

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

**COMMITTEE DAY**

**AGENDA**

*November 21, 2019*  
*10:00 a.m.*

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	152243 C	Northern Westchester Hospital (Westchester County)
2.	162148 C	Nyack Hospital (Rockland County)
3.	162211 C	New York-Presbyterian/Hudson Valley Hospital (Westchester County)
4.	172251 C	Putnam Hospital Center (Putnam County)
5.	171415 C	Northern Dutchess Hospital (Dutchess County)
6.	191260 C	HealthAlliance Hospital Mary's Avenue Campus (Ulster County)
7.	192045 C	Samaritan Hospital (Rensselaer County)
8.	192123 C	Blythedale Childrens Hospital (Westchester County)

**Ambulatory Surgery Centers - Construction**

**Exhibit # 2**

<u>Number</u>	<u>Applicant/Facility</u>
1. 192051 C	Specialists' One-Day Surgery Center, LLC (Onondaga County)

**Certified Home Health Agencies - Constructruction**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 121223 C	Excellent Home Care Services, LLC (Kings County)

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

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

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191075 E	Excellent Home Care Services, LLC (Kings County)
2. 191123 E	Preferred Certified, LLC (Bronx County)
3. 192009 E	VNA of Staten Island (Richmond County)
4. 192014 E	Always There Family Home Health Services (Ulster County)
5. 192109 E	Tender Loving Care, an Amedisys Company (Nassau County)

**Acute Care Services - Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 192157 E	SLHS Massena, Inc. d/b/a Massena Hospital (St. Lawrence County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191212 B	Atlantic SC, LLC d/b/a Atlantic Surgery Center (Suffolk County)

- 2. 192021 B Northeast Endoscopy  
(Suffolk County)
- 3.. 192069 B Crotona Parkway SC, LLC d/b/a Crotona Parkway Ambulatory  
Surgery Center  
(Bronx County)

**Diagnostic and Treatment Center - Establish/Construct**

**Exhibit # 7**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191286 B	Perfect Health Medical, LLC (Kings County)
2.. 192118 B	NY Med of Brooklyn (Kings County)
3. 192120 B	Kerestir Health, LLD d/b/a Kerestir Health Center (Orange County)

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

**Exhibit # 8**

<u>Number</u>	<u>Applicant/Facility</u>
1. 192013 E	Fairview Nursing Care Center, Inc. (Queens County)

**C. Home Health Agency Licensures**

**Exhibit # 9**

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

<u>Number</u>	<u>Applicant/Facility</u>
1 191101 E	Underwood Gardens Homecare, LLC d/b/a Underwood Manor LHCSA (Cattaraugus County)
2. 192006 E	Marchand Home Care at Sharon Springs (Schoharie County)



**Project # 152243-C  
Northern Westchester Hospital**

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

**County: Westchester**  
**Acknowledged: November 10, 2015**

**Executive Summary**

**Description**

Northern Westchester Hospital (NWH), a 245-bed, voluntary not-for-profit, Article 28 acute care hospital located at 400 Main Street, Mount Kisco (Westchester County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) services, and perform requisite renovations, on the Mount Kisco campus. The proposed program will be operated with clinical oversight from Lenox Hill Hospital (LHH) in accordance with the terms of an executed clinical service agreement. LHH, a 634-bed, acute care hospital located on Manhattan's Upper East Side, is a full-service cardiac surgery center that provides PCI and cardiac surgery services. Both hospitals are members of Northwell Health, Inc., a not-for-profit corporation located in Nassau County, and are co-operated by Northwell Healthcare, Inc., whose sole corporate member and passive parent is Northwell Health, Inc.

This project will allow NWH to become the regional destination for patients requiring PCI through coordination with LHH. The Cardiac Cath/EP suite will be located on the second floor (Level 2) of the Wallace Pavilion next to NWH's recently relocated Interventional Radiology (IR) service (CON 172409-L). The proposed 1,709 square foot suite will be directly adjacent to surgery, providing an integrative platform aligning all procedures requiring anesthesia on Level 2 of the Wallace Pavilion.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018, Westchester County residents received 733 treatments outside of the Hudson Valley region. Northern Westchester Hospital, projects 115 emergency PCI procedures in Year One and beyond.

**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 \$3,623,197 will be funded with \$362,320 equity from NWH and a bond issuance for \$3,260,877 at 6.5% interest for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through the Dormitory Authority of the State of New York (DASNY).

<u>Incremental</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$13,592,700	\$13,637,100
Expenses	\$10,211,100	\$10,284,700
Net Income	\$3,381,600	\$3,352,400

## 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 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)

**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 and an expiration of the approval. [PMU]
2. Construction must start on or before January 15, 2020 and construction must be completed by October 15, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**December 12, 2019**

## Need Analysis

### Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHHPC December Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in year-one.

In 2018, Westchester County residents received 733 treatments outside of the Hudson Valley region. Northern Westchester Hospital, projects 115 emergency PCI procedures in year one and beyond. Accompanying patient selection criteria for Electrophysiology procedures has been submitted.

### Analysis

Please refer **RNR Attachment A** - Hudson Valley PCI and Emergency PCI Procedures by County, by Resident, by Existing Provider, and by Applicant Projection.

