and the circumstances. The terminated employee's conduct may subject the

Company to liability for overpayments and penalties under applicable laws. FMCH continues to cooperate in the government's ongoing investigation.

On June 30, 2016, FMCH received a subpoena from the United States Attorney for the Northern District of Texas (Dallas) seeking information under the False Claims Act about the use and management of pharmaceuticals including Velphoro® as well as FMCH's interactions with DaVita Healthcare Partners, Inc. The Company understands that the subpoena relates to an investigation previously disclosed by DaVita and that the investigation encompasses DaVita, Amgen, and Sanofi. FMCH is cooperating in the investigation.

On October 16, 2015, a dialysis facility located in Lindenhurst, New York, operated by Vestal Healthcare, LLC was terminated as a supplier of End Stage Renal Disease services under Medicare by the Centers for Medicare & Medicaid Services. New York Dialysis Services, Inc., a subsidiary of FMCH, provided certain administrative and consulting under contract with Vestal.

On October 6, 2015, the Office of Inspector General of the United States Department of Health and Human Services ("OIG") issued a subpoena under the False Claims Act to the Company seeking information about utilization and invoicing by Fresenius Vascular Care, now known as Azura Vascular Care, facilities as a whole for a period beginning after the Company's acquisition of American Access Care LLC in October 2011. On August 24, 2017, an additional and more detailed subpoena on the same topics was issued by the United States Attorney for the Eastern District of New York (Brooklyn), which has managed the Azura investigation from its outset. The Company is cooperating in the government's inquiry. Allegations against AAC arising in districts in Connecticut, Florida and Rhode Island relating to utilization and invoicing were settled in 2015.

On August 31 and November 25, 2015 respectively, Fresenius Medical Care Holdings received subpoenas under the False Claims Act from the United States Attorney for the District of Colorado and the Eastern District of New York inquiring into FMCH's participation in and management of dialysis facility joint ventures in which physicians are partners. FMCH is cooperating in these investigations.

In July 2015, the Attorney General for Hawaii issued a civil complaint under the Hawaii False Claims Act alleging a conspiracy pursuant to which certain Liberty Dialysis subsidiaries of Fresenius Medical Care Holdings overbilled Hawaii Medicaid for Liberty Epogen administrations to Medicaid patients during a period from 2006 to 2010, prior to the FMCH acquisition of Liberty. Hawaii v. Liberty Dialysis-Hawaii LLC et al. Case No. 15-1-1357-07 (Hawaii 1st Circuit). The State alleges that Liberty acted unlawfully by relying on incorrect and unauthorized billing guidance provided to Liberty by Xerox State Healthcare LLC, which acted as Hawaii's contracted administrator for its Medicaid program reimbursement operations during the relevant period. The amount of the overpayment claimed by the State is approximately $8,000. The State seeks civil remedies, interest, fines, and penalties against Liberties and FMCH under the Hawaii False Claims Act. FMCH filed third-party claims for contribution and indemnifications against Xerox. The State's False Claims Act complaint was filed after Liberty initiated an administrative action challenging the State's recoupment of alleged overpayments from sums currently owed to Liberty. The civil litigation and administrative action are proceeding in parallel.

In August 2014, Fresenius Medical Care Holdings received a subpoena from the United States Attorney for the District of Maryland inquiring into FMCH's contractual arrangements with hospitals and physicians, including contracts relating to the management of in-patient acute dialysis services. FMCH is cooperating with the investigation.

On April 5, 2013, the U.S. Judicial Panel on Multidistrict Litigation ordered that the numerous lawsuits alleging wrongful death and personal injury claims against Fresenius Medical Care Holding and certain of its affiliates relating to Fresenius Medical Care Holding's acid concentrate products, NaturaLyte and GranuFlo, be transferred and consolidated for pretrial management purposes into an consolidated multidistrict litigation in the United States District Court for the District of Massachusetts. The Massachusetts federal and state courts and the St. Louis City (Missouri) court were responsible, together, for more than 95% of all cases. The lawsuits alleged that inadequate labeling and warning for these products caused harm to patients. On February 17, 2016, the Company reached with a committee of plaintiff's counsel and reported to the court's an agreement in principle for settlement of all potential

cases. The agreement in principle calls for the Company to pay $250,000 into a settlement fund in exchange for release of substantially all the plaintiff's claims, subject to the Company's right to void the settlement under certain conditions. As subsequently agreed and refined by the Company and plaintiff committee, and ordered by the courts, plaintiffs may enforce the settlement and compel payment by the

Company if the total cases electing to participate in the settlement and dismissed by the courts with prejudiced, voluntarily or involuntarily, comes to comprise 97% of all cases as defined under the agreement. The three primary courts entered "Lone Pine" orders requiring plaintiffs, on pain of dismissal, who have not elected to participate in the settlement to submit specific justification satisfactory to the courts for their complaints, including attorney verification of certain material factual representations and expert medical opinions relating to causation. The Company may elect to void the settlement if the 97% threshold is not achieved or if plaintiffs' nonparticipation falls into suspect patterns. The deadlines for plaintiffs to elect participation in the settlement or comply with Lone Pine orders have passed. Based on participation, elections already received and Lone Pine dismissal orders already entered, the plaintiff committee and FMCH expect and have advised the courts that they expect, the settlement to be consummated. However, in the Middlesex County coordinated proceeding, many counsel for many plaintiffs have moved to withdraw from representing their clients and the court has granted extensions of time to allow the plaintiffs to obtain new counsel or proceed pro se. In addition, difficulties and delays have occurred in the plaintiff committee's assembling and verifying individual participation elections. The plaintiff committee and FMCH have therefore agreed, with court approval, that consummation will occur promptly upon sufficient verification of fulfillment of the participation threshold, providing only that consummation must occur by February 28, 2018. Four institutional plaintiffs have filed complaints against FMCH or its affiliates under state deceptive practices statutes resting on certain background allegations common to the GranuFlo/NaturaLyte personal injury litigation but seeking as remedy the repayment of sums paid to FMCH attributable the GranuFlo/NatruLyte products. These cases implicate different legal standards, theories of liability and forms of potential recovery from those in the personal injury litigation and their claims will not be extinguishable by the personal injury settlement described above. The four plaintiffs are the Attorneys General for the States of Kentucky, Louisiana, and Mississippi, and the commercial insurance company Blue Cross Blue Shield of Louisiana in its private capacity. State of Mississippi ex rel. Hood, v. Fresenius Medical Care Holdings, Inc., No. 14-cv-152 (Chancery Court, Desoto County); State of Louisiana ex re. Caldwell and Louisiana Health Service & Indemnity Company v. Fresenius Medical Care Airline, 2016 Civ. 11035 (U.S.D.C. D. Mass.); Commonwealth of Kentucky ex rel. Beshear v. Fresenius Medical Care Holdings, Inc. et al., No. 16-CI-00946 (Circuit Court, Franklin County).

On February 15, 2011, a whistleblower (relator) action under the False Claims Act against FMCH was unsealed by order of the United States District Court for the District of Massachusetts and served by the relator. United States ex rel. Chris Drennen v. Fresenius Medical Care Holdings, Inc., 2009 Civ. 10179 (D. Mass.). The realtor's complaint, which was first filed under seal in February 2009, alleged that the Company sought and received reimbursement for government payors for serum ferritin and multiple forms of hepatitis B laboratory tests that were medically unnecessary or not properly ordered by a physician. Discovery on the realtor's complaint closed in May 2015. Although the United States initially declined to intervene in the case, they subsequently changed position. On April 3, 2017 the court allowed the government to intervene with respect only to certain hepatitis b surface antigen tests performed prior to 2011, when Medicare reimbursement rules for such test changed. The court rejected the government's request to take discovery against the government as if the government had intervened at the outset.

In 2011, FMCH received a subpoena from the United States Attorney for the Eastern District of New York (Brooklyn) requesting information under the False Claims Act concerning an assay manufactured by Bayer Diagnostics. Bayer Diagnostics was later acquired by Siemens. The assay is used to test for the serum content of parathyroid hormone (PTH). The assay has been widely used by FMCH and others in the dialysis industry for assessment of bone mineral metabolism disorder, a common consequence of kidney failure. FMCH responded fully and cooperatively to the subpoena but concluded that it was not the focus or target of the US Attorney's investigation. On March 16, 2017, the US Attorney elected not to intervene on a sealed relator (whistleblower) complaint first filed in January 2011 that underlay the investigation. After the US Attorney declined intervention, the United States District Court for the Eastern District unsealed the complaint and ordered the relator to serve and otherwise proceed on his own.

FMCH was served on June 15, 2017. The plaintiff-relator is a salesperson employed by Scanitbodies, a company that manufactures a competing PTH assay. Relator alleges, in essence that Siemens improperly colluded with Fresenius, DaVIta, and another dialysis provider to bar the Scantibodies product from the market in favor of the allegedly inferior Siemens product. On August 14, 2017, FMCH was dismissed with prejudice from the litigation on relator's motion. The litigation continued against other defendants Patriarca v. Bayer Diagnostics n/k/a Siemens et alia, 2011 Civ. 00181 (E.D.N.Y.).

The Company has received communications alleging conduct in countries outside the United States that may violate the U.S Foreign Corrupt Practices Act and other anti-bribery laws. The Company's Supervisory Board, through its Audit and Corporate Governance Committee, has been conducting investigations with the assistance of independent counsel. The Company voluntarily advised the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ). The Company's investigations and dialogue with the SEC and DOJ are ongoing. The Company is cooperating with government investigations.

Conclusion

There will be no changes to services as a result of this application. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the two sites, summarized below:

Date:	December 1, 2018
Purpose:	Buyer desires to purchase all rights of Seller to own and operate the Dialysis Center
Seller:	Renal Care of Rockland, Inc. and Shareholders
Buyer:	Freedom Center of Rockland County, LLC
Assets Acquired:	Transferred Assets shall mean all the assets, rights and properties of the Seller used in connection with Business, including without limitation cash and cash equivalents, accounts receivable, and copies of patient lists, patient appointment books and other medical records to the extent permitted by applicable legal requirements, but excluding the originals thereof and the Excluded Assets.
Excluded Assets:	The Transferred Assets shall not include any of the following assets, rights and properties of the Seller Parties, all of which shall be retained by the Seller Parties: Pre-First Closing Assets, original medical records, the rights arising under any contracts that are not assumed contracts, any inter-company balances due to or from any Seller Party or any of their respective affiliates, all proprietary and third party software that is not assignable to the Buyer or that the Buyer chooses not to assume at Closing, all income tax refunds and tax deposits, all minute books or similar company records and the tax returns of the Seller, and any insurance policies.
Assumed Liabilities:	Obligations under the Assumed Contracts and all other obligations and liabilities of the Seller to the extent arising directly from the operation of the Business.
Purchase Price:	$1,600,000
Payment of Purchase Price:	Cash at Closing

The proposed entity will fund the purchase price via equity from operations and from personal resources of the individual members.

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

Administrative Services Agreement

The applicant has submitted an executed limited administrative services agreement (LASA), which is summarized below:

Date:	December 1, 2018
Company:	Fresenius Management Services, Inc.
Operator:	Freedom Center of Rockland County, LLC
Services Provided:	The Company shall pay part of the budgeted expenses of the Business, rent, maintenance and improvements, supplies, utility expenses, normal janitorial services, assist in the selection of equipment and supplies and will maintain all other dialysis equipment; the Company will provide all full-time and part-time personnel necessary to manage and operate the non-physician aspects of the Business, prepare and submit all bills for items and services, arrange for the provision of accounting and financial services to the Administrator for the Business, provide to the Operator copies of its standard policy manuals for use by the Business, negotiate, execute and maintain contracts and arrangements for in the name of the Company and provide project development assistance by the Company and reasonably request in connection with any expansion or modification to the Business office and clinic space.
Term:	20 years
Compensation:	$970,548 annually plus the Company's direct expense applicable to the Business.

The Operator will retain ultimate control and authority over the Center as noted in the following Reserved Powers Clause per Section 1.2 of the LASA:

- Company will retain, direct, independence authority over the appointment and/or dismissal, in its sole discretion, the Business's operating and capital budgets.
- Company must retain independent control over and physical possession of the Business's operating policies and procedures and the operations and maintenance of the Business.
- Company must retain the right and authority to independently adopt, approve and enforce, policies affecting the Business's delivery of health care services and the disposition of assets and authority to incur debts.
- Company must retain the right to approve and Facility debt.
- Company must retain the ultimate responsibility for day-to-day operations of the Business.

Lease Rental Agreements

The applicant has submitted executed lease agreements and assignments:

Main Site (18 stations)

Date:	September 219, 1995 (date of original lease, last modified October 4, 2016)
Date:	December 1, 2018 (date of assignment)
Premises:	8,112 square feet located at 131 Route 383, Valley Cottage, New York
Landlord:	GBR Valley Cottage Limited Liability Company (signatory on assignment)
Lessee:	Renal Care of Rockland, Inc. (Assignor)
Assignee:	Freedom Center of Rockland County, LLC
Term:	20-year lease, with extensions, currently expiring October 31, 2022.
Rental:	Year One through Five: $141,960 ($17.50 per sq. ft.). For every fifth year of the lease, the lease rental payments shall increase by 10%. For the renewal term, the rent for the first five years should be $207,843.64 and increase 10% for every five years.
Provisions:	The lessee shall be responsible for real estate taxes, maintenance and utilities.

Extension Site (31 stations)

Date:	January 20, 2012 (date of lease)
Date:	Freedom Center of Rockland County, LLC
Premises:	10,965 square feet located at 30 Route 59, Suffern, New York
Landlord:	Hemion Holdings, LLC (signatory on assignment)
Lessee:	Renal Care of Rockland, Inc. (Assignor)
Assignee:	Freedom Center of Rockland County, LLC
Term:	Lease expires January 18, 2020 and the lessee shall have the option to renew the lease for two additional terms of five years each.
Rental:	Year One- $2,761,464.89 ($23.00 per sq. ft.)
Provisions:	The lessee shall be responsible for real estate taxes, maintenance and utilities.

The applicant has indicated that the lease agreements will be arm's length lease arrangements.

Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, for the current year (2018) and the first and third year after the change in ownership, summarized below:

	Current 2018		Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total	Per Visit	Total
Medicaid FFS	$335.10	$5,250,028	$335.10	$5,426,203	$335.09	$5,683,484
Medicare FFS	$240.36	5,898,794	$240.36	6,096,740	$240.36	6,479,746
Comm. FFS	$976.16	2,638,573	$976.76	2,727,116	$976.31	2,882,065
Total Revenues		$13,787,395		$14,250,059		$15,045,295
Expenses						
Operating	$244.52	$10,492,752	$244.31	$10,835,530	$243.56	$11,416,206
Capital	11.39	488,649	13.68	606,774	13.97	654,835
Total Expenses	$255.91	$10,981,401	$257.99	$11,442,304	$257.53	$12,071,041
Net Income		$2,805,994		$2,807,755		$2,974,254
Treatments		42,912		44,352		46,872

Expense and utilization assumptions are based upon the current operations at each of the two facilities. The increase in visits are based on market growth expected.
Utilization broken down by payor is as follows:

Payor	Current (2018)	Year One	Year Three
Medicaid FFS	36.51%	36.51%	36.19%
Medicare FFS	57.19%	57.19%	57.51%
Comm FFS	6.30%	6.30%	6.30%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The purchase price of $1,600,000 will be met via equity from the proposed members of Freedom Center of Rockland County, LLC. BFA Attachments A and B indicate sufficient equity for the transaction.

Working capital requirements are estimated at $2,011,840 based on two months of third year expenses. The proposed members of Freedom Center of Rockland County, LLC will provide equity to meet the working capital requirement. BFA Attachments A and B are the personal net worth statements of the individual members and the 2017 and 2018 certified financial statements of New York Dialysis Services, Inc., respectively, which indicate the availability of sufficient funds for the equity contribution. BFA Attachment C is the pro forma balance sheet of Freedom Center of Rockland Center, LLC, which indicates a positive net asset position of $5,688,776 as of the first day of operation.

The submitted budget projects a net income of $2,807,775 and $2,974,254 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for dialysis services. The submitted budget appears reasonable.

As shown on Attachment B, the entity had a positive working capital position and a negative net asset position in 2018. The applicant indicated that the reason for the negative net asset position is the result of historical losses prior to 2013. Also, the entity achieved a net income of $7,785,217 in 2018.

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

Attachments

BFA Attachment A	Personal Net Worth Statement - Proposed Members of Freedom Center of Rockland County, LLC
BFA Attachment B	Financial Summary - 2017 and 2018 certified financial statements of New York Dialysis Services, Inc.
BFA Attachment C	Pro Forma Balance Sheet as of the first day of operation
Programmatic Attachment A	Star Ratings

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191340-E
Marquis Home Care, LLC

Program:	**LHCSA**	***County:***	**Albany**
Purpose:	**Establishment**	***Acknowledged:***	**July 3, 2019**

Executive Summary

Proposal

Marquis Home Care, LLC, a limited liability company, requests approval to acquire Living Resources Home Care Agency, Inc., an existing LHCSA in Albany county, and merge it into the operations of Marquis Home Care, LLC. Currently, Marquis Home Care, LLC operates one LHCSA with two sites, one in Rockland county and one in Bronx county.

Currently, Living Resources Home Care, Inc. provides Nursing, Home Health Aide, and Personal Care services. Upon approval of this project, the following services will be provided:

Nursing	Home Health Aide	Personal Care Aide	Housekeeper
Physical Therapy	Occupational Therapy	Homemaker	

Living Resources Home Care Agency, Inc. serves the following counties from an office located at 300 Washington Avenue Extension, Albany, New York, 12203, which will become a third site of Marquis Home Care.

Albany	Columbia	Fulton	Saratoga
Greene	Montgomery	Rensselaer	Schenectady
Schoharie	Warren	Washington	

Recommendations

Office of Primary Care and Health Systems Management

Approval, contingent upon:

1. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]

Council Action Dates

Establishment and Project Review – September 26, 2019
Public Health and Health Planning Council – October 10, 2019

Review

Character and Competence

The membership of Marquis Home Care, LLC is as follows:

Eric E. Newhouse, Esq., President – 75%
Founder & CEO, MedWiz Solutions, LLC
Founder & President, The Eliot Management Group, LLC
President, Marquis Home Care, LLC
Affiliations

- The Eliot at Erie Station (LHCSA)
- The Eliot at Catskill (LHCSA)
- The Sentinel of Amsterdam (LHCSA) - *(2014 – Present)*
- Marquis Home Care, LLC (LHCSA) - *(2014 – Present)*
- The Eliot at Erie Station (ALP)
- The Eliot at Catskill (ALP)
- The Sentinel of Amsterdam (ALP) -- *(2014 – Present)*

Neil S. Zelman, COO – 25%
Chief of Operations, Adult Care Management LLC
Affiliations

- The Eliot at Erie Station (LHCSA)
- The Eliot at Catskill (LHCSA)
- The Sentinel of Amsterdam (LHCSA) - *(2014 – Present)*
- Marquis Home Care, LLC (LHCSA) - *(2014 – Present)*
- The Eliot at Erie Station (ALP)
- The Eliot at Catskill (ALP)
- The Sentinel of Amsterdam (ALP) -- *(2014 – Present)*

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.

A seven-year review (unless otherwise noted) of the operations of the affiliated facilities was performed as part of this review. The following was reported for the above-mentioned Assisted Living Programs:

- The Eliot at Catskill was fined $5,700.00, pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015 and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- The Eliot at Catskill was fined $2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- The Eliot at Catskill was fined $7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017 and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR 487.11(a).
- The Sentinel at Amsterdam was fined $1,065.00 pursuant to a stipulation and order dated November 28, 2018 for inspection findings on May 18, 2018 and August 15, 2018 for violations of Article 7 of the Social Services Law and 18 NYCRR 487.8(d)(1-2).

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.

Conclusion

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 182282-E
BAYADA Home Health Care, Inc.

Program:	**LHCSA**	***County:***	**Queens**
Purpose:	**Establishment**	***Acknowledged:***	**December 11, 2018**

Executive Summary

Proposal
BAYADA Home Health Care, Inc., a for-profit corporation, requests approval to convert to a not-for-profit corporation and establish a parent and grandparent above the operator corporation for its exising five-site licensed home care services agency.