<b>Table 1: 2018 Emergency (709.14: 09/25/19) PCI's Performed on Hudson Valley Residents: By: County, By Operational Hudson Valley Facilities, By: Location of Treatment.</b>											
Patient County of Residence	Operational Facilities in the Hudson Valley Region							Resident Outmigration			
	Good Samaritan Suff. (Rockland)	Orange Regional (Orange)	St Luke's Cornwall Newburgh (Orange)	Vassar Brothers (Dutchess)	New York Presbyterian Lawrence (Westchester)	Westchester Med (Westchester)	White Plains (Westchester)	Total	County Residents Treated: All Locations	County Residents Receiving Emergency PCI Treatment in Hudson Valley	County Residents Leaving Hudson Valley for Emergency PCI Treatment
Delaware				4			0	4	131	4	127
Dutchess		3	21	461	4	37	1	527	575	527	48
Orange	90	358	190	24	3	9	0	674	777	674	103
Putnam			2	30	10	55	7	104	137	104	33
Rockland	268	2	2	1	1	11	2	287	412	287	125
Sullivan		141		5		4	0	150	163	150	13
Ulster	3	19	26	263		9	0	320	359	320	39
Westchester		2		6	173	253	331	765	1,498	765	733
Total H. V. Residents receiving Emergency PCIs in Region	361	525	241	794	191	378	341	2,831	4,052	2,831	1,221

**Table 2: Applicant Facilities Projected Emergency PCI's**

Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
152243	Northern Westchester Hospital	Westchester	115	115
162211	New York-Presbyterian Hudson Valley Hospital	Westchester	50	64
162148	Nyack Hospital	Rockland	100	100
171415	Northern Dutchess Hospital	Dutchess	51	51
172251	Putnam Hospital Center	Putnam	36	36
191260	Health Alliance Hospital Mary's Ave Campus	Ulster	103*	103

*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region.

Northern Westchester Hospital has projected 115 Emergency PCI procedures by Year One of service.

The goals of this project are to:

- Improve patient access to high-quality, coordinated diagnostic cardiac catheterization and PCI procedures to residents in both Westchester and Putnam Counties, including the underserved residents of the service area.
- Improve cardiac health outcomes for the residents of the service area who currently experience health disparities and poor cardiac health outcomes.
- Provide high quality oversight of procedures performed in the new laboratory as a result of a clinical services agreement with Lenox Hill Hospital.
- Decrease outmigration of interventional cardiology cases from Northern Westchester and Putnam Counties to facilities in Connecticut and Manhattan.
- Facilitate Northwell Health in transforming its delivery system in order to transition from its current Fee-For-Service Payment model to an accountable Value-Based Payment (VBP) model.

#### Conclusion

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

## Program Analysis

#### Program Description

The program will be coordinated (via an executed clinical service agreement) with Lenox Hill Hospital (LHH), a 634-bed acute care hospital on Manhattan's Upper East Side that offers a full-service cardiac surgery center and is also a member of Northwell Health. Lenox Hill Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at NWH and will provide clinical leadership, day-to-day supervision and quality oversight. Further, all existing policies and procedures currently in place at LHH will be incorporated into the operation of the lab at NWH and patients who require surgery will be transferred to LHH or Westchester Medical Center.

The proposed lab will include:

- One adult PCI-capable cardiac catheterization lab
- One cardiac catheterization lab/EP lab
- 24/7 Interventional staff coverage provided by LHH full-time faculty

- Telemedicine capabilities enabling review of cardiac catheterization laboratory studies by LHH as needed.
- Onsite Medical Director provided by Lenox Hill Hospital.
- Surgical back-up provided by Lenox Hill Hospital (with more critically ill patients to be transferred to Westchester Medical Center)
- The existing ICU/CCU unit will house five (5) dedicated CCU bays for cardiac catheterization and EP patients for recovery and continuation of care.

Upon approval, Northern Westchester Hospital will have the following services added to their operating certificate:

- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization – Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and electrophysiology services and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1), 405.29(e)(2) and 405.29(e)(5).

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

*The Department issued a Stipulation and Order (S&O) dated November 21, 2016 and fined Northern Westchester Hospital \$10,000 based on an investigation of the death of a newborn due to the code team not being called in a timely manner via the proper procedure. Deficient practice was cited in the area of Nursing Services.*

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

Northern Westchester Hospital states that a PCI-capable cardiac catheterization lab would further advance the local Prevention Agenda in that it would aim to improve timely access to high-quality treatment and management of cardiac disease within a clinical setting. Cardiac intervention services provided to patients in Northern Westchester Hospital would fall within the wider continuum of high-quality cardiac care that all Northwell Health patients have access to within its network for providers.

The applicant provides a list of initiatives and objectives are aligned with the goals of the Prevention Agenda 2013-2017. These include preventing chronic and vaccine preventable diseases; promoting initiatives that focus on primary and secondary prevention; healthy women, children and infants; mental health; promoting access to quality health care and reducing health disparities; and preventing chronic and preventable diseases. It is unclear from the documentation if these are also the goals selected by the Westchester County Prevention Agenda Community Coalition. The applicant does not plainly describe involvement in the community-wide health planning activities with the Westchester County Health Department.

Northern Westchester Hospital selects its metrics from the Prevention Agenda dashboard. The applicant provided the following measures as demonstrating an improvement between 2016 and 2017:

- Age-adjusted preventable hospitalizations rate per rate per 10,000 (Age 18+ years)
- Age-adjusted heart attack hospitalization rate per 10,000 population
- An increase on process improvement initiatives to increase the ratio of follow-up appointments for new patients

In 2014 (the latest electronic filing available) the applicant spent \$0 on community health improvement services, representing 0% of total operating expenses.

## 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

### Clinical Services and Quality Oversight Agreement

The applicant has submitted an executed Clinical Services and Quality Oversight Agreement:

Execution Date:	October 21, 2015
Service Provider:	Lenox Hill Hospital located at 100 East 77 <sup>th</sup> Street, New York, NY
Facility Operator:	Northern Westchester Hospital located at 400 Main Street, Mount Kisco, NY
Services rendered:	Back-up to laboratory patients who require Cardiac Surgery Center Services; quality improvement program (jointly); inclusion in Northwell's interventional database; training for personnel on the database; participation in a joint annual study on financial impact; involvement in research studies; inclusions in registries and database; quality assurance activities; at least 10 meetings per year between health professionals; and coverage in labs for 365 days per year, 24 hours per day and ongoing education and training.
Term:	5 years with one-year renewals each year thereafter.

NWH joined Northwell Health, Inc. on January 1, 2015. As NMH and LHH are both members of Northwell Health, Inc., there are no fees associated with the agreement.

The applicant has confirmed that the agreement remains valid and will not take effect until NMH receives CON approval by the Department of Health to establish a cardiac catheterization program at the Mount Kisco campus. The agreement provides that NWH shall be responsible for the day-to-day operations of the Cath Lab and that both parties shall jointly develop a quality improvement program. NWH will establish a telemedicine link that provides LHH representatives with the ability to review Laboratory studies in a timely manner.

### Total Project Cost and Financing

Total project costs for renovations and movable equipment are estimated at \$3,623,197, as follows:

Renovation & Demolition	\$760,000
Design Contingency	70,000
Construction Contingency	70,000
Planning Consultant Fees	20,000
Architect/Engineering Fees	60,000
Construction Manager Fees	38,000
Other Fees	22,000
Movable Equipment	2,388,356
Financing Costs	173,033
Application Fee	2,000
Processing Fee	<u>19,808</u>
Total Project Cost	\$3,623,197

Project costs are based on a six-month construction starting January 2020.

The applicant's financing plan appears as follows:

Equity	\$362,320
Bond Issuance (6.5% interest, 30-year term)	<u>\$3,260,877</u>
Total	\$3,623,197

Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through DASNY.

### Operating Budget

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

<u>Inpatient Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disc.</u>	<u>Total</u>	<u>Per Disc.</u>	<u>Total</u>
Commercial - MC	\$53,069	\$3,714,800	\$52,523	\$3,729,100
Medicare - FFS	\$12,472	1,359,500	\$12,409	1,365,000
Medicare - MC	\$18,453	627,400	\$18,000	630,000
Medicaid - FFS	\$16,380	81,900	\$18,075	72,300
Medicaid - MC	\$21,492	279,400	\$21,569	280,400
Private Pay	\$14,545	<u>160,000</u>	\$14,618	<u>160,800</u>
Total Inpt Revenues		\$6,223,000		\$6,237,600
<u>Outpatient Revenues</u>	<u>Per Proc.</u>	<u>Year One</u>	<u>Per Proc.</u>	<u>Year Three</u>
Commercial - MC	\$19,927	\$4,423,700	\$19,918	\$4,441,800
Medicare - FFS	\$5,635	1,938,300	\$5,640	1,945,900
Medicare - MC	\$6,605	719,900	\$6,631	722,800
Medicaid - FFS	\$3,754	48,800	\$3,769	49,000
Medicaid - MC	\$4,870	194,800	\$4,890	195,600
Private Pay	\$1,300	<u>44,200</u>	\$1,306	<u>44,400</u>
Total Outpt Revenues		\$7,369,700		\$7,399,500
Total Revenue		\$13,592,700		\$13,637,100
<u>Expenses</u>				
Operating		\$9,594,000		\$9,673,500
Capital		<u>617,100</u>		<u>611,200</u>
Total Expenses		\$10,211,100		\$10,284,700
Net Income		<u>\$3,381,600</u>		<u>\$3,352,400</u>
Discharges		242		244
Procedures		762		764

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

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Commercial - MC	70	28.9%	71	29.1%
Medicare - FFS	109	45.0%	110	45.1%
Medicare - MC	34	14.0%	35	14.3%
Medicaid - FFS	5	2.1%	4	1.6%
Medicaid - MC	13	5.4%	13	5.3%
Private Pay	<u>11</u>	4.5%	<u>11</u>	4.5%
Total	242	100.0%	244	100.0%

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

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Commercial - MC	222	29.1%	223	29.2%
Medicare - FFS	344	45.1%	345	45.2%
Medicare - MC	109	14.3%	109	14.3%
Medicaid - FFS	13	1.7%	13	1.7%
Medicaid - MC	40	5.2%	40	5.2%
Private Pay	<u>34</u>	4.5%	<u>34</u>	4.5%
Total	762	100.0%	764	100.0%

Revenue, expense and utilization assumptions are based on the experience of existing cardiac catheterization lab programs within the System. In particular, the applicant looked at the experience of developing the cardiac program at Southside Hospital in Bay Shore, Long Island, and adjusted for the projected Northern Westchester volume and patient utilization.