BAYADA Home Health Care, Inc. will be a subsidiary of a BAYADA Health, LLC, a for-profit limited liability company, which will be a subsidiary of BAYADA, a nonstock/nonmember tax-exempt not-for-profit corporation. See **Programmatic Attachment A**.

The application has been accepted under "Exception C" of the moratorium due to the medical complexity of many of their patients. This transaction is a multi-state (22) transaction that if the timing is affected by the moratorium could cause BAYADA to discontinue its New York State LHCSA operations. Given that many of the patients are ventilator-dependenct, medical fragile children and adults who are not easily served by other existing LHCSAs, the application meets the exception based on a lack of access to a distinct patient demographic.

Recommendation

Office of Primary Care and Health Systems Management
Approval, contingent upon:

1. Submission of a photocopy of the applicant's authority to do business in New York, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's corporate name change, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of the authority to do business in New York for Bayada, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Resolution of the Board of Trustees of Bayada, acceptable to the Department. [CSL]
7. Submission of an executed Certificate of Incorporation for Bayada, acceptable to the Department. [CSL]
8. Submission of a photocopy of the amended bylaws for Bayada, acceptable to the Department. [CSL]
9. Submission of a photocopy of the authority to do business in New York for Bayada Health, LLC, acceptable to the Department. [CSL]

10. Submission of a photocopy of an amended and executed Articles of Organization for Bayada Health, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Operating Agreement for Bayada Health, LLC, acceptable to the Department. [CSL]

Council Action Dates

Establishment and Project Review – September 26, 2019
Public Health and Health Planning Council – October 10, 2019

Review

Character and Competence

The Board of Trustees of **BAYADA Home Health Care, Inc.** is comprised of the following individuals:

Joseph M. Baiada, Chairman BAYADA Home Health Care, Inc. Affiliation: BAYADA Home Health Care (1975-present)	**Paul M. Baiada**, Trustee Managing Partner, Basecamp Ventures Affiliation: BAYADA Home Health Care (2000-present)
Enrico J. Ballezzi, CPA (NJ), Trustee Certified Public Accountant, HBK, LLC, CPAs Affiliations: BAYADA Home Health Care (2017-present) SCHHA, LLC d/b/a MUSC Health at Home by BAYADA (2016-present)	**Gavin R. Kerr**, Trustee Partner - Consultant, Sherbrooke Partners CEO Mentor, Building Champions Affiliation: Inglis Foundation (Disability Services, Pennslyvania, 2008-2017)
Judith M. Persichilli, Trustee Temporary Consultant, NJ Department of Health Affiliation: Catholic Health East-Trinity Health System (2003-2014)	**Dr. Thomas J. Saporito**, Trustee Psychologist (PA), Executive Chairman, RHR International LLP Affiliation: Merakey (2015-present)
Karl T. Weger, JD, Trustee Self Employed Attorney	**David L. Baiada**, Secretary Chief Executive Officer, BAYADA Home Health Care, Inc. Affiliation: Integrated Medication Management (2016-present)
Thomas M. Sibson, CPA (PA), Treasurer Chief Financial Officer, BAYADA Home Health Care, Inc. Affiliations: Inglis Foundation (Disability Services, Pennslyvania, 10/8/2008-8/17/2017) BAYADA Home Health Care, Inc. (11/2005-present) Tri-County Home and Hospice Care, LLC (NJ, 2016-present)	

The sole member of **BAYADA Home Health Care, Inc. is BAYADA Health, LLC. The sole member of BAYADA Health, LLC** is **BAYADA (Delaware).**

The Board of Trustees of **BAYADA (Delaware)** is comprised of the following individuals:

Joseph M. Baiada, Chairman Disclosed Above	**Paul M. Baiada**, Trustee Disclosed Above
Enrico J. Ballezzi, Trustee Disclosed Above	**Gavin R. Kerr**, Trustee Disclosed Above
Judith M. Perschilli, Trustee Disclosed Above	**Dr. Thomas J. Saporito**, Trustee Disclosed Above
Karl T. Weger, Trustee Disclosed Above	**David L. Baiada**, Secretary Disclosed Above
Thomas M. Sibson, Treasurer Disclosed Above	

A search of the Disciplinary Board of the Supreme Court of Pennsylvania revealed that Karl T. Weger individual is currently registered and has no disciplinary actions taken against them. The New Jersey Division of Consumer Affairs indicates no issues with the license of Enrico J. Ballezzi. The Pennsylvania Licensing System Verification indicates the Psychology License of Thomas J. Saporito expired on November 30, 2017. The Pennsylvania Licensing System Verification indicates no issues with the Certified Public Accountant license of Thomas M. Sibson. 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 seven-year review (unless otherwise noted) of the operations of the following facilities/agencies and those listed in **Programmatic Attachment B** and **Programmatic Attachment C** was performed:

- Inglis Foundation (Disability Services, Pennsylvania, (2012-2017)
- Catholic Health East-Trinity Health System (2012-2014)
- Integrated Medication Management (4/2016-present)
- Tri-County Home and Hospice Care, LLC (NJ, 5/2016-present)

The applicant has attested to the litigated claims from 2012-2018 as outlined in **Programmatic Attachment D**.

All Out-of-State 2D Compliance Forms that were recieved for BAYADA Home Health Care, Inc. and Merakey show no enforcement actions against any of the facilities in the past seven years.

An affidavit of Dr. Thomas J. Saporito was submitted to attest that there have been no enforcement actions against Merakey affiliations in Louisiana and Pennsylvania in the past seven years.

An affidavit of Joseph M. Baiada was submitted to attest to the enforcement actions in the past seven years against the BAYADA Home Health Care, Inc. affiliations in the states that did not submit Out-of-State Compliance Forms. These adverse actions are outlined in **Programmatic Attachment E.**

The applicant has attested to the fact that **Inglis House (PA)** had its' license suspended as a result of a resident injury from a fall and medication administration documentation. The agency's license was returned to Regular Status on December 4, 2017, when these tags were cleared. The state of Pennsylvania confirmed this attestation, along with the assessment of the following Civil Monetary Penalties (CMPs):

- CMP of $9,500.00 on November 11, 2016 as a result of Tags F314 and F323.
- CMP of $10,000.00 on January 23, 2017 as a result of Tag F323. The agency's license was put into Provisional I status as a result.
- CMP of $29,250.00 on June 9, 2017 as a result of Tags F309 and F323. The agency's license was put into Provisional II status as a result.
- CMP of $12,750.00 on February 22, 2017 as a result of Tags F309 and F425.

As Judith M. Persichilli is no longer employed by Catholic Health East-Trinity Health System, a complete listing of all agencies within this healthcare network could not be obtained. Catholic Health East-Trinity Health did provide the following enforcement information for the time of Ms. Persichilli's employment.

Trinity Health entities **within New York State:**

- On September 13, 2012, the New York State Department of Health (NYSDOH) issued a Stipulation and Order (S&O) and $22,000 fine against **St. Joseph's Hospital Health Center** based on the findings of two complaint investigations. One involved a patient with a known risk for falls who was left unattended in the bathroom and fell. The second involved inadequate neurological assessment of a drug overdose patient.
- In June 2013, an enforcement action and civil penalty of $5,500 was issued against **McAuley Seton Home Care Corporation** based on a survey completed on September 15, 2011. Deficient practice was cited in the following areas: Governing Authority; Patient Referral, Admission, and Discharge; Patient Assessment and Plan of Care; and Clinical Records.

- In March 2012, an enforcement action and $1,000 penalty was imposed against **Hawthorne Ridge, Inc**. based on an inspection completed on September 14, 2010 where violations of Systemic Endangerment were identified and cited.

Trinity Health entities **outside of New York State**:

- The State of California reported a civil penalty assessed in January 2012 of $50,000 against **Saint Agnes Medical Center**, a hospital located in Fresno, for (nonrepetitive) survey violations.
- The State of Florida reported the following enforcement actions:
  - **Winter Haven Hospital** was assessed a $1,000 fine on five (5) occasions (January 2011 (twice), March 2011, August 2012 and October 2013) for violations related to Nursing Assessment, Emergency Department Services and Inappropriate Restraints.
  - **Mease Dunedin Hospital** was assessed a penalty of $6000 in June 2012 for violations related to Patient Assessment and Emergency Department Services. In August 2013, the hospital was assessed a penalty of $320 for nonpayment of Life Safety Code survey fee.
  - **Morton Plant Hospital** was assessed a penalty of $800 in March 2011 and $1000 on each of four subsequent occasions (March and December 2011, July 2012 and April 2013) for violations related to Nursing Assessment, Goals, Evaluation, Intervention, and Documentation and Nursing Department Policies and Procedures.
  - **Morton Plant North Bay Hospital** was assessed a penalty of $2000 in October 2011 for violations related to Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.
  - **St. Anthony's Hospital**:
    - In July 2011 was assessed a $5,000 penalty for violations in the areas of MRI Alterations, Renovations, and Installation;
    - In January 2014, the hospital was fined $600 for nonpayment of Life Safety Code survey fee.
    - In March 2015, a fine of $1,000 was assessed for violations related to Nursing Management Functions.
    - In April 2016, a $5,500 penalty was assessed for Failure to Notify Florida State Agency for Health Care Administration of Ownership Change.
    - In September 2017, the hospital paid the State of Florida $6,024.67 for administrative fees and reimbursement of Medicaid overpayments.
  - **St. Joseph's Hospital** was assessed a penalty of $1000 in October 2012 for violations related to Discharge Planning.
  - **Bartow Regional Medical Center** was assessed a penalty of $480 in May 2014 for nonpayment of a Life Safety Code survey fee.

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.

Program Description

The applicant proposes to continue to serve the residents from their five licensed sites within the State:

License #	Address	Approved Services	Approved Counties
0853L001	825 East Gate Blvd Suite 201 Garden City	Nursing, Home Health Aide, Personal Care, Physical Therapy, Occupational Therapy, Speech-Language Pathology, Homemaker, Housekeeper	Nassau, Suffolk, Queens
0853L002	1 Central Ave Suite 202 Tarrytown	Nursing, Home Health Aide, Personal Care, Physical Therapy	Orange, Putnam, Rockland, Westchester, Bronx
0853L003	115 West 30th Street Suite 700 New York	Nursing, Home Health Aide, Physical Therapy, Occupational Therapy, Medical Social Services	Bronx, Kings, New York, Queens, Richmond, Westchester
0853L004	700 Veterans Hwy Suite 200 Hauppauge	Nursing, Home Health Aide, Personal Care, Physical Therapy, Occupational Therapy, Speech-Language Pathology, Homemaker, Housekeeper	Nassau, Suffolk, Queens
0853L006	36-36 33rd St. Suite 310 Long Island City	Nursing, Home Health Aide, Personal Care, Physical Therapy, Occupational Therapy	Kings, New York, Queens, Richmond, Nassau

Conclusion

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

Attachments

Programmatic Attachment A	Pre- and Post-Approval Organizational Chart
Programmatic Attachment B	BHHC Locations and Affiliated Licensures
Programmatic Attachment C	Merakey Affiliated Licensures
Programmatic Attachment D	Litigated Claims
Programmatic Attachment E	Out-of-State Enforcement Actions

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191104-E
Intrathecal Care Solutions, LLC
d/b/a Advanced Nursing Solutions

Program:	**LHCSA**	***County:***	**Sullivan**
Purpose:	**Establishment**	***Acknowledged:***	**April 10, 2019**

Executive Summary

Proposal

Intrathecal Care Solutions, LLC d/b/a Advanced Nursing Solutions, a limited liability company formed in Missouri and authorized to do business in New York State, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application has been accepted under "Exception C" of the moratorium as this agency proposes to address a lack of access to a distinct patient demographic in a specified service area. The applicant will serve patients with implanted intrathecal pain pumps who suffer from severe, chronic pain and spasticity. These implanted pumps require regular refilling and reprogramming by specially trained nurses approximately every one to three months. Currently, Intrathecal Care Solutions, LLC provides these services in other states and has the expertise to fill this need in the proposed service area

The applicant will serve the residents of the following counties from an office located at 230 Rock Hill Drive, Rock Hill, New York 12775:

Sullivan	Putnam	Westchester
Orange	Dutchess	

The applicant will provide Nursing services only.

Recommendation

Office of Primary Care and Health Systems Management

Approval, contingent upon:

1. Submission of a copy of the operating agreement of the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the certificate of assumed name of the applicant, acceptable to the Department. [CSL]

Council Action Dates

Establishment and Project Review – September 26, 2019
Public Health and Health Planning Council – October 10, 2019

Character and Competence

Intrathecal Care Solutions, LLC is wholly owned and managed by Advanced Vascular Solutions, LLC. Both Intrathecal Care Solutions, LLC and Advanced Vascular Solutions, LLC have no Board of Directors. Advanced Vascular Solutions, LLC is wholly owned and managed by Advanced Infusion Solutions Acquisition, LLC, which also has no Board of Directors. Advanced Infusion Solutions Acquisition, LLC is wholly owned and managed by TVG-EP-AIS Acquisition Corp., which is wholly owned by TVG-EP-AIS Holdings, LLC. TVG-EP-AIS Acquisition Corp. and TVG-EP-AIS Holdings, LLC have identical membership:

Simon D. Castellanos, CEO
CEO, Advanced Infusion Solutions (MS)

Christopher R. Glaws, Vice President
Partner, Excellere Partners
Affiliations
- AxelaCare Health Solutions (Pharmacy, KS) (December 2010 – April 2014)
- Advanced Infusion Solutions (Pharmacy, MS) (April 2013 – Present)

Michael Geldart, Esq. (FL), Vice President
Partner, Excellere Partners
Affiliations
- Advanced Infusions Solutions (Pharmacy, MS) (February 2016 – Present)

Jonathan E. Maschmeyer, Vice President, Secretary
Partner, The Vistria Group
Affiliations
- CPF Living Communities (Senior Living, IL) (2014 – 2016)
- Recovery Ways (Behavioral Health, UT) (2014 – 2016)

Robert C. Stovall, CFO
CFO, AIS Healthcare (TX)

William G. Shields, R.Ph
Retired

Robert Parkinson
Retired

John C. Landgraf
Retired

Jacopo Leonardi
CEO, Activcore Inc.

The following individuals and entities have ownership interest in TVG-EP-AIS Holdings, LLC:
- Excellere Capital Fund III, LP – 25.4%
- Vistria Fund II, LP – 41.2%
- Charles R. Bell, Jr. – 10.1%

Excellere Capital Fund III, LP is managed by Excellere Partners III, LLC, which is managed by David Kessenich (disclosed below).

Vistria Fund II, LP is managed by Vistria GP II, LP, which is managed by The Vistria Group, LLC. The Vistria Group, LLC is managed by its members, Harreld Kirkpatrick III and Martin Nesbitt (both disclosed below).

The ultimate control persons of TVG-EP-AIS Holdings, LLC are as follows:
David L. Kessenich
Managing Partner, Excellere Partners
Affiliations
- AxelaCare Health Solutions (Pharmacy, KS) (December 2010 to April 2013)

Charles R. Bell, Jr., PharmD (AZ, AR, FL, KY, LA, MA, MD, MS, OR, TN, TX, VA, WV)
President & Founder, Bond Pharmacy, Inc. d/b/a Advanced Infusion Solutions
Affiliations
- Bond Pharmacy, Inc. d/b/a Advanced Infusion Solutions (Pharmacy, MS)

Martin H. Nesbitt
Co-CEO, The Vistria Group
Affiliations
- Rush University Medical Center (Hospital, IL)

Harreld N. Kirkpatrick III
Co-CEO, The Vistria Group

William G. Shields disclosed that a company in which he served as Vice President (1999) and President (2003), PharMerica, entered into a Corporate Integrity Agreement (CIA) with the U.S. Department of Health and Human Service's Office of the Inspector General. PharMerica, Inc. paid $5.9 million and entered into a five-year CIA related to administrative action against PharMerica for the 1997 purchase of Hollins Manor I, LLC, a Virginia-based pharmacy. The purchase of Hollins Manor I, LLC occurred before Mr. Shields began his employment with PharMerica.

Simon Castellanos, Robert Stovall and William Shields disclosed a civil penalty in the amount of $250.00 imposed by the Maine Board of Pharmacy. The state of Maine requires notification of a change in pharmacist in charge of a pharmacy to be filed within seven calendar days. Bond Pharmacy d/b/a Advanced Infusion Solutions filed the notification within seven business days rather than seven calendar days. The action was resolved the same day it was imposed, April 24, 2018.

Robert Parkinson disclosed that during his time as Chairman and CEO of Baxter International, and Chairman of the Board of Trustees of Loyola University, he was named as a defendant in a wide array of legal matters which occurred as part of the normal course of business.
Harreld N. Kirkpatrick III disclosed that during his time as Co-CEO of The Vistria Group he has been named as a defendant in legal matters that arise as part of the normal course of business.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals associated with this application.

The Board of Pharmacy of Arizona, Arkansas, Florida, Kentucky, Louisiana, Massachusetts, Maryland, Mississippi, Oregon, Tennessee, Texas, Virginia and West Virginia indicates no issues with the licensure of the pharmacist associated with this application.

A seven-year review of the operations of Intrathecal Care Solutions, LLC d/b/a Advanced Nursing Solutions in Arizona, Kansas, Florida and Texas was conducted as part of this review. The applicant submitted affidavits attesting to the operations of all out-of-state pharmacies operated by Advanced Infusion Solutions.

Conclusion

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

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: August 9, 2019

Subject: The Hemophilia Center of Western New York, Inc.: Corporate Name Change

---

The Hemophilia Center of Western New York, Inc. (the "Corporation") is a licensed Article 28 entity. The Corporation seeks to change its corporate name to Western New York BloodCare, Inc. in an effort to reflect the various services the Corporation provides and the population of the people it serves. Please see the attached letter from Laurel Reger, authorized representative for the Corporation for further details. The Corporation seeks PHHPC approval of the proposed name change.

PHHPC approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(2) and Not-for-Profit Corporation Law § 804(a).

There is no objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of The Hemophilia Center of Western New York, Inc. is in legally acceptable form.

Attachments

WESTERN NEW YORK
BloodCare
SPECIALISTS • LAB • PHARMACY

To: Department of Health

From: Laurel A. Reger

Date: June 17, 2019

Topic: Corporate Name Change

On November 29, 2018, New York State approved the formal name change of our organization from "The Hemophilia Center of Western New York" to "Western New York BloodCare, Inc.".

This change was initiated with our Board of Directors after filing the certificate of amendment through the Division of Corporations, State Records and Uniform Commercial Code. The name change better reflects the population of people that we serve.

Our Tax Identification Number remains the same.

Our NPI Number remains the same.

Our Medicaid and Medicare Numbers all remain the same.

Thank you

Hemophilia Center
OF WESTERN NEW YORK

936 Delaware Avenue Suite 300 Buffalo, NY 14209 TEL: 716.896.2470 FAX: 716.218.4000 www.wnybloodcare.org

Diagnostic and Treatment Center

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WESTERN NEW YORK BLOODCARE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ERIE
PROCESS NAME

FILED:11/28/2018 DURATION:********* CASH#:181128000496 FILM #:181128000479

FILER:

GERALD T WALSH
ZDARSKY SAWICKI & AGOSTINELLI LLP
1660 MAIN PLACE TOWER 350 MAIN ST
BUFFALO, NY 14202

ADDRESS FOR PROCESS:

GERALD T. WALSH, ESQ., ZDARSKY SAWICKI & AGOSTINELLI LLP
1600 MAIN PLACE TOWER 350 MAIN STREET
BUFFALO, NY 14202

REGISTERED AGENT:

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37 SERVICE CODE: 37

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	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 November 29, 2018.

Whitney Clark
Deputy Secretary of State

Rev. 06/13

181128000479

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 Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF

HEMOPHILIA CENTER OF WESTERN NEW YORK, INC.

(Name of Domestic Corporation)
(Name change only)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

HEMOPHILIA CENTER OF WESTERN NEW YORK, INC.