#### Capability and Feasibility

The applicant will fund the total project cost of \$3,623,197 with \$362,320 in equity from NWH and a bond issuance for \$3,260,8770 at 6.5% interest for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing. If the financing is completed on a tax-exempt basis, the bonds will be issued through DASNY. The Northwell Healthcare, Inc.'s CFO has provided a letter indicating their commitment to providing financial support for the program to serve the needs of the community. BFA Attachment A is the certified financial statements of Northern Westchester Hospital for 2018 and their internal financial statements as of June 30, 2019, which indicates the availability of sufficient resources for this project.

Working capital of \$1,714,117 based on two months of third year expenses will come from hospital operations.

The submitted budget represents the incremental budget related to the proposed PCI capable cardiac catheterization and EP suite, and not the hospital as a whole. The budget projects a net gain for the cardiac services for the first and third years of \$3,381,600 and \$3,352,400, respectively. Revenues are based on prevailing payment methodologies and current payment rates. Expenses are based on the experience of other hospitals within the Northwell system.

The certified and internal financial statements presented as BFA Attachment A indicate the availability of sufficient resources to meet equity requirements and maintain the current project. As shown, the Hospital has maintained positive working capital, positive net asset position and had an average net gain for all periods shown.

#### Conclusion

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

## Attachments

- |                  |   |
|------------------|---|
| RNR Attachment A | Map   |
| BFA Attachment A | Northern Westchester Hospital's 2018 certified financial statements and internal financial statements as of June 30 ,2019 |
| BFA Attachment B | Northwell Health Inc. Organizational Chart  |



**Project # 162148-C  
Nyack Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Rockland  
Acknowledged: September 8, 2016**

**Executive Summary**

**Description**

Montefiore Nyack Hospital (Nyack), a 391-bed, voluntary not-for-profit, Article 28 acute care hospital located at 160 North Midland Avenue, Nyack (Rockland County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services, with requisite renovations. The applicant will renovate 5,484 square feet in the existing radiology department and adjacent shell space to create a Cardiac Catheterization Suite. The project will include one dedicated adult PCI-capable Cardiac Catheterization lab, one multipurpose interventional radiology suite, bays for preparation, recovery and continuity of care, and other support areas.

Nyack will undertake the project with Montefiore Health System, Inc. (MHS), its active parent and co-operator, and with the direct clinical and quality oversight of Montefiore Medical Center (MMC), a New York State cardiac surgery center located at 111 East 210 Street, Bronx (Bronx County). MHS became Nyack’s passive parent and sole member in 2014 and its active parent and co-operator in 2018.

The applicant states that they currently transfer over 100 patients annually for emergency PCIs who present to their Emergency Department (ED) and/or are admitted with acute myocardial infarction or chest pain. Establishing these cardiac catheterization services at Nyack will alleviate the need to transfer patients whose outcome is time-sensitive. The goals of this project include the following: improve patient access to diagnostic cardiac catheterization and PCI procedures for the residents of Rockland

County; improve cardiac health outcomes for the residents of the local service area; provide oversight of procedures performed in the new laboratory; improve continuity of care within one health system and region to achieve better outcomes; facilitate transformation of the healthcare delivery system allowing Nyack and MHS to achieve value-based goals; and support Nyack’s Delivery System Reform Incentive Payment (DSRIP) goals in association with the Montefiore Hudson Valley Collaborative (MHVC) Performing Provider System.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018, Rockland County residents received 125 treatments outside of the Hudson Valley region. Nyack Hospital projects 100 emergency PCI procedures in Year One and beyond.

**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 costs of \$6,408,657 will be funded via \$674,205 in equity from the Montefiore Nyack Hospital Foundation and a \$5,734,452 capital lease for a five or seven-year term (option) at 2.73% interest (as of October 11, 2019). Bank of American Leasing & Capital, LLC has provided a letter of interest for the capital lease. Montefiore Nyack Hospital Foundation has provided a commitment letter to provide the project's equity.

<u>Incremental</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$7,805,568	\$9,726,646
Expenses	<u>\$6,008,985</u>	<u>\$7,024,564</u>
Gain/(Loss)	\$1,796,583	\$2,702,082

## 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 Cardiac Catheterization Services Agreement, acceptable to the Department of Health. (BFA)
3. Submission of an executed capital lease agreement, acceptable to the Department of Health. (BFA)
4. Submission of a fully executed clinical sponsorship agreement, acceptable to the Department. [HSP]
5. Submission of a pre-procedure risk stratification policy to ensure that high risk and/or complex patients are treated at a Cardiac Surgery Center, acceptable to the Department. [HSP]
6. Submission of documentation that a data manager has been hired, acceptable to the Department. [HSP]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within 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 and an expiration of the approval. [PMU]
2. Policies and Procedures adopted from the Cardiac Surgical Affiliate need to be incorporated as applicant's policies and procedures. [HSP]
3. Construction must start on or before February 1, 2020 and construction must be completed by October 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**December 12, 2019**

## Need Analysis

### Background

New York Title 10, Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently-defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHHPC December Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in year-one.