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

Not Applicable

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

January 7, 1970

THIRD: The law the corporation was formed under is:

New York Not-for-Profit Corporation Law

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation relating to the name of the corporation is hereby amended to read in its entirety as follows:

FIRST: The name of the corporation is:

Western New York BloodCare, Inc.

181128000479

SIXTH: The Secretary of State is 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:

Gerald T. Walsh, Esq.
Zdarsky, Sawicki & Agostinelli LLP
1600 Main Place Tower
350 Main Street
Buffalo, New York 14202

SEVENTH: The certificate of amendment was authorized by: *(Check the appropriate box)*

☐ a vote of a majority of the members at a meeting.

☐ the unanimous written consent of the members entitled to vote thereon.

☒ a vote of a majority of the entire board of directors. The corporation has no members.

X _____ *(Signature)*

President
(Capacity of Signer)

Thomas Long
(Print or Type Signer's Name)

479

DRAWDOWN

UNI-37

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

HEMOPHILIA CENTER OF WESTERN NEW YORK, INC.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Gerald T. Walsh

Address Zdarsky, Sawicki & Agostinelli LLP 1660 Main Place Tower, 350 Main Street

City, State and Zip Code Buffalo, New York 14202

Ref# WestE03815

NOTES:

1. This form was prepared by the New York State Department of State to amend paragraph FIRST of a certificate of incorporation to change the name of a domestic corporation. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
2. 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.
3. **The certificate must be submitted with a $30 filing fee.**
4. The Department of State recommends that all documents be prepared under the guidance of an attorney.
5. **Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.**

For Office Use Only

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV 28 2018

TAX $ 0

BY:

RECEIVED
2018 NOV 28 AM 9:09

469

File

STATE OF NEW YORK
DEPARTMENT OF HEALTH
OFFICE OF MEDICARE PROGRAM COORDINATION

Facility Transaction Notice

[X] New Facility

[ ] Change in Existing Facility

Type: [ ] Hospital [ ] Nursing Home [ ] Health Related Facility

[X] Independent Out-of-Hospital Health Facility

Ownership: [X] Voluntary Non-profit [ ] Public [ ] Proprietary

Name of Facility Hemophilia Center of Western New York, Inc. County Erie

Address 462 Grider Street, Area B-1, Buffalo Zip Code 14215

Certificate # 1401203 Certified Bed Capacity _____ Effective Date 12/16/69

CHANGE	FROM	TO
[ ] Bed Capacity		
[ ] Ownership		
[ ] Location		
[ ] Name		
[ ] Other (Specify)		

Comments

Cc: Hospitals & Ind. O-H Health Facilities

Health Economics
Hospital Certification
Miss Bobilin
Social Services*
Dr. Cicero (Stat. Clerk)
Hosp. Rev. & Planning
File
Kardex

Nursing Homes HHF's

Health Economics
Long Term Care
Miss Bobilin
Social Services*
Dr. Cicero (Stat. Clerk)
Hosp. Rev. & Planning
File
Kardex

DATE January 2, 1970

George E. Smith, Jr. by S.L.
Medicare Program Coordinator

*Att: Mr. Zetterstrom

MPC 1 (Rev. 6/69)

STATE OF NEW YORK
DEPARTMENT OF HEALTH

MEMORANDUM December 18, 1969

G.C
V.L.
Check number for O.K.
S.L
Tghe Cert
MPC I
new facility.
R.

To: Mr. George E. Smith, Jr. - Medicare Program Coordinator

From: Dr. Campbell - Buffalo Regional Office LEC

Subject: Request for Special Handling-Application for Operating Certificate-Hemophilia Center of Western New York, Inc.

RECEIVED
DEC 22 1969
MEDICARE PROGRAM COORDINATOR

Enclosed please find the application for an operating certificate for the Hemophilia Center of Western New York, Inc., which is an independent out-of-hospital health facility (Subchapter F) even though it is located at the E.J. Meyer Memorial Hospital in Buffalo, New York.

I have constructed a certificate number for this facility, but I would appreciate it if you would check and confirm it.

Please make the effective date of the operating certificate December 16, 1969. I have indicated that the expiration date should be January 31, 1971, but I also ask you to verify this as well.

Please process this application as soon as possible and send the operating certificate to me for presentation to the facility.

RECEIVED
DEC 22 1969

LEC:cah
Enc.
cc: Mr. Kuechle - Erie County Health Department

R

NEW YORK STATE DEPARTMENT OF HEALTH
RELATED MEDICAL FACILITY APPLICATION FOR OPERATING CERTIFICATE

This section is completed by the Regional Health or Contractual Health Office. [X] Orig. [ ] Reissue

Certificate No. (1-7) 14[illegible]03 Previous No. _____

Effective (8) August 1, 19____ (1) [ ] Expires (9)

February 1, 19____ (2) July 31, 19____ (1)

Other 12/16/69 (3) January 31, 1971 (2)

Type of Facility (10)

	General	Special
Medical	(1) [ ]	(2) [X]
Dental	(3) [ ]	

Directions to Applicant: Complete only items 1 - 14 below. Type or print replies in spaces provided. Check (X) boxes where applicable. Return completed form (in pre-addressed envelope provided) in 5 business days.

1. Name of Authorized Official* Robert E. Long 2. Title (11) President, Board of Directors [ ] Administrator [X] Other

3. Name of Facility (8-79) Hemophilia Center of Western New York, Inc. 4. County of Location Erie

5. Address 462 Grider Street, Area B-1, Buffalo, New York 14215 (E. J. Meyer Memorial Hospital)
(No. and Street 8-43) (City and State 44-74) (Zip Code 75-79)

6. Name of Owner: Land County of Erie Building County of Erie

7. Name of Operator(s) Hemophilia Center of Western New York, Inc.

	Ind.	Corp.	Partner	Assoc.	Church	Gov't.	Other (specify)
8. Type of Ownership (12)	1 [ ]	2 [X]	3 [ ]	4 [ ]	5 [ ]	6 [ ]	non-profit
Classification of Operation	[ ]	[X]	[ ]	[ ]	[ ]	[ ]	non-profit

9. Facility affiliations, formal recognitions, or approvals (please list)**

E. J. Meyer Memorial Hospital

For Coding Only

	15	
13	16	
14	17	

10. Check Services and Facilities Available on Premises. (Underline any services contracted for.)

35 [ ] Cancer Detection	45 [ ] Otological	55 [X] Vocational Rehabilitation
36 [X] Dental	46 [X] Pediatric	56 [ ] Home Health Program
37 [ ] Electro-cardiography	47 [ ] Podiatry	57 [X] Medical Social Services
38 [ ] Electro-encephalography	48 [ ] Pre-Natal	58 [X] Occupational Therapy
39 [ ] Gynecological	49 [X] Psychiatric	59 [X] Physical Therapy
40 [ ] Immunological	50 [X] Psychological	60 [ ] Speech Therapy
41 [X] Neurological	51 [ ] TB - Respiratory Disease	61 [ ] Audio Therapy
42 [ ] Ophthalmological	52 [ ] Venereal Disease	62 [X] Other (specify) Transfusion
43 [X] Orthopedic	53 [X] Health Education	x Casting
44 [ ] Otolaryngological	54 [X] Medical Rehabilitation	x Minor Emergency Treatment (no surgery)
		x Coagulation Laboratory

Do not code any. pg R

11. Are your employees covered by Workman's Compensation? (45) [X] Yes [ ] No

12. Are your employees covered for Disability Benefits? (46) [X] Yes [ ] No

13. Physical Plant:

A. Do the buildings and structures comply fully with the standards of construction specified in Part 711 of the State Hospital Code? (47)
[X] Yes [X] No RSC, RHD Hospital has filled L of I Re Replacement

B. If the answer to 13A is no, specify briefly in an attachment those modifications or exceptions to the applicability of the standards of construction of Part 711 that are requested pursuant to Sect. 700.4 and 700.5 of the State Hospital Code. (48)

14. Certification:

The undersigned hereby certifies that the foregoing statements and all statements made in attachments hereto are correct to the best of his knowledge and belief.

Date November 20, 1969 Signed Robert E Long

Telephone 716-896-2470 (area code-number-extension) Title President, Board of Directors

* This certification must be completed by a responsible agent of the facility such as an officer of the Board of Trustees or the Director of the facility.

** Refers to affiliations, approvals or formal recognitions given by medical, dental or other professional associations and agencies to the facility or its medical programs.

This side to be completed by the responsible accrediting health agency

A. ~~Recertification~~ initial survey made [x] Yes [ ] No By [ ] Region [x] Local

Follow-up visit needed [ ] Yes [x] No

Follow-up visit made [ ] Yes [ ] No By [ ] Region [ ] Local

B. Recommendation:

Facility in substantial compliance with standards [x] Yes [ ] No

Certificate to be granted [x] Yes [ ] No [ ] Limited (explain) _____

C. Certification

Region [ ] Albany [x] Buffalo [ ] Rochester [ ] Syracuse [ ] White Plains [ ] N.Y.C.

Local [x] Erie [ ] Nassau [ ] Monroe [ ] Suffolk [ ] Onondaga

Date 24 Nov-69 Signed Donald B Thomas, M.D.

If local recommendation, regional endorsement LaVerne E. Campbell, MD, RHD 12/16/69

D. Routing

	Date and Action
[x] Region	To MPC 12/18/69
[ ] Medicare Program Coord.	1-2-70 - To RCH
[ ] Other (specify) _____	
[ ] Machine Tab. Unit	
[ ] Med. Prog. Coord.	
[ ] Regional Office	
[ ] Local	

HA 5 (reverse)

RECEIVED
DEC 22 1969
MEDICARE PROGRAM
COORDINATOR

[illegible] 12/17 (phone 856-8488 or 7979)

[illegible] Mr. Morrison has called - [illegible]

1401203

12/16/69

01/31/71

Hemophilia Center of Western New York, Inc.
462 Grider Street, Area B-1
Buffalo, New York 14215

HEALTH EDUCATION

****

BOARD OF DIRECTORS MEETING MINUTES with Staff Present
Wednesday, September 12th, 2018
Templeton Landing Restaurant, 2 Templeton Terrace, Buffalo, NY 14202

Present: M. Brecher, K. Burdette, M. Cimato, M. Comerford, M. Gellin, M. Haggerty, C. Hunter, K. Kubicki, A. Long, R. Long, T. Long, E. McNamara, J. Moyer, M. Zevon
Absent/Excused: G. Anderson, B. Schaefer, S. Lesinski, J. Wagner
Staff Present: L. Reger, L. Lewis, M. Dunn, M. Burgwin, R. Ritchie, L. Belling, A. Ciraolo, J. Thiel, D. Harrison, S. Jain, A. Kotowski, K. Kovach, J. Niethe, M. Acosta, R. Czarniak, J. Fix, G. Wojcinski and Consultant Greg Hiczewski

AGENDA	DISCUSSION	ACTION
5:37pm Meeting called to order *This meeting will also be counted as HCWNY September Staff Meeting.		All board members and staff present introduce themselves.
1. Consent Agenda	Consent Agenda documents were reviewed without additional discussion or corrections needed. (July 11th mins, June YTD Operating Financials, June YTD Factor Units Usage, ED report and dashboard)	Motion by T. Long, 2nd by M. Gellin to approve Consent Agenda. Yes- 14. No- 0.
2. Treasurer's Report	K. Kubicki reports that the Finance Committee will be meeting with M. Arena in early October.	

BOARD OF DIRECTORS MEETING MINUTES with Staff Present
Wednesday, September 12th, 2018
Templeton Landing Restaurant, 2 Templeton Terrace, Buffalo, NY 14202

Present: M. Brecher, K. Burdette, M. Cimato, M. Comerford, M. Gellin, M. Haggerty, C. Hunter, K. Kubicki, A. Long, R. Long, T. Long, E. McNamara, J. Moyer, M. Zevon
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Staff Present: L. Reger, L. Lewis, M. Dunn, M. Burgwin, R. Ritchie, L. Belling, A. Ciraolo, J. Thiel, D. Harrison, S. Jain, A. Kotowski, K. Kovach, J. Niethe, M. Acosta, R. Czarniak, J. Fix, G. Wojcinski and Consultant Greg Hiczewski

3. Executive Director's Report a. Rebranding update	The Center has been working with Magellan Group to develop a new name and logo to be implemented in conjunction with relocation. M. Hiczewski reports they surveyed Hospital Admins, Staff, HCWNY Pts, with 15 options and needed the Board to vote between the final two. Results are as follows: Option A- 11 votes, Option B- 4 votes, Abstained- 2.	Motion by M. Gellin, 2nd by E. McNamara to move forward with changing HCWNY's articles of incorporation with the IRS and obtain trademark for Western New York BloodCare (Option A). Yes- 13, No- 0, Abstained- 1.
b. Quality Improvement	L. Belling provides update. HCWNY was selected to be a part of an 18 month QI pilot study through Dartmouth in 2016. The focus was transitioning pediatric patients to adult patients and concluded in December 2017. We have since continued the QI initiative, identifying 9 tasks- 7 have which been started/implemented and the two remaining will begin on October. All staff is involved, in addition to one board and one patient representative, which meet monthly. Communication between staff has increased as a result of this work.	Continue on newly identified projects in 2019.
4. HCWNY Foundation Update	HCWNY Executive Committee approved the	

BOARD OF DIRECTORS MEETING MINUTES with Staff Present
Wednesday, September 12th, 2018
Templeton Landing Restaurant, 2 Templeton Terrace, Buffalo, NY 14202

Present: M. Brecher, K. Burdette, M. Cimato, M. Comerford, M. Gellin, M. Haggerty, C. Hunter, K. Kubicki, A. Long, R. Long, T. Long, E. McNamara, J. Moyer, M. Zevon
Absent/Excused: G. Anderson, B. Schaefer, S. Lesinski, J. Wagner
Staff Present: L. Reger, L. Lewis, M. Dunn, M. Burgwin, R. Ritchie, L. Belling, A. Ciraolo, J. Thiel, D. Harrison, S. Jain, A. Kotowski, K. Kovach, J. Niethe, M. Acosta, R. Czarniak, J. Fix, G. Wojcinski and Consultant Greg Hiczewski

	following Patient Assistance: • $3,900 granted to student who wanted to return to college but was unable to register until the remaining debt was paid off in full. • $2,000 granted to patient who has high deductible insurance plan.	
No HCWNY Foundation Meeting was held for September 2018.		
Meeting adjourned at 5:50pm. Our next meeting is: **Wednesday, November 14, 2018 at 5:30pm**		

Respectfully submitted:
Lauren Lewis, Executive Assistant and Compliance Officer

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 March 24, 2014.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

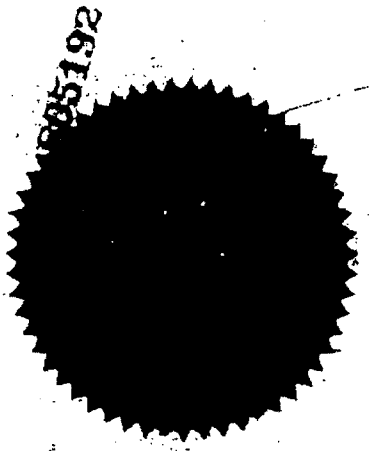
State of New York — Department of Social Services

State Board of Social Welfare

Albany

Know all Men by These Presents

At a meeting of the State Board of Social Welfare, held on the sixteenth *day of* December, 1969, *due inquiry and investigation having been made,* The Board approved the application by the HEMOPHILIA CENTER OF WESTERN NEW YORK, INC., No. 1-70, a membership corporation, for approval of a certificate of incorporation pursuant to subdivision 3 of Section 35 of the Social Services Law, to establish and operate an out-patient clinic and laboratory for hemophiliacs in the City of Buffalo, Erie County, New York.



In Witness Whereof, *the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this* seventeenth *day of* December, *in the year one thousand nine hundred and* sixty-nine.

Secretary

Form DSS-824

The University of the State of New York

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

Pursuant to the provisions of Section 11, Article 2 of the Membership Corporations Law, consent is hereby given to the filing of the annexed certificate of incorporation of

HEMOPHILIA CENTER OF WESTERN NEW YORK, INC.

as a membership corporation.

This consent, however, shall in no way be construed as an approval by the Board of Regents, Commissioner of Education or Education Department of the purposes and objects of this corporation, nor shall it be construed as giving the officers or agents of this corporation the right to use the name of the Board of Regents, Commissioner of Education, University of the State of New York or Education Department in its publications and advertising matter.

This consent is granted with the understanding that nothing contained in the certificate shall be construed as authorizing the corporation to conduct a school of medicine.

IN WITNESS WHEREOF, I, Ewald B. Nyquist, Acting Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 23rd day of October [illegible]

CERTIFICATE OF INCORPORATION

OF

HEMOPHILIA CENTER OF
WESTERN NEW YORK, INC.

Pursuant to the Membership Corporations Law

We, the undersigned, a committee of the Western New York Chapter of the National Hemophilia Foundation, an unincorporated association not organized for pecuniary profit, having been duly authorized to incorporate the said association, do, for the purpose of forming a membership corporation pursuant to the Membership Corporations Law of the State of New York, hereby certify that:

1. The name of the proposed corporation shall be HEMOPHILIA CENTER OF WESTERN NEW YORK, INC.

2. The purposes for which it is to be formed are: to establish and operate a centralized outpatient clinic and laboratory providing a continuity of medical and dental care for hemophiliacs and thus to reduce hospital admissions; to encourage research in the blood coagulation field; to provide vocational guidance, social service help when needed and educational counselling as and when available; to provide aids for hemophiliacs, such as braces, orthopedic aids, wheelchairs, identification tags and to disseminate information about Hemophilia to hemophiliacs and their families, local professional groups in the medical, dental and nursing fields, local health, welfare and community organizations and to local media of public

LAW OFFICES OF
IRWIN E. GINSBERG

information; and to associate with the National Hemophilia Foundation and to participate with it in its charitable activities.

3. This corporation shall have and may exercise all powers conferred upon it by the laws of the State of New York now or hereafter in effect. Pursuant to and not in limitation of such powers conferred by laws, this corporation shall have the power to enter into contracts and carry out the provisions thereof, to borrow, collect or otherwise raise money for the purposes of the corporation and secure the payment thereof and interest thereon by mortgage upon or pledge or conveyance or assignment of the whole or any part of the property of the corporation, real or personal, including rights under contracts, to construct, purchase, receive by deed, gift, devise or bequest or otherwise acquire and hold, mortgage, lease, sell or otherwise dispose of facilities and such other real and personal property and rights as may be necessary or convenient for the purposes of the corporation to the same extent and as fully as any natural person could do.

4. The foregoing statement of purposes constitutes charitable and benevolent uses, purposes and powers. The operations of the corporation will be carried on without pecuniary profit and no part of the net earnings of this corporation shall inure to the benefit of any person, and none of such net earnings nor any of the properties of the corporation shall be used otherwise than for any of the purposes of the corporation.

5. The territory in which its operations are principally to be conducted is Erie County, New York.

LAW OFFICES OF
WIN E. GINSBERG

6. The city and county in which its office is to be located are Buffalo, Erie County, New York.

7. The duration of the corporation shall be perpetual.

8. The number of its directors shall be not less than 15 nor more than 33.

9. The names and residences of the directors until the first annual meeting are:

Names	Addresses
ROBERT E. LONG	239 Roycroft Boulevard Buffalo, New York 14226
ANTHONY LOMBARDO	528 West Ferry Street Buffalo, New York 14222
EARL NEUROHR	122 Kay Street Buffalo, New York 14215
IRWIN KATZMAN	118 Surrey Run Buffalo, New York 14221
MRS. GERALD B. COHEN Bruna	158 Paramount Parkway Buffalo, New York 14223
MRS. CHARLES LACHUT Mary	14 Tamark Court Buffalo, New York 14225
EDWARD WASIELEWSKI 2/2 [illegible]	1404 Eggert Road Buffalo, New York 14226
ALICE AUDREY DAY	703 West Ferry Street Buffalo, New York 14222
MRS. EARL BEUZENBERG [illegible]	Commercial Street Farnham, New York 14061
A. DONALD GILDEN	192 Meadowview Lane Buffalo, New York 14221
MICHAEL MOLFESE 8/28/14	94 Caesar Boulevard Buffalo, New York 14226
IRWIN GINSBERG 12/22/30	75 Windermere Boulevard Amherst, New York 14226
MRS. FRANK SCIRIA 7/29/37 Phyllis	78 Norwalk Street Buffalo, New York 14216
RICHARD JEZIORO 3/28/30	120 Ceil Drive Buffalo, New York 14225
MISS OLLIE SCOTT 8/9/26	136 Oxford Avenue Buffalo, New York 14[illegible]

LAW OFFICES OF
IRWIN [illegible]

ROBERT S. KELSO	10/30/20	84 Harper Street Buffalo, New York 14226
L. EDGAR HUMMEL	4/22/23	134 Morris Avenue Buffalo, New York 14214
MRS. JOHN B. CAMPBELL	7/25/06	800 West Ferry Street Buffalo, New York 14222
WILLIAM MUC[redacted]	11/5/23	10 Campbell Boulevard Getzville, New York 14068
NORBERT A. BISHOP	6/14/32	59 Windermere Boulevard Amherst, New York 14226
IRVING B. MINK	9/2/07	325 Argonne Drive Buffalo, New York 14217
ALFRED M. STEIN	8/14/32	241 Argonne Drive Buffalo, New York 14217

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

Names	Addresses
ROBERT E. LONG	239 Roycroft Boulevard Buffalo, New York 14226
ANTHONY LOMBARDO	528 West Ferry Street Buffalo, New York 14222
EARL NEUROHR	122 Kay Street Buffalo, New York 14215
IRWIN KATZMAN	118 Surrey Run Buffalo, New York 14221
ALFRED M. STEIN	241 Argonne Drive Buffalo, New York 14217

11. That all of the subscribers to the Certificate are of full age; that at least two-thirds of them are citizens of the United States; that at least one of them is a resident of the State of New York, and that of the persons named as directors, at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate this 20th day of October, 1969.

Robert E. Long

Anthony Lombardo

LAW OFFICES OF
VIN E. GINSBERG

Earl Neurohr

Earl Neurohr

Irwin Katzman

Alfred M. Stein

STATE OF NEW YORK)
COUNTY OF ERIE)SS.
CITY OF BUFFALO)

On this 20th day of October, 1969, before me personally came ROBERT E. LONG, ANTHONY LOMBARDO, EARL NEUROHR, IRWIN KATZMAN and ALFRED M. STEIN, to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation, and they thereupon severally duly acknowledged to me that they executed the same.

IRWIN E. GINSBERG
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 30, 1971

STATE OF NEW YORK)
COUNTY OF ERIE)SS.
CITY OF BUFFALO)

IRWIN E. GINSBERG, being duly sworn, deposes and says that he is the attorney herein for the subscribers to the Certificate of Incorporation set forth above and that no previous application has been made to a Justice of the New York State Supreme Court for the approval thereof.

Sworn to before me this
21st day of October, 1969.

WILLIAM H. HARTZBERG
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
Certificate Filed in Erie County
Commission Expires March 30, 1971

LAW OFFICES OF
IRWIN E. GINSBERG

Earl Neurohr

Earl Neurohr

Irwin Katzman

Alfred M. Stein

STATE OF NEW YORK)
COUNTY OF ERIE)ss.
CITY OF BUFFALO)

On this 20th day of October, 1969, before me personally came ROBERT E. LONG, ANTHONY LOMBARDO, EARL NEUROHR, IRWIN KATZMAN and ALFRED M. STEIN, to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation, and they thereupon severally duly acknowledged to me that they executed the same.

IRWIN E. GINSBERG
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1971

STATE OF NEW YORK)
COUNTY OF ERIE)ss.
CITY OF BUFFALO)

IRWIN E. GINSBERG, being duly sworn, deposes and says that he is the attorney herein for the subscribers to the Certificate of Incorporation set forth above and that no previous application has been made to a Justice of the New York State Supreme Court for the approval thereof.

Sworn to before me this
21st day of October, 1969.

WILLIAM H. HARTZBERG
NOTARY PUBLIC, STATE OF NEW YORK
RESIDING IN ERIE COUNTY
Certificate Filed in Niagara County
Commission Expires March 30, 1971

LAW OFFICES OF
IRWIN E. GINSBERG

STATE OF NEW YORK)
COUNTY OF ERIE):SS.
CITY OF BUFFALO)

ROBERT E. LONG, ANTHONY LOMBARDO, EARL NEUROHR, IRWIN KATZMAN and ALFRED M. STEIN, each for himself, being duly sworn, deposes and says:

[redacted] he is one of the subscribers of the foregoing Certificate of Incorporation of HEMOPHILIA CENTER OF WESTERN NEW YORK, INC., that the said Certificate of Incorporation is for the incorporation of an existing unincorporated association; namely, Western New York Chapter of the National Hemophilia Foundation; that the purposes set forth in the Certificate of Incorporation are the same as those of the unincorporated association; that the subscribers of such Certificate of Incorporation constitute all of the members of a committee authorized to incorporate such association by vote as required by the organic law of the association for the amendment of such organic law.

That no previous application for the approval of the foregoing Certificate of Incorporation has been made.

Robert E. Long

Anthony Lombardo

Earl Neurohr

Irwin Katzman

Alfred M. Stein

Sworn to before me this
20th day of October, 1969

[illegible]

[illegible] of New York
[illegible] County
[illegible] March 30, 1971

[illegible] OFFICES OF
[illegible] E. GINSBERG

The undersigned, a Justice of the Supreme Court of the State of New York, Eighth Judicial District, hereby approves the foregoing Certificate of Incorporation at Buffalo, New York this 23rd day of December, 1969.

J. S. C.

LAW OFFICES OF
IRWIN E. DINSBERG

RESOLUTIONS

WHEREAS, unincorporated non-profit associations may be incorporated pursuant to Article 2 of the Membership Corporation Law of the State of New York, and

WHEREAS, the members of this Association seeking to establish and operate a Hemophilia Center deem it desirable that the Association be incorporated so as to secure the benefits of said Membership Corporations Law and to carry on the purposes for which it was organized;

NOW THEREFORE, upon motion duly made and seconded, and upon the affirmative vote of all of the members of this Association present at a duly called meeting of the Association, a quorum being present, it is

> RESOLVED, that the WESTERN NEW YORK CHAPTER OF THE NATIONAL HEMOPHILIA FOUNDATION elects to become a corporation pursuant to the provisions of the Membership Corporations Law of the State of New York; and it is further
>
> RESOLVED, that ROBERT E. LONG, ANTHONY LOMBARDO, EARL NEUROHR, IRWIN KATZMAN and ALFRED M. STEIN be appointed and constitute a committee with full power to do all things necessary and proper to effect such incorporation, and that all prior actions and proceedings so taken by them or any of them, be approved and ratified; and it is further
>
> RESOLVED, that such incorporation take place upon receipt of required approvals for the establishment and operation of a center for the treatment of hemophilia in the Western New York area; and it is further
>
> RESOLVED, that upon such incorporation, the members of this Association shall be members of the corporation, the by-laws of the Association shall be the [illegible] of the corporation, the officers and directors of the Association shall be officers and directors of the corporation and all property owned by this Association or held for it shall belong and vest in said corporation, subject to

LAW OFFICES OF
IRWIN E. DINSBERG

existing encumbrances and claims, if any, which the said corporation shall assume; and it is further

RESOLVED, that the name of such corporation shall be the HEMOPHILIA CENTER OF WESTERN NEW YORK, INC., or such similar name as the afo[illegible]id committee shall determine; and it is further

RESOLVED, that the by-laws be amended as follows: (a) that a quorum for the purpose of membership meetings be deemed to be not less than one-third of the membership (Article 4, Section 3); (b) that the Board of Directors be comprised of not less than 15 nor more than 33 members including the Chairman of the Medical Advisory Committee (Article 7, Section 2); (c) that the terms of board members be for three-year periods except where necessary to assure that the terms of only one-third of the members of the board shall expire in any given year (Article 7, Section 4) and (d) and otherwise as may be necessary to conform with the requirements of the Membership Corporations Law.

EARL NEUROHR, Secretary of the WESTERN NEW YORK CHAPTER OF THE NATIONAL HEMOPHILIA FOUNDATION, hereby certifies that the foregoing is a true copy of a Resolution passed at a regular general meeting of the Association held at Fairfax Motor Inn, Buffalo, New York on the 28th day of September, 1969 at 8:00 o'clock P.M., at which a quorum was present.

TIDES OF GINSBERG

SHERIFF OF ERIE COUNTY
10 DELAWARE AVENUE
BUFFALO, N.Y. 14202

TELEPHONE: 846-7600

THOMAS W. RYAN
SHERIFF

MERRELL C. SMITH
UNDER SHERIFF

LESTER W. GRAWUNDER
INSPECTOR

Date 25 November 1969

Records of the Erie County Sheriff's Department disclose no reference identifiable with the following listed persons who executed a certificate of incorporation of the HEMOPHILIA CENTER OF WESTERN NEW YORK, INC. date 20 October 1969 or with the persons listed therein as directors until the first annual meeting.

ROBERT E. LONG
ANTHONY LOMBARDO
EARL NEUROHR
IRWIN KATZMAN
ALFRED M. STEIN

This Identification is by Name only and is Not to be Misconstrued as a Positive Identification

G. A. Budzinski
Chief Identification Officer

12

805192 - 13

CERTIFICATE OF INCORPORATION

OF

HEMOPHILIA CENTER OF
WESTERN NEW YORK, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 7 1970
TAX $ None
FILING FEE $ 50

IRWIN E. GINSBERG
Attorney at Law
1012 Prudential Building
Buffalo, New York 14202

Chin, Christopher C (HEALTH)

From: Laurie Reger <lreger@wnybloodcare.org>
Sent: Tuesday, August 06, 2019 10:04 AM
To: Chin, Christopher C (HEALTH)
Subject: RE: Name Change Request

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Sure thing. We have been seeing more patients that have various bleeding disorders (as the testing has evolved over the years), there are many different Factor disorders (not just hemophilia). So when patients were referred to us for management, they were confused because they did not have hemophilia. Our board decided it was time to change the name to better reflect the population of people that we serve. And, it has been received very well!

Laurie

From: Chin, Christopher C (HEALTH) [mailto:Christopher.Chin@health.ny.gov]
Sent: Tuesday, August 06, 2019 9:59 AM
To: Laurie Reger <lreger@wnybloodcare.org>
Subject: RE: Name Change Request

Got it thanks. One more thing, can you explain why you changed the name? PHHPC may want to know so I will put the explanation in my submission to PHHPC

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY CLIENT PRIVILEGE
Christopher Chin
Senior Attorney
Division of Legal Affairs
New York State Department of Health
Room 2462, Tower Building
Empire State Plaza
Albany, NY 12237
518.473.3303

Christopher.chin@health.ny.gov

From: Laurie Reger <lreger@wnybloodcare.org>
Sent: Tuesday, August 06, 2019 9:51 AM
To: Chin, Christopher C (HEALTH) <Christopher.Chin@health.ny.gov>
Subject: FW: Name Change Request

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Christopher,

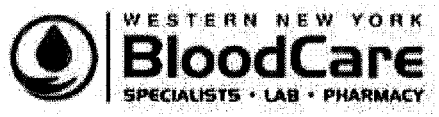
I have attached the following items that you requested:

1. **Original articles of incorporation**
2. **Board minutes from 9/12/18 passing resolution for name change**
3. **Email to DOH Facilities Management re: process for name change**
4. **Response from Dianne Connell to notify Public Health and Planning Council**
5. **2 email notifications to Public Health and Planning regarding process (1st one below, 2nd attached)**

I appreciate any help or direction that you can provide. This certainly has been a challenge.

Best Regards,

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202
www.wnybloodcare.org



Please note our new address effective June 12, 2019.

From: Laurie Reger
Sent: Monday, June 24, 2019 10:42 AM
To: 'phhpc@health.ny.gov' < >
Subject: Corporate Name Change

Dear Public Health and Planning Council,

Our Hemophilia Treatment Center underwent a name change in recent months to better reflect the population that we serve. I am requesting an updated Operating Certificate identifying our new name and location. Please advise me on what further information you may need.

Best Regards,

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202

New Address effective June 12, 2019

From: Laurie Reger
Sent: Monday, June 17, 2019 3:35 PM
To: 'hfismb@health.ny.gov' <hfismb@health.ny.gov>
Subject: Name Change Request

Diane,

Please see the attached documents requesting a name change on our D & T center in Buffalo, NY.
Thank you

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202

New Address effective June 12, 2019

FW: Corporate Name Change - Message (HTML)

FILE MESSAGE SENDING

Thu 8/1/2019 11:25 AM

Laurie Reger

FW: Corporate Name Change

To phhpc@health.ny.gov

Message | Formal memo re name change.docx (88 KB) | Amended Name Change.pdf (2 MB)

I am following up on this request submitted June 24th. Please confirm that you have received. Thank you

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202
www.wnybloodcare.org

Please note our new address effective June 12, 2019.

From: Laurie Reger
Sent: Monday, June 24, 2019 10:42 AM
To: 'phhpc@health.ny.gov' < >
Subject: Corporate Name Change

Dear Public Health and Planning Council,
Our Hemophilia Treatment Center underwent a name change in recent months to better reflect the population that we serve. I am requesting an updated Operating Certificate identifying our new name and location. Please advise me on what further information you may need.

Best Regards,

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202

New Address effective June 12, 2019

See more about Laurie Reger.

RE: Name Change Request - Message (HTML)

FILE MESSAGE SENDING

Thu 6/20/2019 4:22 PM

doh.sm.Health.Facility.System.Mailbox <hfismb@health.ny.gov>

RE: Name Change Request

To Laurie Reger

Follow up. Completed on Monday, July 15, 2019.

Good Afternoon,

Corporate name changes must be approved by the Public Health and Health Planning Council (PHHPC). Please submit your name change request to the following address. phhpc@health.ny.gov.

Thanks,
Dianne

Dianne V Connell
Health Program Administrator 1
Bureau of Project Management

New York State Department of Health
Room 1842, Corning Tower ESP, Albany, NY 12237
518-402-0911 | hfismb@health.ny.gov

From: Laurie Reger <lreger@wnybloodcare.org>
Sent: Monday, June 17, 2019 3:35 PM
To: doh.sm.Health.Facility.System.Mailbox <hfismb@health.ny.gov>
Subject: Name Change Request

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Diane,
Please see the attached documents requesting a name change on our D & T center in Buffalo, NY.
Thank you

Laurie Reger, MSHSA
Executive Director
1010 Main St.
Buffalo, NY 14202

Hemophilia Center OF WESTERN NEW YORK

WESTERN NEW YORK BloodCare SPECIALISTS • LAB • PHARMACY

Grow with us as we expand our reach.

New Address effective June 12, 2019

See more about doh.sm.Health.Facility.System.Mailbox.

9:27 AM

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: September 9, 2019

Subject: Revised Certificate of Amendment of the Certificate of Incorporation of WMC Health Network-Ulster, Inc. and HealthAlliance, Inc. (Ulster County)

Westchester Medical Center Health Network (WCHCC) is currently the active parent of HealthAlliance, Inc. (HealthAlliance) and the active grandparent of three HealthAlliance subsidiary hospitals: HealthAlliance Hospital Broadway Campus (HA Broadway), HealthAlliance Hospital Mary's Avenue Campus (HA Mary's Avenue) and Margaretville Memorial Hospital (MMH).

HealthAlliance was originally approved in 2007 (Project No. 072099-E) as the active parent of the aforementioned subsidiary hospitals. Under CON Project No. 162396-E WMC Health Network-Ulster, Inc (Ulster) was approved to become the active parent of HealthAlliance and the active grandparent of the three subsidiary hospitals: HA Broadway, HA Mary's Avenue and MMH. Subsequently, CON Project No. 181031-E allowed for HealthAlliance and the subsidiary hospitals to be disestablished from Ulster; which lost its active parent status but retained its status as the sole member of HealthAlliance.

Part of the legal review of the application involved reviewing the Certificate of Amendment of the Certificate of Incorporation of both HealthAlliance and Ulster, to allow WCHCC to amend HealthAlliance's Certificate of Incorporation to replace Ulster with WCHCC as its sole member and to amend Ulster's certificate of Incorporation to remove from its purposes being the sole member of HealthAlliance.

The Certificates cannot be filed with the New York State Department of State without having PHHPC's consent to file attached thereto. Therefore, PHHPC is being asked to grant consent to the filing.

The documents have been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation and they are in legally acceptable form.

Attachments

Restated Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus (f/k/a) Benedictine Hospital – November 1, 2012

130205001/78

[~~AMENDED AND~~] RESTATED

CERTIFICATE OF INCORPORATION
OF
BENEDICTINE HOSPITAL

UNDER SECTION 805 OF THE NOT FOR PROFIT CORPORATION LAW

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED FEB 05 2013
BY: _____

FILED
2013 FEB -5 PM 3:56

RECEIVED
2013 FEB -5 PM 2:53

NIXON PEABODY LLP
677 Broadway, 10th Floor
Albany, New York 12207
(518) 427-2650

1267

130205001/78

~~AMENDED AND~~ RESTATED

CERTIFICATE OF INCORPORATION

OF

BENEDICTINE HOSPITAL

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

Michael Ryan and Ward Todd, being, respectively, the Chair and Vice-Chair of the Board of Directors of Benedictine Hospital, hereby certify:

FIRST: The name of the corporation is Benedictine Hospital (the "Corporation"). The name under which the Corporation was formed is Our Lady of Victory Sanitarium.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on November 7, 1902 pursuant to Chapter 559 of the Laws of 1895 of the State of New York.

THIRD: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPCL"). The Corporation is a type B corporation as defined in Section 201 of the NPCL and shall remain a type B corporation after this Restated Certificate of Incorporation is effectuated.

FOURTH: The Certificate of Incorporation of the Corporation is amended to effect the following amendments pursuant to the NPCL:

RECEIVED
NYS OFFICE OF THE ATTORNEY GENERAL
JAN 29 2013
CLAIMS & LITIGATION
POUGHKEEPSIE OFFICE

1. Paragraph "FIRST," stating the name of the corporation is hereby amended to change the name and to read in full as follows:

"FIRST: The name of the Corporation is HealthAlliance Hospital Mary's Avenue Campus (the "Corporation"). ~~The name under which the Corporation was formed is Our Lady of Victory Sanitarium.~~"

2. Paragraph "THIRD," stating the objects or purposes of the Corporation is hereby amended to change the purposes of the Corporation. Paragraph THIRD, as amended and restated, shall read in full as follows:

"THIRD: The Corporation shall have the following purposes:

14169771.3

(a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;

(b) To participate, insofar as circumstances may warrant, in any activity permitted by present law or future law designed to promote the general health of the community;

(c) To carry on educational activities related to the delivery of health care services or the promotion of health which, in the opinion of the members of the Corporation's Board may be justified by the facilities, personnel, funds or other requirements that are or can be made available;

(d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;

(e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and

(f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

3. A new Paragraph "FOURTH," naming the sole member of the Corporation and reserving certain powers to such member, is hereby amended to read in full as follows:

"FOURTH: The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for Corporation services under the Corporation's provider numbers, and the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, the addition and deletion of services and related matters. Subject to the foregoing responsibilities, with respect to the Corporation, the Member shall have the following powers with respect to the Corporation:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer

review activities of the Corporation and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Corporation;

- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;
- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member that is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;

- Assure that the Corporation remains a secular institution; and

- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Restated Certificate of Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation."

4. Paragraph "FIFTH," relating to the role of the Benedictine Sisters and reserved powers vested in the Benedictine Sisters, is hereby deleted.

5. Paragraph "SIXTH," is hereby renumbered as Paragraph "FIFTH"; Paragraph "SEVENTH" is hereby renumbered as Paragraph "SIXTH"; Paragraph "EIGHTH" is hereby renumbered as Paragraph "SEVENTH"; Paragraph "NINTH" is hereby renumbered as Paragraph "EIGHTH"; Paragraph "TENTH" is hereby renumbered as Paragraph "NINTH"; Paragraph "ELEVENTH" is hereby renumbered as Paragraph "TENTH".