In 2018, Rockland County residents received 125 treatments outside of the Hudson Valley region. Nyack Hospital projects 100 emergency PCI procedures in year one and beyond. Accompanying patient selection criteria for Electrophysiology procedures has been submitted.

### Analysis

Please refer **RNR Attachment A** - Hudson Valley PCI and Emergency PCI Procedures by County, by Resident, by Existing Provider, and by Applicant Projection.

<b>Table 1: 2018 Emergency (709.14: 09/25/19) PCI's Performed on Hudson Valley Residents: By: County, By Operational Hudson Valley Facilities, By: Location of Treatment.</b>											
Patient County of Residence	Operational Facilities in the Hudson Valley Region							Resident Outmigration			
	Good Samaritan Suff. (Rockland)	Orange Regional (Orange)	St Luke's Cornwall Newburgh (Orange)	Vassar Brothers (Dutchess)	New York Presbyterian Lawrence (Westchester)	Westchester Med (Westchester)	White Plains (Westchester)	Total	County Residents Treated: All Locations	County Residents Receiving Emergency PCI Treatment in Hudson Valley	County Residents Leaving Hudson Valley for Emergency PCI Treatment
Delaware				4			0	4	131	4	127
Dutchess		3	21	461	4	37	1	527	575	527	48
Orange	90	358	190	24	3	9	0	674	777	674	103
Putnam			2	30	10	55	7	104	137	104	33
Rockland	268	2	2	1	1	11	2	287	412	287	125
Sullivan		141		5		4	0	150	163	150	13
Ulster	3	19	26	263		9	0	320	359	320	39
Westchester		2		6	173	253	331	765	1,498	765	733
Total H. V. Residents receiving Emergency PCIs in Region	361	525	241	794	191	378	341	2,831	4,052	2,831	1,221

**Table 2: Applicant Facilities Projected Emergency PCI's**

Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
152243	Northern Westchester Hospital	Westchester	115	115
162211	New York-Presbyterian Hudson Valley Hospital	Westchester	50	64
162148	Nyack Hospital	Rockland	100	100
171415	Northern Dutchess Hospital	Dutchess	51	51
172251	Putnam Hospital Center	Putnam	36	36
191260	Health Alliance Hospital Mary's Ave Campus	Ulster	103*	103

*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region. Nyack Hospital projects 100 Emergency PCI procedures by Year One of opening. By providing PCI-capable Cardiac Cath and EP services, Nyack Hospital proposes to achieve the following goals:

- Improve patient access to high-quality, coordinated diagnostic cardiac catheterization and PCI procedures for residents.
- Improve cardiac health outcomes for the residents of the local service area who currently experience health disparities and poor cardiac health outcomes.
- Provide high quality oversight of procedures performed in the new laboratory as a result of a clinical service agreement with Montefiore Medical Center (MMC).
- Improve continuity of care within one health system and region to achieve better outcomes, by decreasing outmigration of interventional cardiology cases from the local service area to facilities in Orange, Westchester, Bronx and Manhattan counties in New York and Bergen County in New Jersey.
- Facilitate the Transformation and DSRIP goals of Nyack and MHS to achieve value-based goals in the Hudson Valley region.

#### Conclusion

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

## Program Analysis

#### Program Description

The proposed program will operate with clinical oversight from Montefiore Medical Center-Jack D. Weiler Hospital of Albert Einstein College Division in accordance with the terms of an executed clinical sponsorship agreement. Montefiore Medical Center (MMC) is a 421-bed, academic facility located at 1825 Eastchester Road in Bronx (Kings County) that is a full-service cardiac surgery provider.

Nyack plans to renovate existing space on the first floor. Staffing is expected to increase by 14.7 FTEs in the first year after completion and remain at this level by the third year of operation.

The project will result in Nyack's operating certificate changing to add the following certified services:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization - Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology (EP) and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

### 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 hospital did not specify how the documented barriers these residents face (e.g., economic, cultural or linguistic) would be addressed. Almost 40% of all visits are from Medicaid, uninsured or dual-eligible patients. Population-based statistics are included.

Nyack Hospital served on a Steering Committee to develop the 2016-2018 CHIP. While the identified needs pertained to all five Prevention Agenda priority areas, the county selected Preventing Chronic Diseases and Promoting Healthy Women, Infants and Children to focus on. Because of the observed risk factor and mortality patterns in Rockland County, Nyack believes that a Cardiac Cath Lab would aid in diagnosing patients with the associated risk factors and conditions, and then recommending a personalized treatment plan. The need for a Cardiac Rehabilitation Center is also addressed.