FIFTH: The text of the Certificate of Incorporation is hereby restated, as amended, to read in full as follows:

~~AMENDED AND RESTATED~~

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS

FIRST: The name of the corporation is HealthAlliance Hospital Mary's Avenue Campus (the "Corporation"). ~~The name under which the Corporation was formed is Our Lady of Victory Sanitarium.~~

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 ("NPCL") and is a type B corporation as defined in Section 201 of the NPCL.

THIRD: The Corporation shall have the following purposes:

(a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;

(b) To participate, insofar as circumstances may warrant in any activity permitted by present law or future law designed to promote the general health of the community;

(c) To carry on educational activities related to the delivery of health care services or the promotion of health which, in the opinion of the members of the Corporation's Board may be justified by the facilities, personnel, funds or other requirements that are or can be made available;

(d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;

(e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and

(f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal

revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;

2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;

3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or

4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

FOURTH: The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for Corporation services under the Corporation's provider numbers, and the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, the addition and deletion of services and related matters. Subject to the foregoing responsibilities, with respect to the Corporation, the Member shall have the following powers:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Broadway Campus;

- Credential all licensed health care professionals to be providing services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);

- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Corporation and share in any and all

credentialing, quality assurance, risk management and peer review decisions of the Corporation;

- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;
- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member that is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;
- Assure that the Corporation remains a secular institution; and

- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Restated Certificate of Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation.

FIFTH: The term of duration of the Corporation shall be perpetual.

SIXTH: The office of the Corporation within the State of New York is located in the County of Ulster.

SEVENTH: The Corporation hereby delegates to Vassar Brothers Hospital, a New York not-for-profit corporation, pursuant to Section 701(a) of the Not-For-Profit Corporation Law joint operational decision making authority over and responsibility with the Corporation for operation of an extension clinic in Ulster County, New York providing therapeutic radiology services (the "Therapeutic Radiology Extension Clinic"). The Corporation hereby accepts delegation of authority from Vassar Brothers Hospital for joint operational decision making authority over and responsibility with the Corporation for the Therapeutic Radiology Extension Clinic.

EIGHTH: No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.

NINTH: In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the Board of Directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

TENTH: The Secretary of the 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 shall mail a copy of any process against the Corporation served upon her/him is: 105 Mary's Avenue, Kingston, New York 12401.

SIXTH: This Amended and Restated Certificate of Incorporation was authorized by the vote of HealthAlliance, Inc., its sole member, and of its board of directors.

IN WITNESS WHEREOF, the undersigned, being at least eighteen (18) years of age, have subscribed and affirmed this Amended and Restated Certificate of Incorporation as true under the penalties of perjury on the date indicated next to each of their names:

Michael Ryan
Chair of the Board of Directors
Dated: November 1, 2012

Ward Todd
Vice-Chair of the Board of Directors
Dated: November 1, 2012

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

G. Nicholas Gerrin
ASSISTANT ATTORNEY GENERAL DATE
1/28/13

14163771.3

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 26, 2012

Mr. Peter Millock
Nixon Peabody, LLP
677 Broadway, 10th Floor
Albany, New York 12207

Re: Amended and Restated Certificate of Incorporation of Benedictine Hospital

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 6th day of December, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Amended and Restated Certificate of Incorporation of Benedictine Hospital, dated November 1, 2012.

Sincerely,

Colleen M. Frost

Colleen M. Frost
Executive Secretary

/cf

The undersigned, a Justice of the Supreme Court of the State of New York for the Third Judicial District, in which the office of the Corporation is located, hereby approves the foregoing Amended and Restated Certificate of Incorporation of Benedictine Hospital.

Dated: February 4, 2013

Justice, Supreme Court

14318126.1

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 6, 2013.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 05/09

Certificate of Amendment of the Certificate of Incorporation of the WMC Health Network (Ulster) – September 4, 2015

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WMC HEALTH NETWORK-ULSTER, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT) TYPE: C COUNTY: WEST

FILED:09/04/2015 DURATION:PERPETUAL CASH#:150904000385 FILM #:150904000355

FILER:

ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS

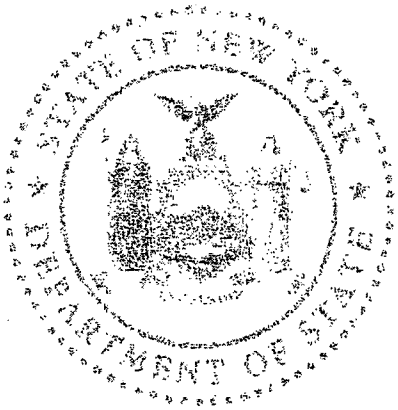
NEW YORK, NY 10036-8704

EXIST DATE
09/04/2015

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS, ATTN: GENERAL COUNSEL, WESTCHESTER MEDICAL CTR, EXEC. OFFICES OF TAYLOR PAVILION, 100 WOODS RD. VALHALLA, NY 10595

REGISTERED AGENT:



SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45 SERVICE CODE: 45

FEES	385.00	PAYMENTS	385.00
FILING	75.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	385.00
HANDLING	300.00	OPAL	0.00
		REFUND	0.00

773293KXK DOS-1025 (04/2007)

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 September 4, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

1509040003 55

CSC 45
Drawdown

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK-ULSTER, INC.

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

The undersigned, a natural person over the age of eighteen years, for the purpose of forming a corporation under Section 402 of the New York State Not-for-Profit Corporation Law (the "NPCL"), hereby certifies as follows:

FIRST: The name of the corporation is WMC Health Network-Ulster, Inc. (hereinafter referred to as the "Corporation").

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

THIRD: The Corporation shall have one class of members. The composition of the membership of the Corporation and the rights, powers, duties and obligations of the member(s) shall be set forth in the Bylaws of the Corporation.

FOURTH: The Corporation is organized and shall be operated exclusively for the support and benefit of, to perform the functions of, or to carry out the purposes of Westchester County Health Care Corporation d/b/a Westchester Medical Center. The purposes for which the Corporation is formed are charitable.

In furtherance thereof, the Corporation may receive property by gift, devise or bequest, invest and reinvest the same, and apply the income and principal thereof, as the Board of Directors may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for charitable purposes, and engage in any lawful act or activity for which corporations may be organized under the Not-For-Profit Corporation Law.

FIFTH: In furtherance of its corporate purposes, the Corporation shall have all of the general powers enumerated in § 202 of the Not-For-Profit Corporation Law, as now in effect or as may hereafter be amended, together with the power to solicit grants and contributions for such purposes.

SIXTH: No part of the Corporation's net earnings shall inure to the benefit of, or be distributable to, any trustee, director, officer or employee of the Corporation or other private person; 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.

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 Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (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 is organized exclusively for one or more purposes as specified in Section 501(c)(3) of the Code and the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status 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, nor shall it carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: The names and addresses of the individuals who are to serve as the initial directors of the Corporation until the first annual meeting or until their successors are elected and qualify are:

Michael D. Israel
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Gary F. Brudnicki
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Julie Switzer
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Marsha Casey
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Mark Tulis
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Mitchell Hochberg
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Zubeen Shroff
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

TENTH: In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation shall, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and for the necessary expenses thereof, be distributed to such organization or organizations organized and operated exclusively for charitable or educational purposes as shall at the time qualify as an exempt organization or organizations under § 501(c)(3) of the Code. In the event of voluntary dissolution, such organization or organizations shall be selected in the discretion of the directors, subject to approval of the plan of dissolution and distribution of assets upon an order of a Justice of the Supreme Court of the State of New York.

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

TWELTH: During such period, or periods, of time as the Corporation is treated as a "private foundation" pursuant to § 509 of the Code, the directors must distribute the Corporation's income at such time and in such manner so as not to subject the Corporation to tax under § 4942 of the Code, and the Corporation is prohibited from engaging in any act of self-dealing (as defined in § 4941(d) of the Code), from retaining excess business holdings (as defined in § 4943(c) of the Code) which would subject the Corporation to tax under § 4943 of the Code, from making any investments or otherwise acquiring assets in such manner so as to subject the Corporation to tax under § 4944 of the Code, from retaining any assets which would subject the Corporation to tax under § 4944 of the Code if the directors have acquired such assets, and from making any taxable expenditures (as defined in § 4945(d) of the Code).

THIRTEENTH: No trustee, director or officer of the Corporation shall have any personal liability to the Corporation or its member(s) for damage resulting from any breach of such trustee's, director's or officer's duties as a trustee, director or officer of the Corporation; provided, however, that this Article THIRTEENTH shall not eliminate or limit the liability of any trustee, director or officer: (a) if a judgment or other final adjudication adverse to such trustee, director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such trustee, director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal

liability is otherwise required by, or can not otherwise be eliminated in accordance with, the NPCL.

FOURTEENTH: All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of future United States Internal Revenue Laws which supersede the Code or particular provisions thereof.

FIFTEENTH: 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 the Secretary of State is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices of Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

SIXTEENTH: Pursuant to Section 402(a)(2-b) of the New York State Not-for-Profit Corporation Law this entity is not formed to engage in any active or activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 4th day of September, 2015.

/s/ Robert Baxter
Robert Baxter
Incorporator
c/o Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704

355

CSC 45
Drawdown

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK-ULSTER, INC.

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

Filed by:

Ropes & Gray LLP

1211 Avenue of the Americas

New York, NY 10036-8704

Cust Ref #773293

KXK

FILED
2015 SEP -4 AM 11:29

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 04 2015
TAX $
BY:

RECEIVED
2015 SEP -4 AM 11:19

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365

Certificate of Amendment of the Certificate of Incorporation of HealthAlliance– March 30, 2016

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ULST
PROCESS PROVISIONS

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FILED:03/30/2016 DURATION:********* CASH#:160330000691 FILM #:160330000658

FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD SUITE 600
GREAT NECK, NY 11021

REGISTERED AGENT:

==========

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	340.00	PAYMENTS	340.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
ART	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	340.00
HANDLING	300.00	OPAL	0.00
		REFUND	0.00

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DOS-1025 (04/2007)

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

==========

ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ULST
PROCESS PROVISIONS

==========

FILED:03/30/2016 DURATION:********* CASH#:160330000691 FILM #:160330000658

FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD SUITE 600
GREAT NECK, NY 11021

REGISTERED AGENT:

==========

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	340.00	PAYMENTS	340.00
FILING	30.00	CASH	0.00
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ART	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	340.00
HANDLING	300.00	OPAL	0.00
		REFUND	0.00

==========

DOS-1025 (04/2007)

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 March 30, 2016.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

E-12

160330000

658

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION OF

HEALTHALLIANCE, INC.

Under Section 803 of the
New York Not-For-Profit Corporation Law

The undersigned. Thomas Collins, hereby certifies that he is the Chair of HealthAlliance, Inc. (hereinafter, the "Corporation"), a corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York, and do hereby further certify as follows:

- The original name of the Corporation was Health Alliance Planning, Inc. At the present time, the name of the Corporation is HealthAlliance, Inc.

- The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on August 23, 2007 pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York.

- 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.

- The Corporation's Certificate of Incorporation is hereby amended to add a new paragraph "EIGHTH" as follows:

> "**EIGHTH:** WMC Health Network – Ulster, Inc., a New York not-for-profit corporation, shall be the sole member of the Corporation."

- This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the unanimous vote of the Board of Directors of the Corporation.

- 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 Garfunkel Wild, P.C., 111 Great Neck Road, Suite 600 Great Neck, New York 11021.

IN WITNESS WHEREOF, this Certificate of Amendment has been signed, and the statements made herein are affirmed as true under penalties of perjury this 30th day of March, 2016.

Name: Thomas Collins
Title: Chair / AUTHORIZED PERSON

658

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION OF

HEALTHALLIANCE, INC.

Under Section 803 of the
New York Not-For-Profit Corporation Law

FILED
2016 MAR 30 PM 1:22

1cc

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAR 30 2016
TAX $ 0
BY: pw

E-12

DRAWDOWN

691

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

==========

ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ULST
PURPOSES PROCESS

==========

FILED:03/24/2016 DURATION:********* CASH#:160324000479 FILM #:160324000450

FILER:

CARRIE J POLLAK, ESQ
HANCOCK ESTABROOK, LLP, GATEWAY CTR
401 EAST STATE STREET, SUITE 304
ITHACA, NY 14850

ADDRESS FOR PROCESS:

C/O GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD, SUITE 600
GREAT NECK, NY 11021

REGISTERED AGENT:

STATE OF NEW YORK DEPARTMENT OF STATE EXCELSIOR

==========

SERVICE COMPANY: ACCELERATED INFORMATION & DOCUMENT FIL SERVICE CODE: 24

FEES	40.00	PAYMENTS	40.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	40.00
HANDLING	0.00	OPAL	0.00
		REFUND	0.00

==========

041750-68 DOS-1025 (04/2007)

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 March 25, 2016.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

160324000450

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
HEALTHALLIANCE, INC.
(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned, being the Chair of HealthAlliance, Inc. (the "Corporation"), hereby certifies that:

1. The name of the Corporation is HealthAlliance, Inc.

2. The Certificate of Incorporation was filed by the Secretary of the State of New York on August 23, 2007 under the name Health Alliance Planning, Inc. The Corporation's Restated Certificate of Incorporation was filed by the Secretary of State on March 11, 2009. A Certificate of Amendment of the Certificate of Incorporation was filed by the Secretary of State on May 21, 2010. A Certificate of Amendment to the Certificate of Incorporation was filed by the Secretary of State on December 4, 2012. The Corporation's Restated Certificate of Incorporation was filed by the Secretary of State on February 5, 2013.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law. The Corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, and shall remain a charitable corporation following the effective date of the amendment herein.

4. The Certificate of Incorporation is hereby amended as authorized by Section 801 of the Not-for-Profit Corporation Law to effect the following amendments:

Subparagraph (b) of Paragraph "THIRD" of the Corporation's Certificate of Incorporation, setting forth the Corporation's powers as a member of certain not-for-profit corporations, is hereby amended in its entirety to read as follows:

(b) "To be and to exercise the following powers as a member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital"):

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- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Hospitals or any entity controlled by the Hospitals (subject to the adoption by the Hospital of amendments to the medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals;
- Elect and remove the members of the boards of directors and board officers of the Hospitals;
- Appoint and remove the corporate officers of the Hospitals (which power may be delegated to the Corporation's chief executive officer);
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Hospitals;
- Approve and may adopt the annual capital and operating budgets of the Hospitals;
- Approve and may initiate the addition or deletion of services at the Hospitals;
- Approve and may initiate the filing of certificate of need applications by the Hospitals;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Hospitals;
- Approve the incurrence of any debt by the Hospitals;
- Approve any expenditure by the Hospitals in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Hospitals;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Hospitals;
- Approve the sale by the Hospitals of any assets outside the ordinary course of business or approved within the Hospital's budget;
- Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, and Margaretville Memorial Hospital remain secular institutions; and

- Exercise any power that is not specifically and explicitly reserved to the Hospitals in the Certificate of Incorporation or Bylaws of the Hospitals or reserved to the Hospitals by law or regulations.

5. This Certificate of Amendment of the Certificate of Incorporation of HealthAlliance, Inc. was authorized by a vote of the board of directors of the Corporation.

6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of such process is: c/o Garfunkel Wild, P.C., 111 Great Neck Road, Suite 600, Great Neck, New York 11021.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Corporation's Certificate of Incorporation and hereby affirms the truth of the statements made herein under the penalty of perjury this 20th day of November, 2015.

Tom Collins, Chair of the Board of Directors

STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

CERTIFICATE OF AMENDMENT

OF CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.
(Under Section 803 of the Not-For Profit Corporation Law

THE ATTORNEY GENERAL HEREBY APPROVES THE FOREGOING CERTIFICATE OF AMENDMENT FOR FILING WITH THE DEPARTMENT OF STATE.

Jill Faber
JILL F. FABER

Date: March 14, 2016
ASSISTANT ATTORNEY GENERAL

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

February 25, 2016

Michelle T. Gramoglia
Executive Director
HealthAlliance Senior Living Corp.
d/b/a Woodland Pond at New Paltz
100 Woodland Pond Circle
New Paltz, New York 12561

Re: Certificate of Amendment of the Certificate of Incorporation of HealthAlliance, Inc.

Dear Ms. Gramoglia:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 11th day of February, 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 HealthAlliance, Inc., dated November 20, 2015.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

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CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

(Under Section 803 of the Not-For-Profit Corporation Law)

1cc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAR 24 2016
TAX $
BY:

ULSTER

Carrie J. Pollak, Esq.
Hancock Estabrook, LLP
Gateway Center
401 East State Street Suite 304
Ithaca, New York 14850

{H2674464.1}

DRAWDOWN
AIDF-24
Reference # 1784
479

Restated Certificate of Incorporation of HealthAlliance– February 6, 2017

130205001196

[~~AMENDED AND~~] RESTATED

CERTIFICATE OF INCORPORATION
OF
HEALTH ALLIANCE, INC.

UNDER SECTION 805 OF THE NOT FOR PROFIT CORPORATION LAW

2013 FEB -5 PM 3:56

NIXON PEABODY LLP
677 Broadway, 10th Floor
Albany, New York 12207
(518) 427-2650

2013 FEB -5 PM 2:53

RECEIVED

1CC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED FEB 05 2013
BY: MB
Ulster

1284

~~AMENDED AND~~ RESTATED

CERTIFICATE OF INCORPORATION

OF

HEALTH ALLIANCE, INC.

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

Cynthia A. Lowe, being the Chair of the Board of Directors of Health Alliance, Inc., hereby certifies:

FIRST: The name of the corporation is Health Alliance, Inc. (the "Corporation"). The name under which the Corporation was formed is Health Alliance Planning, Inc.

SECOND: The Certificate of Incorporation of Health Alliance Planning, Inc. was filed by the Department of State on August 23, 2007.

THIRD: The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the Not-for-Profit Corporation Law:

1. Paragraph "FIRST," stating the name of the Corporation, is hereby amended to change the name and to read in full as follows:

   "FIRST: The name of the corporation is HealthAlliance, Inc. (the "Corporation"). ~~The name under which the Corporation was formed is Health Alliance Planning, Inc.~~"

2. Subparagraph (b) of Paragraph "THIRD" stating the purposes of the Corporation is hereby amended to read in full as follows:

"(b) To be and to exercise the following powers as a member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital") and HealthAlliance Senior Living Corp. ("HASLC"):

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;

- Credential all licensed health care professionals to be providing services at the Hospitals and/or HASLC or any entity controlled by the Hospitals and/or HASLC (subject to the adoption by the Hospital

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and/or HASLC of amendments to the medical staff bylaws to the extent required to authorize such action);

- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and/or HASLC and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals and/or HASLC;

- Elect and remove the members of the boards of directors and board officers of the Hospitals and the members of the board of directors of HASLC;

- Appoint and remove the corporate officers of the Hospitals and/or HASLC (which power may be delegated to the Corporation's chief executive officer);

- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Hospitals and/or HASLC;

- Approve and may adopt the annual capital and operating budgets of the Hospitals and/or HASLC;

- Approve and may initiate the addition or deletion of services at the Hospitals and/or HASLC;

- Approve and may initiate the filing of certificate of need applications by the Hospitals and/or HASLC;

- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Hospitals and/or HASLC;

- Approve the incurrence of any debt by the Hospitals and/or HASLC;

- Approve any expenditure by the Hospitals and/or HASLC in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;

- Approve and may initiate the commencement and settlement of any litigation by the Hospitals and/or HASLC;

- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;

- Approve the dissolution of the Hospitals and/or HASLC;

- Approve the sale by the Hospitals and/or HASLC of any assets outside the ordinary course of business or approved within the Hospital's and/or HASLC's budget;

- Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, Margaretville Memorial Hospital and HASLC remain secular institutions; and

- Exercise any power that is not specifically and explicitly reserved to the Hospitals and/or HASLC in the Certificate of Incorporation or Bylaws of the Hospitals and/or HASLC or reserved to the Hospitals and/or HASLC by law or regulation.

3. Paragraph "FOURTH," stating the county within the state in which the office of the Corporation is located, is hereby amended to read in full as follows:

"FOURTH: The office of the Corporation within the State of New York is to be located in the County of Ulster."

FOURTH: The text of the Certificate of Incorporation is hereby restated as amended to read in full as follows:

~~AMENDED AND RESTATED~~

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

FIRST: The name of the corporation is HealthAlliance, Inc. (the "Corporation"). ~~The name under which the Corporation was formed is Health Alliance Planning, Inc.~~

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 ("NPCL") and is a type B corporation as defined in Section 201 of the NPCL.

THIRD: The Corporation is organized for the following purposes:

(a) To study, plan and implement the allocation of clinical health services in Ulster and Delaware Counties, New York; to educate the residents of Ulster and Delaware Counties about options for the

provision of such services; and to operate a health care system for the provision of such services;

(b) To be and to exercise the following powers as a member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital") and HealthAlliance Senior Living Corp. ("HASLC"):

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;

- Credential all licensed health care professionals to be providing services at the Hospitals and/or HASLC or any entity controlled by the Hospitals and/or HASLC (subject to the adoption by the Hospital and/or HASLC of amendments to the medical staff bylaws to the extent required to authorize such action);

- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and/or HASLC and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals and/or HASLC;

- Elect and remove the members of the boards of directors and board officers of the Hospitals and the members of the board of directors of HASLC;

- Appoint and remove the corporate officers of the Hospitals and/or HASLC (which power may be delegated to the Corporation's chief executive officer);

- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Hospitals and/or HASLC;

- Approve and may adopt the annual capital and operating budgets of the Hospitals and/or HASLC;

- Approve and may initiate the addition or deletion of services at the Hospitals and/or HASLC;

- Approve and may initiate the filing of certificate of need applications by the Hospitals and/or HASLC;

- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Hospitals and/or HASLC;
- Approve the incurrence of any debt by the Hospitals and/or HASLC;
- Approve any expenditure by the Hospitals and/or HASLC in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Hospitals and/or HASLC;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Hospitals and/or HASLC;
- Approve the sale by the Hospitals and/or HASLC of any assets outside the ordinary course of business or approved within the Hospital's and/or HASLC's budget;
- Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, Margaretville Memorial Hospital and HASLC remain secular institutions; and
- Exercise any power that is not specifically and explicitly reserved to the Hospitals and/or HASLC in the Certificate of Incorporation or Bylaws of the Hospitals and/or HASLC or reserved to the Hospitals and/or HASLC by law or regulation.

(c) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations;

(d) To solicit charitable contributions to advance the purposes of the Corporation, and to support the activities of its affiliates, the Hospitals and their affiliates; and

(e) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, to the extent such purposes are purposes described in Section 509(a)(1)(2) or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the 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(a) through (n),(p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future Untied States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;

2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;

3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or

4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

FOURTH: The office of the Corporation within the State of New York is to be located in the County of Ulster.

FIFTH: No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the

Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.

SIXTH: In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the board of directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

SEVENTH: The Secretary of the 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 shall mail a copy of any process against the Corporation served upon her/him is: Nixon Peabody LLP, 677 Broadway, Albany, New York 12207.

FIFTH: This Amended and Restated Certificate of Incorporation was authorized by vote of its board of directors.

IN WITNESS WHEREOF, the undersigned, being at least eighteen (18) years of age, has subscribed and affirmed this Amended and Restated Certificate of Incorporation as true under the penalties of perjury on the date indicated next to her name:

Cynthia A. Lowe
Chair of the Board of Directors
Dated: 11/1, 2012

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER

ASSISTANT ATTORNEY GENERAL

DATE 1/28/13

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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 26, 2012

Mr. Peter Millock
Nixon Peabody, LLP
677 Broadway, 10th Floor
Albany, New York 12207

Re: Amended and Restated Certificate of Incorporation of Health Alliance, Inc.

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 6th day of December, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Amended and Restated Certificate of Incorporation of Health Alliance, Inc., dated November 1, 2012.

Sincerely,

Colleen M. Frost

Colleen M. Frost
Executive Secretary

/cf

The undersigned, a Justice of the Supreme Court of the State of New York for the Third Judicial District, in which the office of the Corporation is located, hereby approves the foregoing Amended and Restated Certificate of Incorporation of Health Alliance, Inc.

Dated: February 4, 2013

Justice, Supreme Court

14318112.1

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 6, 2013.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 05/09

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) TYPE: C COUNTY: ULST
PURPOSES PROCESS NFP TYPE PROVISIONS RESTATED

FILED:09/14/2017 DURATION:********* CASH#:170914000548 FILM #:170914000514

FILER:

GARFUNKEL WILD PC ATTY AT LAW
111 GREAT NECK ROAD

GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

ATTN GENERAL COUNSEL
WESTCHESTER MEDICAL CENTER TAYLOR PAVILION 100 WOODS ROAD
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

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 September 15, 2017.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

Rev. 06/13

E-12

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RESTATED

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

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

The undersigned, being the Chair of the Board of Directors of HealthAlliance, Inc., hereby certifies:

1. The name of the corporation is HEALTHALLIANCE, INC. (the "Corporation"). The name under which the Corporation was formed was "Health Alliance Planning, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 23, 2007 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

3. The Certificate of Incorporation is hereby amended to effect the following changes:

(a) Paragraph SECOND of the Certificate of Incorporation regarding the type of Corporation is amended to delete the reference to the Corporation being a type B corporation as defined in Section 201 of the NPCL and to add that the Corporation is charitable. Accordingly paragraph SECOND shall be hereby amended in its entirety to read as follows:

"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 ("NPCL")", and is a charitable Corporation as defined in Section 201 of the NPCL.

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(b) Subparagraph (b) of paragraph THIRD of the Certificate of Incorporation, which sets forth the powers of the Corporation as member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals"), is hereby (i) renumbered as paragraph FOURTH of the Certificate of Incorporation, (ii) revised to identify the sole member of the Corporation, WMC Health Network-Ulster, Inc. ("WMC-Health"), and (iii) revised to subject certain of those powers to the approval of the WMC-Health. Accordingly, (x) existing subparagraphs (c), (d), and (e) of paragraph THIRD of the Certificate of Incorporation shall be modified to be subparagraphs (b), (c), and (d) of paragraph THIRD, (y) existing paragraphs FOURTH, FIFTH, SIXTH, SEVENTH, and EIGHTH of the Certificate of Incorporation shall be correspondingly renumbered as paragraphs FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH, and (z) paragraph FOURTH shall be amended in its entirety to read as follows:

> "**FOURTH**: The Corporation shall have one member: WMC Health Network-Ulster, Inc. ("WMC-Health"). The Corporation shall be and exercise the following powers as a member of the Hospitals:
>
> • Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;
>
> • Credential all licensed health care professionals to be providing services at the Hospitals or any entity controlled by the Hospitals (subject to the adoption by the Hospital of amendments to the medical staff bylaws to the extent required to authorize such action);
>
> • Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and share

in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals;

• Elect and remove the members of the boards of directors and board officers of the Hospitals;

• Appoint and remove the corporate officers of the Hospitals (which power may be delegated to the Corporation's chief executive officer);

• Approve and may initiate the adoption, deletion and amendment of bylaws of the Hospitals;

• Approve and may adopt the annual capital and operating budgets of the Hospitals, subject to the approval of WMC-Health;

• Approve and may adopt operating policies and procedures of the Hospitals, subject to the approval of WMC-Health;

• Approve and may initiate the addition or deletion of services at the Hospitals;

• Approve and may initiate the filing of certificate of need applications by the Hospitals;

• Negotiate and approve all vendor and equipment contracts for the Hospitals;

• Approve the incurrence of any debt by the Hospitals;

• Approve any expenditure by the Hospitals in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;

• Approve and may initiate the commencement and settlement of any litigation by the Hospitals;

• Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;

• Approve the dissolution of the Hospitals;

• Approve the sale by the Hospitals of any assets outside the ordinary course of business or approved within the Hospital's budget;

• Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, and Margaretville Memorial Hospital remain secular institutions; and

• Exercise any power that is not specifically and explicitly reserved to WMC-Health in this Certificate of Incorporation, or reserved to the Hospitals in the

Certificate of Incorporation or Bylaws of the Hospitals, or reserved to the Hospitals by law or regulation."

(c) Existing paragraph SEVENTH of the Certificate of Incorporation, regarding service of process, renumbered as paragraph EIGHTH per above, shall be amended in its entirety to read as follows:

"**EIGHTH**: 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 shall mail a copy of any process against the Corporation served upon her/him is: Attn: General Counsel, Westchester Medical Center, Taylor Pavilion, 100 Woods Road, Valhalla, NY 10595".

(d) Existing paragraph EIGHTH of the Certificate of Incorporation, which identifies the member of the Corporation, renumbered as paragraph NINTH per above, is revised to delete identification of the member (which was moved to paragraph FOURTH), and grant certain rights and powers to the member. Accordingly, paragraph EIGHTH, renumbered as paragraph NINTH per above, shall be amended in its entirety to read as follows:

"**NINTH**: WMC-Health shall be entitled to all the rights and powers of a member under New York law, and shall exercise the following powers, in addition to those granted under the Not-For-Profit Corporation Law, as sole corporate member:

(a) Appointment and dismissal of management-level employees of the Corporation;

(b) Negotiation of payor and managed care contracts on behalf of the Corporation and the Hospitals;

(c) Approval of the annual capital and operating budgets of the Corporation and the Hospitals; and

(d) Approval of the operating policies and procedures of the Corporation and the Hospitals."

4. The text of the Certificate of Incorporation is hereby restated as amended to read in full as follows:

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

FIRST: The name of the corporation is HealthAlliance, Inc. (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 ("NPCL"), and is a charitable Corporation as defined in Section 201 of the NPCL.

THIRD: The Corporation is organized for the following purposes:

(a) To study, plan and implement the allocation of clinical health services in Ulster and Delaware Counties, New York; to educate the residents of Ulster and Delaware Counties about options for the provision of such services; and to operate a health care system for the provision of such services;

(b) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations;

(c) To solicit charitable contributions to advance the purposes of the Corporation, and to support the activities of its affiliates, HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital") and their affiliates; and

(d) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, to the extent such purposes are purposes described in Section 509(a)(1), (2) or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the 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(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;

2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;

3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or

4. Making my taxable expenditures as defined in Section 4945(d) of the Code.

FOURTH: The Corporation shall have one member: WMC Health Network-Ulster, Inc. ("WMC-Health"). The Corporation shall be and exercise the following powers as a member of the Hospitals:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;

- Credential all licensed health care professionals to be providing services at the Hospitals or any entity controlled by the Hospitals (subject to the adoption by the

Hospital of amendments to the medical staff bylaws to the extent required to authorize such action);

• Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals;

• Elect and remove the members of the boards of directors and board officers of the Hospitals;

• Appoint and remove the corporate officers of the Hospitals (which power may be delegated to the Corporation's chief executive officer);

• Approve and may initiate the adoption, deletion and amendment of bylaws of the Hospitals;

• Approve and may adopt the annual capital and operating budgets of the Hospitals, subject to the approval of WMC-Health;

• Approve and may adopt operating policies and procedures of the Hospitals, subject to the approval of WMC-Health;

• Approve and may initiate the addition or deletion of services at the Hospitals;

• Approve and may initiate the filing of certificate of need applications by the Hospitals;

• Negotiate and approve all vendor and equipment contracts for the Hospitals;

• Approve the incurrence of any debt by the Hospitals;

• Approve any expenditure by the Hospitals in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;

• Approve and may initiate the commencement and settlement of any litigation by the Hospitals;

• Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;

• Approve the dissolution of the Hospitals;

• Approve the sale by the Hospitals of any assets outside the ordinary course of business or approved within the Hospital's budget;

• Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, and Margaretville Memorial Hospital remain secular institutions; and

• Exercise any power that is not specifically and explicitly reserved to WMC-Health in this Certificate of Incorporation, or reserved to the Hospitals in the Certificate of Incorporation or Bylaws of the Hospitals, or reserved to the Hospitals by law or regulation.

FIFTH: The office of the Corporation within the State of New York is to be located in the County of Ulster.

SIXTH: No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.

SEVENTH: In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the board of directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

EIGHTH: 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 shall mail a copy of any process against the Corporation served upon her/him is:

Attn: General Counsel, Westchester Medical Center, Taylor Pavilion, 100 Woods Road, Valhalla, NY 10595"

NINTH: WMC-Health shall be entitled to all the rights and powers of a member under New York law, and shall exercise the following powers, in addition to those granted under the Not-For-Profit Corporation Law, as sole corporate member:

(a) Appointment and dismissal of management-level employees of the Corporation;

(b) Negotiation of payor and managed care contracts on behalf of the Corporation and the Hospitals;

(c) Approval of the annual capital and operating budgets of the Corporation and the Hospitals; and

(d) Approval of the operating policies and procedures of the Corporation and the Hospitals.

5. This Restated Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and written consent of the sole member of the Corporation.

Dated: February 6, 2017

Name: Thomas Collins
Title: Chair, Board of Directors

The Attorney General approves the foregoing restated Certificate of Incorporation for filing with the Department of State.

8/23/17

Assistant Attorney General

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

May 10, 2017

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Restated Certificate of Incorporation of HealthAlliance, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March, 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Restated Certificate of Incorporation of HealthAlliance, Inc., dated February 6, 2017.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

614

RESTATED CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

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

RECEIVED
2017 SEP 14 AM 11:03

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 14 2017
TAX $ 0
BY:

RECEIVED
2017 SEP 11 PM 12:02

FILED
2017 SEP 14 PM 2:41

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

E-12

DRAWDOWN

548

Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus – February 6, 2017

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ULST
PROCESS PROVISIONS

FILED:09/14/2017 DURATION:********* CASH#:170914000450 FILM #:170914000423

FILER:

CHRISTINA VAN VORT, ESQ.
GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS, ATTN:GENERAL COUNCEL, WESTCHESTER
MEDICAL CTR.,EXECUTIVE OFFICES TAYLOR PAVILION,100 WOODS RD.
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

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 September 15, 2017.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

Rev. 06/13

E-12

170914000423

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chair of the Board of Directors of HealthAlliance Hospital Mary's Avenue Campus, hereby certifies:

1. The name of the corporation is HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS (the "Corporation"). The name under which the Corporation was formed was "Our Lady of Victory Sanitarium."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 7, 1902 pursuant to Chapter 559 of the Laws of 1895 of the State of New York. A Restated Certificate of Incorporation of the Corporation was filed on February 5, 2013.

3. 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 (the "NPCL").

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraphs (b)(3), (b)(5) and (b)(8) of Section 801 of the NPCL.

(a) Paragraph FOURTH of the Certificate of Incorporation, which identifies the member of the Corporation and sets forth the member's rights and powers and the powers of the Corporation, is revised to (i) subject certain of the powers of the Corporation to the approval of the Corporation's sole member, HealthAlliance, Inc., and (ii) grant additional

rights and powers to the member of HealthAlliance, Inc., WMC Health Network-Ulster, Inc. Accordingly, Paragraph FOURTH shall be amended in its entirety to read as follows:

"FOURTH: The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for services under the Corporation's provider numbers, the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, and the proposed addition and deletion of services and related matters. Subject to the following responsibilities, the Member shall have the following powers with respect to the Corporation:

• Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Broadway Campus;

• Credential all licensed health care professionals to be providing services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);

• Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Corporation and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Corporation;

• Elect and remove the members of the Board of Directors and board officers of the Corporation;

• Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;

• Approve and may initiate the adoption, deletion and amendment of bylaws of the Corporation;

• Approve and may adopt the annual capital and operating budgets of the Corporation, subject to the approval of WMC Health Network-Ulster, Inc. ("WMC-Health");

• Approve and may adopt operating policies and procedures of the Corporation, subject to the approval of WMC-Health;

• Approve and may initiate the addition or deletion of services at the Corporation;

• Approve and may initiate the filing of certificate of need applications by the Corporation;

• Negotiate and approve all vendor and equipment contracts for the Corporation;

• Approve the incurrence of any debt by the Corporation;

• Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member which is not included in an approved capital or operating budget;

• Approve and may initiate the commencement and settlement of any litigation by the Corporation;

• Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;

• Approve the dissolution of the Corporation;

• Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;

• Assure that the Corporation remains a secular institution; and

• Exercise any power that is not specifically and explicitly reserved to the Corporation in this Certificate of Incorporation or the Bylaws of the Corporation, or expressly reserved to the Corporation by law or regulation.

In addition, WMC-Health shall be entitled to exercise all of the following rights and powers with respect to the Corporation:

• Negotiation of payor and managed care contracts on behalf of the Corporation;

• Approval of the annual capital and operating budgets of the Corporation; and

• Approval of the operating policies and procedures of the Corporation.

(b) Paragraph TENTH of the Certificate of Incorporation, regarding service of process, shall be amended in its entirety to read as follows:

"TENTH: 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 shall mail a copy of any process against the Corporation served upon her/him is: Office of Legal Affairs, Attention: General Counsel, Westchester Medical Center, Executive Offices at Taylor Pavilion, 100 Woods Road, Valhalla, NY 10595."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and written consent of the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: February 6, 2017

Name: Thomas Collins
Title: Chair, Board of Directors

THE ATTORNEY GENERAL HEREBY APPROVES THE FOREGOING CERIFICATE OF AMENDMENT FOR FILING WITH THE DEPARTMENT OF STATE

ASSISTANT ATTORNEY GENERAL

JILL PAGER

8/23/17
DATE

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

May 23, 2017

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March, 2017, 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 HealthAlliance Hospital Mary's Avenue Campus, dated February 6, 2017.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

423

RECEIVED
2017 SEP 14 AM 11:03

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS

(Under Section 803 of the Not-For-Profit Corporation Law of the State of New York)

FILED
2017 SEP 14 PM 3:24

RECEIVED
2017 SEP 11 PM 12:02

Filed by:

Christina Van Vort, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

1CC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 14 2017
TAX $ ____
BY: ____

E-12

DRAWDOWN

450

Certificate of Amendment of the Certificate of Incorporation of the WMC Health Network (Ulster) – February 6, 2017

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WMC HEALTH NETWORK-ULSTER, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: WEST
PURPOSES PROCESS

FILED:09/20/2017 DURATION:********* CASH#:170920000464 FILM #:170920000419

FILER:

GARFUNKEL WILD PC ATTY AT LAW
111 GREAT NECK ROAD

GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS, ATTN: GENERAL COUNSEL, WESTCHESTER
MEDICAL CTR, EXEC. OFFICERS OF TAYLOR PAVILION 100 WOODS RD.
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	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 September 21, 2017.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

Rev. 06/13

E-12

170920000 419

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK – ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chairman of the Board of WMC Health Network – Ulster, Inc., hereby certifies:

1. The name of the corporation is WMC HEALTH NETWORK— ULSTER, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on September 4, 2015 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(3) of Section 801 of the NPCL. Paragraph FOURTH of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to add to its purposes the Corporation's duties as sole member of HealthAlliance, Inc. Accordingly, paragraph FOURTH shall be amended in its entirety to read as follows:

> "FOURTH: (a) The Corporation is organized and shall be operated exclusively for the support and benefit of, to perform the functions of, or to carry out the purposes of Westchester County Health Care

4035778v.3

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Corporation d/b/a Westchester Medical Center. The purposes for which the Corporation is formed are charitable.

(b) The Corporation shall be the sole corporate member of HealthAlliance, Inc., a New York Not-For-Profit Corporation established under Article 28 of the Public Health Law as a co-operator of HealthAlliance Hospital Broadway Campus, HealthAlliance Hospital Mary's Avenue Campus and Margaretville Memorial Hospital (collectively, the "Hospitals") and shall exercise the following powers, in addition to those granted under the Not-For-Profit Corporation Law, as sole corporate member:

i. Appointment and dismissal of management-level employees of HealthAlliance, Inc.;

ii. Negotiation of payor and managed care contracts on behalf of HealthAlliance, Inc. and the Hospitals;

iii. Approval of the annual capital and operating budgets of HealthAlliance, Inc. and the Hospitals; and

iv. Approval of the operating policies and procedures of HealthAlliance, Inc. and the Hospitals."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and written consent of the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: February 6, 2017

Name: Mitchell Hochberg
Title: Chair, Board of Directors

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

May 10, 2017

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of WMC Health Network – Ulster, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March, 2017, 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 WMC Health Network – Ulster, Inc., dated February 6, 2017.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

September 19, 2017

Christina Van Vort, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: Application of Certificate of Amendment
of the Certificate of Incorporation of WMC Health Network-Ulster, Inc.