Nyack Hospital collaborated with 19 organization to develop the county's Prevention Agenda plan. The proposed project will advance the county's goal to prevent chronic diseases by implementing Diabetes Prevention Programs (DPP) in Ramapo and the hospital is being considered by CDC to be a recognized DPP provider. The same list of activities to address diabetes was included in response to information about advancing Prevention Agenda priorities (7b) and supporting local Prevention Agenda goals (8). A description of the Bariatric Center was included as the vehicle to support a Prevention Agenda goal (which was not specified). Finally, information was included from the Dashboard about obesity and diabetes to support the proposed objectives and interventions.

The majority of interventions described in the application involve health education services to raise awareness and improve treatment outcomes, particularly for diabetes and obesity. In 2017 the applicant spent \$259,765 on community health improvement services, representing less than one percent of total operating expenses.

### 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

### Cardiac Catheterization Clinical Sponsorship Agreement

The applicant has submitted a draft Cardiac Catheterization Clinical Sponsorship Agreement regarding the operation and oversight of an adult cardiac catheterization suite on-site at Nyack. The terms are summarized below:

Client:	Montefiore Nyack Hospital f/k/a The Nyack Hospital
Provider:	Montefiore Medical Center (MMC)
Services:	<p>MMC will serve as clinical sponsor of the Cath Lab at Nyack and assign a NY licensed/registered physician to serve as Cath Lab Program Director. MMC representative(s) shall participate in and be deemed members of Nyack's quality assurance committee and shall provide reviews of the quality of cardiac care and recommendations for quality improvement of cardiac services. MMC's representative(s) will review data for quality improvement purposes, Nyack's policies and procedures, care provided by health care practitioners, the appropriateness /timeliness of patient referrals and patients retained at Nyack who met criteria for transfer to MMC or another cardiac surgery center, and examine adverse events or occurrences including death and major complications. Host a joint cardiology/cardiac surgery conference at least quarterly to review all cardiac laboratory related morbidity and mortality, review uncomplicated routine cases, patient selection criteria, rates of normal out comes for diagnostic studies performed, rates of studies needed to be repeated prior to intervention, the quality of the studies conducted, rates of patients referred for and receiving intervention procedures subsequent to the diagnostic cardiac catheterization procedure, and the number and duration of cardiac catheterization laboratory system failure. A telemedicine link between Nyack and MMC will be developed for off-site review of digital studies and timely treatment consultation by physicians. MMC will participate in developing privileging criteria for physicians, provide consultation on equipment, staffing, ancillary services and policies and procedures, develop and implement a pre-procedure risk stratification tool which ensures high risk and or complex cases are treated at MMC. In conjunction with Nyack, develop and implement procedures to provide for appropriate patient transfer. Assume responsibility on behalf Nyack for the cardiac reporting system provided all data is delineated at facility level.</p> <p>Joint Activities of MMC and Nyack – Notify NYS Department of Health (DOH) of any proposed changes to this agreement. Jointly sponsor and conduct annual studies of the impact that Cath Lab has on costs and access to cardiac service in Nyack's service area. Develop a plan for how the proficiency of physicians, nurses and other staff at Nyack will maintained through rotational or other training opportunities at MMC. Develop a plan for how the Cath Lab will maintain the capacity to provide PCI services on a 24 hour a day, 365 days a year basis and be capable of assembling a team within 30 minutes of the activation call to provide coronary intervention.</p>
Term	Automatically one-year renewals. Termination upon mutual written agreement of the parties, upon at least ninety (90) days 'written notice. The termination or expiration of the agreement shall result in the closure of the Cardiac Catheterization Laboratory.
Fee	\$250,000 per year

## Total Project Cost and Financing

Total project costs for renovation and moveable equipment are estimated at \$6,408,657, as follows:

Renovation & Demolition	\$2,869,429
Design Contingency	\$286,943
Construction Contingency	\$286,943
Architect/Engineering Fees	\$196,479
Construction Manager Fees	\$157,819
Other Fees	\$35,000
Movable Equipment	\$2,539,000
Application Fee	\$2,000
Additional Fee for Projects	<u>\$35,044</u>
Total Project Cost with Fees	\$6,408,657

Project costs are based on a nine-month construction starting February 2020.

The applicant's financing plan is as follows:

Equity - Montefiore Nyack Hospital Foundation	\$674,205
Capital Lease (option of 60 or 84 months, 2.73% as 10/11/19)	<u>5,734,452</u>
Total	\$6,408,657

The applicant has provided a letter of interest from Banc of America Leasing & Capital, LLC for a capital lease at the above stated terms. Montefiore Nyack Hospital Foundation has provided a commitment letter to fund the \$674,205 in project's equity. BFA Attachment C is Montefiore Nyack Hospital and Subsidiaries' 2018 financial statement (broken out by subsidiary), which shows the Foundation has sufficient resources to provide the equity.