Dear Ms. Van Vort:

The Attorney General hereby approves pursuant to the Not-For-Profit Corporation Law § 804(a)(ii)(A) the proposed Application of the Certificate of Amendment of the Certificate of Incorporation of *WMC Health Network-Ulster, Inc.* which is annexed hereto. Said approval is conditioned on submission of the Application of Amended of the Certificate of Incorporation to the Department of State for filing within 60 days hereafter. A copy of the filed Certificate shall be provided to the Attorney General within 30 days thereafter.

Sincerely,

Eric T. Schneiderman
Attorney General
State of New York

By: Sandra Giorno-Tocco

Sandra Giorno-Tocco
Assistant Attorney General
Westchester Regional Office

419

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK – ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FILED
2017 SEP 20 PM 2:29

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 20 2017
TAX $
BY

RECEIVED
2017 SEP 20 AM 11:01

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

E-12

DRAWDOWN

464

Certificate of Amendment of the Certificate of Incorporation of HealthAlliance– April 4, 2017

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) PURPOSES COUNTY: ULST

FILED:09/19/2017 DURATION:********* CASH#:170919000301 FILM #:170919000282

FILER:

CHRISTINA VAN VORT, ESQ.
GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

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 September 20, 2017.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

Rev. 06/13

E-12

170919000282

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chair of the Board of Directors of HealthAlliance, Inc., hereby certifies:

1. The name of the corporation is HEALTHALLIANCE, INC. (the "Corporation"). The name under which the Corporation was formed was "Health Alliance Planning, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 23, 2007 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(2) of Section 801 of the NPCL. Paragraph THIRD of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to add an additional purpose regarding the operation of chemical dependence, alcoholism and/or substance abuse services. Accordingly, the existing subsection (d) of paragraph THIRD of the Certificate of Incorporation shall be re-lettered as subsection (e) and a new subsection (d) shall be added to read as follows:

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" (d) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized at a meeting of the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Office of Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: April 4, 2017

Name: Thomas Collins
Title: Board of Directors

THE ATTORNEY GENERAL HEREBY APPROVES THE FOREGOING CERIFICATE OF AMENDMENT FOR FILING WITH THE DEPARTMENT OF STATE

ASSISTANT ATTORNEY GENERAL
JILL FABER

8/23/17
DATE

STATE OF NEW YORK

OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

ALBANY, NEW YORK

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 803 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment of the Certificate of Incorporation of

HEALTHALLIANCE, INC.

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is Executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 27th day of April, 2017

ROBERT A. KENT
GENERAL COUNSEL
NYS OASAS

By: Janet L. Piloski
Director
Bureau of Certification and
Systems Management

Janet Piloski

282

CERTIFICATE OF AMENDMENT OF

THE

CERTIFICATE OF INCORPORATION OF

HEALTHALLIANCE, INC.

(Under Section 803 of the Not-For-Profit Corporation Law of the State of New York)

FILED
2017 SEP 19 PM 2:39

Filed by:

Christina Van Vort, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

F-12
DRAWDOWN

1cc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 19 2017

TAX $ _____

BY: KVA

RECEIVED
2017 SEP 18 PM 3:01

301

Certificate of Amendment of the Certificate of Incorporation of the WMC Health Network (Ulster) – April 24, 2017

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WMC HEALTH NETWORK-ULSTER, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: WEST
PURPOSES PROCESS

FILED:10/06/2017 DURATION:********* CASH#:171006000646 FILM #:171006000585

FILER:

GARFUNKEL WILD, P.C.
111 GREAT NECK ROAD

GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS ATTN: GEN CSL WEST MEDICAL CENTER
EXECUTIVE OFF OF T. PAVILLION 100 WOODS ROAD
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

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 October 11, 2017.

Brendan Fitzgerald
Executive Deputy Secretary of State

Rev. 09/16

E-12

171006000-585 1

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK – ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chairman of the Board of WMC Health Network – Ulster, Inc., hereby certifies:

1. The name of the corporation is WMC HEALTH NETWORK – ULSTER, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on September 4, 2015 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(2) of Section 801 of the NPCL. Subsection (a) of paragraph FOURTH of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to add an additional purpose regarding the operation of chemical dependence, alcoholism, and/or substance abuse services. Accordingly, subsection (a) of paragraph FOURTH shall be amended in its entirety to read as follows:

> "FOURTH: (a) The Corporation is organized and shall be operated exclusively for the following purposes:

43934311v.2

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i. For the support and benefit of, to perform the functions of, or to carry out the purposes of Westchester County Health Care Corporation d/b/a Westchester Medical Center, the purposes for which the Corporation is formed are charitable; and .

ii. To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized at a meeting of the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Office of Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: April 1, 2017

Name: Mitchell Hochberg
Title: Chairman

STATE OF NEW YORK

OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

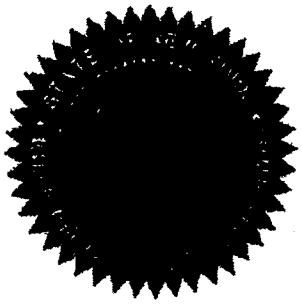
ALBANY, NEW YORK

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 803 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment of the Certificate of Incorporation of

WMC HEALTH NETWORK – ULSTER, INC.

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.



IN WITNESS WHEREOF, this instrument is Executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 27th day of April, 2017

ROBERT A. KENT
GENERAL COUNSEL
NYS OASAS

By: Janet L. Paloski
Director
Bureau of Certification and
Systems Management

Janet Paloski

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

October 5, 2017

Christina Van Vort, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: Application of Certificate of Amendment
of the Certificate of Incorporation of WMC Health Network-Ulster, Inc.

Dear Ms. Van Vort:

The Attorney General hereby approves pursuant to the Not-For-Profit Corporation Law § 804(a)(ii)(A) the proposed Application of the Certificate of Amendment of the Certificate of Incorporation of *WMC Health Network-Ulster, Inc.* which is annexed hereto. Said approval is conditioned on submission of the Application of Amended of the Certificate of Incorporation to the Department of State for filing within 60 days hereafter. A copy of the filed Certificate shall be provided to the Attorney General within 30 days thereafter.

Sincerely,

Eric T. Schneiderman
Attorney General
State of New York

By: Sandra Giorno-Tocco

Sandra Giorno-Tocco
Assistant Attorney General
Westchester Regional Office

44 SOUTH BROADWAY, WHITE PLAINS, NY 10601 • PHONE (914) 422-8755 • FAX (914) 422-8706 • WWW.AG.NY.GOV

585

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK – ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED OCT 06 2017
TAX $
BY:

FILED
RECEIVED
2017 OCT 16 PM 3:17
2017 OCT 16 AM 11:03

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

E-12

DRAWDOWN

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WMC Health Network (Ulster) – Board Resolution – January 4, 2018

WMC HEALTH NETWORK – ULSTER, INC.

RESOLUTION 1 – 2018

WHEREAS, WMC Health Network – Ulster, Inc. (the "Corporation") is a New York not-for-profit corporation and the sole corporate member of HealthAlliance, Inc. ("Health Alliance") which, in turn, is the sole corporate member of HealthAlliance Hospital Mary's Avenue Campus ("HAHMA"), HealthAlliance Hospital Broadway Campus ("HAHBW") and Margaretville Memorial Hospital ("MMH") (collectively, the "Subsidiaries"); and

WHEREAS, in 2017, the Corporation was Established as an Article 28 Active Parent over HealthAlliance, and Active Grandparent over the Subsidiaries, with increased reserved powers as a result; and

WHEREAS, Ulster and HealthAlliance desire to provide the Westchester County Health Care Corporation ("WCHCC") with the reserved powers over HealthAlliance and the Subsidiaries currently enjoyed by the Corporation; and

WHEREAS, in order to remove such reserved powers from the Corporation, HealthAlliance, HAHMA, HAHBW, MMH, and the Corporation must amend their governing documents to reflect that Ulster no longer holds Active Parent and Active Grandparent status over HealthAlliance and the Subsidiaries, as the case may be.

NOW THEREFORE BE IT

RESOLVED, that the Board of Directors of the Corporation hereby approves amending the Bylaws to reflect the removal of its current Active Parent and Active Grandparent status, as the case may be, over HealthAlliance and the Subsidiaries; and

RESOLVED, that this Resolution will take effect immediately.

STATE OF NEW YORK)
)ss:
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Resolution with the original Resolution on file in my office, which was duly adopted by the Governing Board of WMC Health Network – Ulster, Inc. at a legally convened meeting held on the 10th day of January, 2018 and that the same is a true and complete copy therefrom and the whole of the said original.

I further certify that the full Governing Board consists of 8 voting directors and that 7 of such voting directors were present at such meeting and that 7 of such voting directors voted in favor of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand on this 10th day of January, 2018.

AnnMarie Fernandez
Assistant Secretary
WMC Health Network – Ulster, Inc.

HealthAlliance, Inc. Board Resolution certified by Assistant Secretary of the Board of Directors- January 10, 2018

HEALTHALLIANCE, INC.

RESOLUTION 1 – 2018

WHEREAS, HealthAlliance, Inc. (the "Corporation") is a New York not-for-profit corporation and the sole corporate member of HealthAlliance Hospital Mary's Avenue Campus ("HAHMA"), HealthAlliance Hospital Broadway Campus ("HAHBW") and Margaretville Memorial Hospital ("MMH") (collectively, the "Subsidiaries"); and

WHEREAS, on March 31, 2016, the Corporation entered into an Affiliation Agreement with the Westchester County Health Care Corporation and WMC Health Network – Ulster, Inc. ("Ulster"), as well as amended its Certificate of Incorporation and Bylaws to effectuate Ulster becoming the sole corporate member of the Corporation; and

WHEREAS, on March 25, 2016, HAHMA and HAHBW amended their Bylaws to that effect, as well; and

WHEREAS, in 2017, the Corporation and the Subsidiaries further amended their Bylaws to provide Ulster with certain additional reserved powers over them consistent with powers held by an Article 28 Established Active Parent and Grandparent, as the case may be, and Ulster was provided such additional reserved powers over the Corporation and the Subsidiaries by the New York State Department of Health ("DOH"); and

WHEREAS, the Corporation now desires to provide the Westchester County Health Care Corporation ("WCHCC") with the reserved powers currently held by Ulster; and

WHEREAS, in order to effectuate this change in reserved powers over the Corporation, HAHMA, HAHBW and MMH, WCHCC must file a CON application with the DOH, and the Corporation and its Subsidiaries must amend their governing documents to reflect WCHCC's Active Parent and Active Grandparent status, as the case may be.

NOW THEREFORE BE IT

RESOLVED, that the Board of Directors of the Corporation, on behalf of itself and its Subsidiaries, hereby approves (i) WCHCC's filing of a CON with DOH to provide it reserved powers over the Corporation and its Subsidiaries consistent with an Article 28 Established Active Parent and Grandparent, and (ii) amending the Corporation's Bylaws to reflect WCHCC's Active Parent and Active Grandparent status, as the case may be; and

RESOLVED, that this Resolution will take effect immediately.

STATE OF NEW YORK)
)ss:
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Resolution with the original Resolution on file in my office, which was duly adopted by the Governing Board of HealthAlliance, Inc. at a legally convened meeting held on the 4th day of January, 2018 and that the same is a true and complete copy therefrom and the whole of the said original.

I further certify that the full Governing Board consists of 17 voting directors and that 14 of such voting directors were present at such meeting and that 14 of such voting directors voted in favor of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand on this 4th day of January, 2018.

AnnMarie Fernandez
Assistant Secretary
HealthAlliance, Inc.

Certificate of Amendment of the Certificate of Incorporation of HealthAlliance– April 20, 2018

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: HEALTHALLIANCE, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ULST
PROCESS PROVISIONS

FILED:01/15/2019 DURATION:********* CASH#:190115000732 FILM #:190115000689

FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS: ATTENTION: GENERAL COUNSEL
WESTCHESTER MEDICAL CENTER EXECUTIVE OFFICES 100 WOODS RD
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

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 January 16, 2019.

Whitney Clark
Deputy Secretary of State

Rev. 06/13

190115000689

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chair of the Board of Directors of HealthAlliance, Inc., hereby certifies:

1. The name of the corporation is HEALTHALLIANCE, INC. (the "Corporation"). The name under which the Corporation was formed was "Health Alliance Planning, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 23, 2007 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Restated Certificate of Incorporation of the Corporation was filed on September 14, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on September 19, 2017.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraph (b)(3) of Section 801 of the NPCL.

(a) Paragraph FOURTH of the Certificate of Incorporation, which identifies the sole member of the Corporation and sets forth the rights and powers of the Corporation as the member of HealthAlliance Hospital Mary's Avenue Campus,

190115000689

HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals"), is revised to delete certain rights and powers that WMC Health Network-Ulster, Inc., the sole member of the Corporation, has with respect to the Hospitals and grant certain rights and powers to Westchester County Health Care Corporation ("WCHCC"). Accordingly, paragraph FOURTH shall be amended in its entirety to read as follows:

"FOURTH: The Corporation shall have one member: WMC Health Network-Ulster, Inc. The Corporation shall be and exercise the following powers as a member of the Hospitals:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Hospitals or any entity controlled by the Hospitals (subject to the adoption by the Hospital of amendments to the medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals;
- Elect and remove the members of the boards of directors and board officers of the Hospitals;
- Appoint and remove the corporate officers of the Hospitals (which power may be delegated to the Corporation's chief executive officer);
- Approve and may initiate the adoption, deletion and amendment of bylaws of the Hospitals;
- Approve and may adopt the annual capital and operating budgets of the Hospitals, subject to the approval of Westchester County Health Care Corporation ("WCHCC");

- Approve and may adopt operating policies and procedures of the Hospitals, subject to the approval of WCHCC;

- Approve and may initiate the addition or deletion of services at the Hospitals;

- Approve and may initiate the filing of certificate of need applications by the Hospitals, subject to the approval of WCHCC;

- Negotiate and approve all vendor and equipment contracts for the Hospitals;

- Approve the incurrence of any debt by the Hospitals;

- Approve any expenditure by the Hospitals in aggregate per year above the threshold amount set by the Corporation which is not included in an approved capital or operating budget;

- Approve and may initiate the commencement and settlement of any litigation by the Hospitals;

- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;

- Approve the dissolution of the Hospitals;

- Approve the sale by the Hospitals of any assets outside the ordinary course of business or approved within the Hospital's budget;

- Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, and Margaretville Memorial Hospital remain secular institutions; and

- Exercise any power that is not specifically and explicitly reserved to WCHCC in this Certificate of Incorporation, or reserved to the Hospitals in the Certificate of Incorporation or Bylaws of the Hospitals, or reserved to the Hospitals by law or regulation."

(b) Paragraph NINTH of the Certificate of Incorporation, which sets forth the powers of the sole member of the Corporation, is revised to delete certain rights and

powers that WMC Health Network-Ulster, Inc. has with respect to the Corporation and the Hospitals and to grant certain rights and powers to WCHCC. Accordingly, paragraph NINTH shall be amended in its entirety to read as follows:

"NINTH: WCHCC shall exercise the following powers with respect to the Corporation and the Hospitals:

(a) Appointment and dismissal of management-level employees of the Corporation;

(b) Negotiation of payor and managed care contracts on behalf of the Corporation and the Hospitals;

(c) Approval of the annual capital and operating budgets of the Corporation and the Hospitals;

(d) Approval of the operating policies and procedures of the Corporation and the Hospitals; and

(e) Approval and initiation of the filing of certificate of need applications by the Corporation and the Hospitals."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: 4-20, 2018

Name: Thomas Collins
Title: Chair, Board of Directors

THE ATTORNEY GENERAL HEREBY APPROVES THE FORGOING CERTIFICATE OF AMENDMENT FOR FILING WITH THE DEPARTMENT OF STATE

ASSISTANT ATTORNEY GENERAL DATE

JILL FARBER 1/10/19

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

November 15, 2018

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of HealthAlliance, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 12th day of April 2018, 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 HealthAlliance, Inc., dated April 20, 2018.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

190115000689

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

Under Section 803 of the Not-For-Profit Corporation Law

2019 JAN 15 PM 2:00

FILER

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

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DRAWDOWN

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 15 2019
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BY: A

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Certificate of Amendment of the Certificate of Incorporation of the WMC Health Network (Ulster) – April 25, 2018

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WMC HEALTH NETWORK-ULSTER, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: WEST
PURPOSES PROCESS

FILED:02/26/2019 DURATION:********* CASH#:190226000080 FILM #:190226000075

FILER:

GARFUNKEL WILD PC ATTY AT LAW
111 GREAT NECK ROAD

GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

OFFICE OF LEGAL AFFAIRS; ATTN: GEN CSL; WEST MEDICAL CENTER
EXEC. OFF. AT TAYLOR PAVILION 100 WOODS ROAD
VALHALLA, NY 10595

REGISTERED AGENT:

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	65.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 27, 2019.

Whitney Clark
Deputy Secretary of State

Rev. 06/13

E-12

190226000 075

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK–ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chairman of the Board of WMC Health Network–Ulster, Inc., hereby certifies:

1. The name of the corporation is WMC HEALTH NETWORK–ULSTER, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on September 4, 2015 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on September 20, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on October 6, 2017.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraphs (b)(2) and (b)(3) of Section 801 of the NPCL. Paragraph FOURTH of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to (a) delete from its purposes the operation of chemical dependence, alcoholism, and/or substance abuse services; and (b) delete certain rights and powers of the Corporation with respect

to HealthAlliance, Inc. Accordingly, paragraph FOURTH shall be amended in its entirety to read as follows:

> "FOURTH: (a) The Corporation is organized and shall be operated exclusively for the support and benefit of, to perform the functions of, or to carry out the purposes of Westchester County Health Care Corporation d/b/a Westchester Medical Center. The purposes of which the Corporation is formed are charitable.
>
> (b) The Corporation shall be the sole corporate member of HealthAlliance, Inc., a New York Not-For-Profit Corporation established under Article 28 of the Public Health Law as a co-operator of HealthAlliance Hospital Broadway Campus, HealthAlliance Hospital Mary's Avenue Campus and Margaretville Memorial Hospital."

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: April 25, 2018

Name: Mitchell Hochberg
Title: Chair, Board of Directors

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

February 25, 2019

Christina Van Vort, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: Application of Certificate of Amendment of
Certificate of Incorporation of WMC Health Network-Ulster, Inc.

Dear Ms. Van Vort:

The Attorney General hereby approves pursuant to the Not-For-Profit Corporation Law § 804(a)(ii)(A) the proposed application of the Certificate of Amendment of the Certificate of Incorporation of *WMC Health Network-Ulster, Inc.*, which is annexed hereto. Approval of the Certificate Amendment of *WMC Health Network-Ulster, Inc.* is conditioned upon its submission to the Department of State for filing within 60 days hereafter. A copy of the filed Certificate of Amendment shall be provided to the Attorney General within 30 days thereafter.

Sincerely,

LETITIA JAMES
Attorney General
State of New York

By: Sandra Giorno-Tocco

Sandra Giorno-Tocco
Assistant Attorney General
Westchester Regional Office

CC: Charities Bureau-Registration Unit

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.ny.gov

November 15, 2018

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of WMC Health Network-Ulster, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 12th day of April 2018, 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 WMC Health Network-Ulster, Inc., dated April 20, 2018.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

075

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK–ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FILER

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

FILED
2019 FEB 26 PM 1:22

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DRAWDOWN

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED FEB 26 2019
TAX $ 0
BY:

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2019 FEB 25 PM 3:03

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Certificate of Amendment of the Certificate of Incorporation of the WMC Health Network (Ulster) – May 1, 2019

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

WMC HEALTH NETWORK – ULSTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chairman of the Board of WMC Health Network – Ulster, Inc., hereby certifies:

1. The name of the corporation is WMC HEALTH NETWORK – ULSTER, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on September 4, 2015 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on September 20, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on October 6, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on February 26, 2019.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraph (b)(3) of Section 801 of the NPCL. Paragraph FOURTH of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to delete subsection (b) thereof which states that the Corporation is the sole member of HealthAlliance, Inc. because the Corporation will no longer be the sole member of

HealthAlliance, Inc. and to delete "(a)" from the first paragraph thereof because there will no longer be a subsection (b). Accordingly, paragraph FOURTH shall be amended in its entirety to read as follows:

> "**FOURTH**: The Corporation is organized and shall be operated exclusively for the support and benefit of, to perform the functions of, or to carry out the purposes of Westchester County Health Care Corporation d/b/a Westchester Medical Center. The purposes for which the Corporation is formed are charitable."

5. This Amendment of the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: May 1, 2019

Name: Mitchell Hochberg
Title: Chair, Board of Directors

Certificate of Amendment of the Certificate of Incorporation of HealthAlliance, Inc. – May 2, 2019

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

HEALTHALLIANCE, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the Chair of the Board of Directors of HealthAlliance, Inc., hereby certifies:

1. The name of the corporation is HEALTHALLIANCE, INC. (the "Corporation"). The name under which the Corporation was formed was "Health Alliance Planning, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 23, 2007 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Restated Certificate of Incorporation of the Corporation was filed on September 14, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on September 19, 2017. A Certificate of Amendment of the Certificate of Incorporation was filed on January 15, 2019.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraph (b)(3) of Section 801 of the NPCL. Paragraph FOURTH of the Certificate of Incorporation, which identifies the sole member of the Corporation and sets forth the rights and powers of the Corporation as the member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus

and Margaretville Memorial Hospital, is revised to replace the current sole member of the Corporation, WMC Health Network – Ulster, Inc., with Westchester County Health Care Corporation, which will be the new sole member of the Corporation, and to use the defined term "WCHCC" in the seventh bullet. Accordingly, (a) the first sentence of the Paragraph FOURTH shall be amended in its entirety to read as follows: "The Corporation shall have one member: Westchester County Health Care Corporation ("WCHCC")." and (b) the seventh bullet in Paragraph FOURTH shall be amended in its entirety to read as follows: "Approve and may adopt the annual capital and operating budgets of the Hospitals, subject to the approval of WCHCC;"

5. This Amendment of the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Directors of the Corporation and the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

Office of Legal Affairs
Attention: General Counsel
Westchester Medical Center
Executive Offices at Taylor Pavilion
100 Woods Road
Valhalla, NY 10595

Dated: May 2, 2019

Name: Thomas Collins
Title: Chair, Board of Directors

Finally, under CON Project No. 181031-E, HealthAlliance and its subsidiary hospitals were disestablished from Ulster. While Ulster lost its Active Parent status under the PHHPC approval, it remained the sole member of HealthAlliance.

Current Request

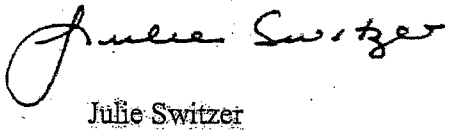
WCHCC now desires to (i) amend HealthAlliance's Certificate of Incorporation to replace Ulster with WCHCC as its sole member and (ii) amend Ulster's Certificate of Incorporation to remove from its purposes being the sole member of HealthAlliance.

As Ulster currently does not hold Active Parent status over any Article 28 entity, we believe a Certificate of Need Application is not needed for the proposed transaction, and only PHHPC's approval of the certificate changes are required.

Toward that end, please see the proposed amended Certificates of Incorporation of HealthAlliance and Ulster attached.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Julie Switzer

Enclosures

cc: Frank M. Cicero, Cicero Consulting Associates

WMC Health
Westchester Medical Center Health Network

Julie Switzer
Executive Vice President
Chief Legal Officer and General Counsel
Westchester Medical Center Health Network

Executive Offices
100 Woods Road
Valhalla, New York 10595

914.493.2797
julie.switzer@wmchealth.org

May 3, 2019

VIA FEDEX
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: WMC HEALTH NETWORK-ULSTER, INC. AND HEALTHALLIANCE, INC. (Ulster County)
Revised Certificates of Amendment of their Certificates of Incorporation

Dear Ms. Leonard:

WMC Health Network-Ulster, Inc. (Ulster) and HealthAlliance, Inc.(HealthAlliance) are seeking Public Health and Health Planning Council (PHHPC) approval of Amendments to their Certificates of Incorporation. Ulster is a wholly-owned subsidiary of Westchester County Health Care Corporation (WCHCC), d/b/a Westchester Medical Center Health Network (WMC Health) and currently is the sole member of HealthAlliance.

Background

Under CON Project No. 181031-E, WCHCC, a public benefit corporation (PBC) established by New York State in 1997, received approval to become the Active Parent of HealthAlliance and the Active Grandparent of the three (3) HealthAlliance subsidiary hospitals:

- HealthAlliance Hospital Broadway Campus (HA Broadway), a 150-bed hospital located at 396 Broadway, Kingston (Ulster County), NY 12401;
- HealthAlliance Hospital Mary's Avenue Campus (HA Mary's Avenue), a 150-bed hospital located at 105 Mary's Avenue, Kingston (Ulster County), NY 12401; and
- Margaretville Memorial Hospital (MMH), a 15-bed Critical Access Hospital located at 42084 State Highway 28, Margaretville (Delaware County), NY 12455.

HealthAlliance was approved in 2007 as the Active Parent over the three (3) hospitals under CON Project No. 072099-E. Under CON Project No. 181031-E, HealthAlliance remained the Active Parent of the HealthAlliance subsidiary hospitals.

Ulster was approved to become the Active Parent of HealthAlliance and the Active Grandparent of the three (3) HealthAlliance subsidiary hospitals under CON Project No. 162396-E.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: September 19, 2019

Subject: Certificate of Amendment of Certificate of Incorporation of Northwest Buffalo Community Health Care Center, Inc.: Corporate Name Change

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Neighborhood Health Center of WNY, Inc., d/b/a "Neighborhood Health Center" is the operator of a facility licensed pursuant to Public Health Law Article 28, specifically a Federally Qualified Health Center and Diagnostic and Treatment Center.

The Board of Directors is seeking to amend the Certificate of Incorporation of Northwest Buffalo Community Health Care Center, Inc.:, to change the name to Neighborhood Health Center of WNY, Inc., for branding and clear identification purposes, and due to a request by its federal regulatory agency, the Health Resources and Services Administration, to cease using the current assumed name and corporate name. Please see the attached email from Michael A. de Freitas of William C. Moran & Associates, P.C. for further details.

The facility wishes to amend its Certificate of Incorporation and requests PHHPC approval of the change and for filing the amendment with the New York State Secretary of State. PHHPC approval is required pursuant to New York State Public Health Law § 2801-a, 10 NYCRR § 600.11, and N-PCL §804(a)(i).

There is no legal objection to the proposed Certificate of Amendment of Certificate of Incorporation of Northwest Buffalo Community Health Care Center, Inc., and it is in legally acceptable form.

WILLIAM C. MORAN & ASSOCIATES, P.C.
ATTORNEYS AT LAW
6500 MAIN STREET
SUITE FIVE
WILLIAMSVILLE, NEW YORK 14221

Michael A. de Freitas
Susan J. Facer
Alyssa M. Gross
William C. Moran

(716) 633-6500
FAX (716) 633-3370

September 18, 2019

By email to mark.schweitzer@health.ny.gov

Mark Schweitzer, Esq.
NYS Dept of Health
Office of Counsel

Dear Mark:

Re: Northwest Buffalo Community Health Care Center, Inc.

This letter supplements my letter dated September 11, 2019, a copy of which is attached (minus the attachments to that letter). This letter is sent pursuant to your request. As originally requested in my September 11 letter, the above corporation requests approval to change the name of the corporation to "Neighborhood Health Center of WNY, Inc." By electronic mail the morning of September 18, I sent you updated certified resolutions of the board regarding the approval of "Neighborhood Health Center of WNY, Inc." Those certified resolutions are again attached. This letter confirms the September 11 letter and the September 18 e-mail.

Thanks again for your help.

Sincerely,

Michael A. de Freitas

Copy w/o enc. to Joanne Haefner, CEO

WILLIAM C. MORAN & ASSOCIATES, P.C.
ATTORNEYS AT LAW
6500 MAIN STREET
SUITE FIVE
WILLIAMSVILLE, NEW YORK 14221

Michael A. de Freitas
Susan J. Facer
Alyssa M. Gross
William C. Moran

(716) 633-6500
FAX (716) 633-3370

September 11, 2019

By email to mark.schweitzer@health.ny.gov

Mark Schweitzer, Esq.
NYS Dept of Health
Office of Counsel

Dear Mark:

Re: Northwest Buffalo Community Health Care Center, Inc.

Thanks for speaking with me earlier this week. The above corporation, which does business under the duly-filed assumed name "Neighborhood Health Center," is a Federally Qualified Health Center as well as a diagnostic and treatment center and has been asked by its federal regulatory agency, the Health Resources and Services Administration, to cease use of an assumed name and change its actual corporate name if it wishes to use any other name. Therefore, I am seeking approval by the Public Health and Health Planning Council of the attached proposed Certificate of Amendment of the Certificate of Incorporation to change the name of the corporation to "Neighborhood Health Center of WNY, Inc." The existing Certificate of Incorporation is attached for your review.

The attached minutes from July approved "Neighborhood Health Center." Since then, the staff concluded that it is advisable to use "Neighborhood Health Center of WNY, Inc.," to more clearly identify our service area. Staff is confident that the board will approve the slight variation at its upcoming meeting on September 19. I will provide minutes to you promptly following that meeting. If, however, you are not comfortable putting this name change on the October agenda for the PHHPC, I would understand. Please let me know either way.

Thanks for your help.

Sincerely,

Michael A. de Freitas

Copy w/o enc. to Joanne Haefner, CEO

OFFICER'S CERTIFICATE

I certify that I am the duly elected and qualified Chair of the Board of Directors of Northwest Buffalo Community Health Care Center, Inc., a New York not-for-profit corporation, (the "Corporation").

I further certify that the following resolutions attached to this Officer's Certificate as Exhibit A were duly adopted on September 17, 2019, by the unanimous written consent of the board of directors.

I further certify that all of such resolutions are in full force and effect on the date of this Officer's Certificate.

Dated: September 17, 2019

Diana Proske, Chair

EXHIBIT A

WHEREAS, the corporation previously filed a Certificate of Assumed Name with the New York Department of State to use the name Neighborhood Health Center; and

WHEREAS, it is advisable for the corporation to formally change its real corporate name;

NOW, THEREFORE, BE IT RESOLVED, that the name of the corporation be changed from Northwest Buffalo Community Health Care Center, Inc. to Neighborhood Health Center of WNY, Inc., subject to any necessary or appropriate approval of any governmental authorities or other third parties under applicable law, including without limitation the approval of the New York State Public Health and Health Planning Council; and be it further

RESOLVED, that the Chief Executive Officer of this corporation be, and hereby is, authorized and directed to execute a Certificate of Amendment of the Certificate of Incorporation to be filed in the New York Department of State to effect the foregoing name change and to execute each other document, and take each other action, including without limitation, seeking the approvals of any governmental authorities or other third parties under applicable law, that she deems necessary or advisable to effect the change of name of the corporation.

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

1. The name of the corporation is Northwest Buffalo Community Health Care Center, Inc.

2. The Certificate of Incorporation of the corporation was filed by the Department of State of the State of New York on April 21, 1987. The corporation was formed under the Not-for-Profit Corporations Law of the State of New York.

3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a charitable corporation under Section 201 of such law.

4. The Certificate of Incorporation of the corporation is amended or changed to effect one or more of the amendments or changes authorized in subparagraph (b) of Section 801 of the Not-for-Profit Corporation Law, to wit:

A. Article I, which sets forth the name of the corporation, is hereby amended to read in its entirety as follows:

I. The name of the corporation is Neighborhood Health Center of WNY, Inc.

B. Article XI, which sets forth the corporation's address for mailing service of process, is hereby amended to read in its entirety as follows:

> XI. 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 post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is 155 Lawn Avenue, Buffalo, New York 14207.

5. The foregoing amendments of the Certificate of Incorporation were authorized by a majority vote of the board of directors of the corporation at a meeting duly held.

6. 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 post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is 155 Lawn Avenue, Buffalo, New York 14207.

Dated: 9/11, 2019.

Name:
Title:

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC.

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

Filer:
Michael A. de Freitas
William C. Moran & Associates, P.C.
Attorneys at law
6500 Main Street, Suite 5
Williamsville NY 14221

The University of the State of New York

STATE OF NEW YORK:
: ss.:
COUNTY OF ALBANY :

Pursuant to the provisions of section 216 of the Education Law and section 404, subdivision (d) of the Not-for-Profit Corporation Law, consent is hereby given to the filing of the annexed certificate of incorporation of NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC. as a not-for-profit corporation.

B486534

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth annexed to this form.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 18th day of March, 1987.

Gordon M. Ambach
Commissioner of Education

By: James H. Whitney

James H. Whitney
Acting Counsel

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This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shalll be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services unless or until the corporation is approved pursuant to Article 28 of the Public Health Law.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

CERTIFICATE OF INCORPORATION

of

NORTHWEST BUFFALO COMMUNITY
HEALTH CARE CENTER, INC.

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

The undersigned incorporator, at least 18 years of age, acting under the Not-for-Profit Corporation Law, does hereby adopt the following certificate of incorporation for such corporation:

I. The name of the corporation is NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC.

II. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or shall enure to the benefit of, its members, directors or officers except to the extent permitted under the Not-for-Profit Corporation Law.

III. The purposes for which the corporation is formed are:

A. To supplement health care services presently offered in the northwest area of Buffalo, New York by establishing a community health care center which will provide prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition in areas which such services are statistically underprovided for by existing institutions, all solely on a not-for-profit basis.

B. To further provide health care services by operation of a preventive, diagnostic and treatment health center pursuant to Article 28 of the Public Health Law of the State of New York, all solely on a not-for-profit basis.

C. In furtherance of corporate purposes, to coordinate the aforesaid activities with the decisions and the activities of other federally funded, State and local health services delivery projects and programs serving the Buffalo, New York area, all solely on a not-for-profit basis.

D. To provide for care of the sick of the Buffalo area through the employment of trained physicians, nurses and other health care professionals, solely on a not-for-profit basis.

E. To do any other act or thing incidental to or connected with the foregoing purposes and objectives or in advancemwnt thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

F. Provided, however, that nothing herein shall authorize the corporation, directly or indirectly, to engage in, or include among its purposes, any of the activities described in (and for which approvals or consents are required by) paragraphs (b) through (u), excepting paragraphs (o) and (t) of §404 of the Not-for-Profit Corporation Law.

The foregoing purposes shall be exclusively charitable, scientific and educational within the meaning of §501(c)(3) of the Internal Revenue Code of 1954, as amended.

IV. The corporation shall have the powers enumerated in section 202(a) of the Not-for-Profit Corporation Law of the State

of New York.

V. The corporation shall be a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

VI. The names and addresses of the initial directors are:

Barbara Doeing
392 Amherst Street
Buffalo, New York 14207

Bernadette Turner
95 Laird Avenue
Buffalo, New York 14207

David Haynes
288 Ontario Street
Buffalo, New York 14207

Gary Reilly
Assistant Administrator
Millard Fillmore Hospital
3 Gates Circle
Buffalo, New York 14222

VII. The office of the corporation is to be located in the City of Buffalo, County of Erie, State of New York.

VIII. The territory in which the activities of the corporation are principally to be conducted is the City of Buffalo, County of Erie.

IX. Prior to delivery to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law and any other statute of the State of New York will be endorsed upon or annexed to this certificate.

X. The duration of the corporation is perpetual.

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XI. The Secretary of State is designated as agent of the corporation upon whom process against it may be served, and the post office address within this state to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

Northwest Buffalo Community Health Care Center, Inc.
Attn.: President, Board of Directors
155 Lawn Avenue
Buffalo, New York 14207

XII. The corporation shall neither have nor exercise any power, not shall it engage directly or indirectly in any activity that would invalidate its status (1) as a corporation which is exempt from Federal Income taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 or (2) as a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1954.

XIII. No part of the net earnings or the assests of the corporation shall enure to the benefit of or be distributed to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above in Article 3.

XIV. The corporation shall not operate for the purpose of carrying on a trade or business for profit.

XV. No part of the activities of the corporation shall be carrying on of propaganda, or otherwise attempting to influence

legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

XVI. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation, and to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of 1954, as the Board of Directors shall determine upon approval of a Justice of the Supreme Court of the State of New York. Any such assets not so disposed of shall be disposed of by a Justice of the Supreme Court of the State of New York, Erie County, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated in such manner as in the judgment of the Court will best accomplish the general purposes for which the corporation was organized.

XVII. All refernces herein to provisions of the Internal Revenue Code of 1954 shall be deemed to include statutes which succeed such provisions (i.e., the corresponding provisions of future United States Internal Revenue Laws).

XVIII. The corporation shall not be a membership corporation.

IN WITNESS WHEREOF, I have made and signed this certificate this 21 day of January, 1986, and I affirm the statements contained herein are true under the penalties of perjury.

Bernadette Turner
Bernadette Turner
95 Laird Avenue
Buffalo, NY 14207

STATE OF NEW YORK :
COUNTY OF ERIE : S S :
CITY OF BUFFALO :

On this 21st day of January, 1986, before me personally came Bernadette Turner, to me known and known to me to be the person described in and who executed the foregoing certificate, and he thereupon duly acknowledged to me that he executed same.

David J. Seeger
NOTARY PUBLIC

DAVID J. SEEGER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1987

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

March 5, 1987

Ms. Virgilia Benker-Beck
Executive Director of Northwest Buffalo
Community Health Care Center
155 Lawn Avenue
Buffalo, NY 14207

Dear Ms. Benker-Beck:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of September, 1986, I hereby certify that the Certificate of Incorporation of Northwest Buffalo Community Health Center, Inc. dated January 21, 1986 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Sincerely,

Karen S. Westervelt

Karen S. Westervelt
Acting Executive Secretary

Attachment

cc: David J. Seeger
Terranova, Seeger & Galeziowski
394 Franklin Street
Buffalo, NY 14202

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STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. MCSPARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

Telephone: (518) 474-7206

March 9, 1987

David J. Seeger, Esq.
Terranova, Seeger & Galeziowski, Esqs.
394 Franklin Street
Buffalo, New York 14202

Dear Mr. Seeger:

RE: NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application. Approval is contingent upon your 1) inserting the addresses of the incorporator opposite to or beneath her signature pursuant to Section 402 of the Not-For-Profit Corporation Law; and 2) seeking the approval of the Education Department pursuant to Section 404 of the Not-For-Profit Corporation Law.

Very truly yours,

ROBERT ABRAMS
Attorney General

By:

RICHARD S. REDLO
Assistant Attorney General

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SUPREME COURT : STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of Application for approval of the Certificate of Incorporation of NORTHEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC. pursuant to Section 402 of the Not-for-Profit Corporation Law.

Index No. _____

HON. JOSEPH D. MINTZ, J.S.C., a Justice of the Supreme Court of the State of New York of the Eight Judicial District approve of the foregoing certificate of incorporation of Northwest Buffalo Community Health Care Center, Inc. and consent to its filing with the Department of State.

DATED: Buffalo, New York
MAR 24 1987, 1986

JOSEPH D. MINTZ, J.S.C. J.S.C.

TERRANOVA, SEEGER & GALEZIOWSKI
Attorneys

B486534

RECEIVED APR 20 2 PM '87

RECEIVED MAR 26 1 PM '87

CERTIFICATE OF INCORPORATION

of

NORTHWEST BUFFALO COMMUNITY HEALTH CARE CENTER, INC.

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

F TYPE B

DAVID J. SEEGER, ESQ.
394 Franklin Street
Buffalo, New York 14202
(716) 856-1536

FILED APR 21 9 35 AM '87

930400

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 21 1987

RECEIVED APR 7 1 PM '87

AMT. OF CHECK $ 60
FILING FEE $ 50
TAX $
COUNTY FEE $
COPY $
CERT $
REFUND $
SPEC HANDLE $ 10

BY: m

Erie
types

don't find
3/26