## Operating Budget

The applicant has submitted an incremental operating budget, in 2019 dollars, for Years One and Three:

	First Year		Third Year	
<u>Inpatient Revenues</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Medicaid FFS	\$18,435	\$331,829	\$18,980	\$379,597
Medicaid MC	\$17,918	447,956	\$18,330	513,242
Medicare FFS	\$19,634	3,259,312	\$20,212	3,779,564
Medicare MC	\$18,715	655,012	\$19,035	761,389
Commercial FFS	\$22,982	689,460	\$24,528	833,957
Commercial MC	\$22,536	653,550	\$24,704	790,522
Private Pay	\$4,351	21,754	\$4,945	29,671
All Other	\$17,407	69,628	\$17,759	106,554
Bad Debt		<u>-264,541</u>		<u>-298,167</u>
Total Inpt Revenues		\$5,863,960		\$6,896,329
<u>Outpatient Revenues</u>	<u>Per Visit</u>	<u>First Year</u>	<u>Per Visit</u>	<u>Third Year</u>
Medicaid FFS	\$5,685	\$85,280	\$5,411	\$129,853
Medicaid MC	\$5,373	118,195	\$5,293	179,972
Medicare FFS	\$7,618	1,097,009	\$7,378	1,652,717
Medicare MC	\$7,249	224,722	\$7,058	338,807
Commercial FFS	\$8,543	222,110	\$8,136	333,573
Commercial MC	\$8,422	210,541	\$8,321	316,199
Private Pay	\$5,227	20,906	\$2,814	19,698
All Other	\$5,985	23,938	\$5,207	36,450
Bad Debt		<u>-61,093</u>		<u>-176,952</u>
Total Outpt Revenues		\$1,941,608		\$2,830,317
Total Revenues		\$7,805,568		\$9,726,646

	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
<u>Inpatient Expenses</u>				
Operating	\$11,260	\$3,512,986	\$10,492	\$3,703,647
Capital	<u>\$1,108</u>	<u>345,908</u>	<u>\$839</u>	<u>296,175</u>
Total Inpt Expenses	\$12,368	\$3,858,894	\$11,331	\$3,999,822
<u>Outpatient Expenses</u>				
Operating	\$7,002	\$1,897,563	\$6,580	\$2,783,311
Capital	<u>\$932</u>	<u>252,528</u>	<u>\$571</u>	<u>241,431</u>
Total Outpt Expenses	\$7,934	\$2,150,091	\$7,151	\$3,024,742
Total Expenses		\$6,008,985		\$7,024,564
Net Income		<u>\$1,796,583</u>		<u>\$2,702,082</u>
Inpatient discharges		312		353
Outpatient visits		271		423

The following is noted with respect to the operating budget:

- Revenues reflect the applicable diagnosis-related groups (DRG), outpatient rates for various interventional cardiology procedures and current contract rates.
- The projected expenses are based on staffing guidelines and input provided by MMC using Nyack's pay rates. The budget reflects the additional clinical services agreement expenses.
- Utilization is based on analysis of Rockland County outmigration and transfers from Nyack's ED to the closest PCI facility. The applicant notes that these estimations assume that Nyack would capture 20% of the outmigration of both diagnostic catheterization and PCI. In terms of EP cases, it is anticipated that Nyack will retain 20 cases they currently handle and will add cases that currently leave the state, for a total of 88 EP cases in year one and 165 cases in year three. These cases include the following: EP Studies, ICD implants, Biventricular pacemakers, and Cardiac resynchronization therapy devices (CRT-D).
- Utilization by payor source is as follows:

<u>Inpatient Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	18	5.77%	20	5.67%
Medicaid MC	25	8.01%	28	7.93%
Medicare FFS	166	53.22%	187	52.97%
Medicare MC	35	11.22%	40	11.33%
Commercial FFS	30	9.62%	34	9.63%
Commercial MC	29	9.28%	32	9.07%
Private Pay	5	1.60%	6	1.70%
All Other	4	<u>1.28%</u>	6	<u>1.70%</u>
Total	312	100%	353	100%

<u>Outpatient Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	15	5.54%	24	5.67%
Medicaid MC	22	8.12%	34	8.04%
Medicare FFS	144	53.14%	224	52.96%
Medicare MC	31	11.44%	48	11.35%
Commercial FFS	26	9.57%	41	9.69%
Commercial MC	25	9.23%	38	8.99%
Private Pay	4	1.48%	7	1.65%
All Other	4	<u>1.48%</u>	7	<u>1.65%</u>
Total	271	100%	423	100%

### Capability and Feasibility

Total project costs of \$6,408,657 will be funded via \$674,205 in equity from Montefiore Nyack Hospital Foundation and a \$5,734,452 capital lease for a five or seven-year term at 2.73% interest (as of October 11, 2019). Banc of America Leasing & Capital, LLC has provided a letter of interest for the capital lease. Montefiore Nyack Hospital Foundation has provided a letter committing to fund the project's equity.

Total working capital is estimated at \$1,170,761 based on two months of third year expenses. Funding comes from the program's positive margin, ongoing operations, and existing cash resources.

The submitted budget demonstrates net income of \$1,796,583 and \$2,702,082 in Year One and Year Three, respectively. Revenues reflect the applicable diagnosis-related groups (DRG), outpatient rates for various interventional cardiology procedures and current contract rates. The budget appears reasonable.

BFA Attachment A and B are Montefiore Nyack Hospital 2017 and 2018 certified financial statements and internal financial statements as of September 30, 2019, which shows negative working capital, positive net assets, and a net loss. Management is pursuing a financial stabilization plan aimed at increasing revenue, reducing costs and evaluating opportunities for efficiencies. This includes working closely with MHS to maximize the clinical and financial opportunities. The stabilization plan includes pursuing replacement financing arrangements with a creditor, additional financial support from State and Federal sources, such as funding under the DSRIP, Value Based Payment-Quality Improvement Program (VBP-QIP) and Capital Restructuring Financing Program (CRFP). For the year ended December 31, 2018, approximately \$907,000 and \$17,719,419 was recognized related to DSRIP and VBP-QIP, respectively. Additionally, \$4,936,748 was recognized under CRFP. It is expected that successful culmination of certain of the above-mentioned initiatives will result in improved liquidity and operating results in the near term.

### Conclusion

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

## Attachments

RNR Attachment A	Map
BFA Attachment A	Financial Statement certified, Montefiore Nyack Hospital 2017 and 2018
BFA Attachment B	Financial Statement internal, Montefiore Nyack Hospital, Sept. 30, 2019
BFA Attachment C	Financial Statement subsidiaries, Montefiore Nyack Hospital Foundation 2018



**Project # 162211-C**  
**NewYork-Presbyterian/Hudson Valley Hospital**

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

**County: Westchester**  
**Acknowledged: September 22, 2016**

**Executive Summary**

**Description**

Hudson Valley Hospital Center d/b/a New York-Presbyterian Hudson Valley Hospital (NYP/HV), a 128-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1980 Crompond Rd, Cortlandt (Westchester County), requests approval to certify Cardiac Catheterization – Electrophysiology (EP) and Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) services and renovate space to construct a new suite to house one Cardiac Catheterization Lab and one laboratory for EP and other minor procedures. The applicant will modify 8,262 square feet of space on the third floor of the original hospital building to create the new suite.

NYP Community Programs, Inc. (NYP), a wholly owned subsidiary of The New York and Presbyterian Hospital (NYPH), became the sole member and active parent/co-operator of NYP/HV in January 2015. One of the main goals of the relationship was to establish a coordinated and integrated system with the objective of improving quality and increasing access at the regional level for the communities served by NYP/HV.

NYP/HV has a formal clinical sponsorship agreement with NYP/Columbia University Irving Medical Center (NYP/Columbia). By integrating the cardiac resources of NYP/Columbia and coordinating care from an integrated system perspective, NYP/HV will be able to expand NYP/Columbia's cardiac program, broadening access to critical cardiac services in NYP/HV's service area, while enhancing clinical quality and outcomes by adopting common protocols, quality measures, and safety standards.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018, Westchester County residents received 733 treatments outside of the Hudson Valley region. New York Presbyterian, Hudson Valley Hospital projects 50 emergency PCI procedures in Year One and 64 in Year Three.

**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 costs of \$13,073,500 will be met via accumulated funds.

<u>Incremental</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$8,965,316	\$9,993,879
Expenses	<u>\$9,547,565</u>	<u>\$11,289,034</u>
Gain/(Loss)	(\$582,249)	(\$1,295,155)

	<u>In 000's</u>		
<u>Enterprise</u>	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
Revenue	\$4,182,124	\$4,191,089	\$4,192,118
Expenses	<u>\$4,018,780</u>	<u>\$4,028,328</u>	<u>\$4,030,069</u>
Gain	\$163,344	\$162,762	\$162,049

## 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 and 2.18 LSC Chapter 18 Healthcare Facilities Public Use for review and approval. [DAS]
3. Submission of documentation that a data manager has been hired, acceptable to the Department. [HSP]

**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 and an expiration of the approval. [PMU]
2. Construction must start on or before February 3, 2020 and construction must be completed by October 16, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.

Council Action Date

**December 12, 2019**

## Need Analysis

### Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHPC December Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

In 2018, Westchester County residents received 733 treatments outside of the Hudson Valley region. New York Presbyterian, Hudson Valley Hospital projects 50 emergency PCI procedures in Year One and 64 in Year Three. Accompanying patient selection criteria for Electrophysiology procedures has been submitted.

### Analysis

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Dutchess		3	21	461	4	37	1	527	575	527	48
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Rockland	268	2	2	1	1	11	2	287	412	287	125
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*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region. New York-Presbyterian/Hudson Valley Hospital projects 50 Emergency PCI procedures by Year One of operation.

By providing PCI-capable Cardiac Cath and EP services, NYP/Hudson Valley proposes to achieve the following goals:

- Improve regional access to advanced cardiac services including diagnostic cardiac catheterization, PCI, and EP services for the communities served by NYP/Hudson Valley;
- Improve cardiac health outcomes for residents of the NYP/Hudson Valley service area; and
- Provide a continuum of care for patients already treated at NYP/Hudson Valley.

#### Conclusion

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

## Program Analysis

#### Project Proposal

The proposed program will operate with clinical oversight from New York-Presbyterian/Columbia University Medical Center (NYPCUMC) in accordance with the terms of an executed clinical sponsorship agreement. New York-Presbyterian/Columbia University Medical Center is a 1007-bed, academic facility located at 622 West 168<sup>th</sup> Street in Manhattan (New York County) that is a full-service cardiac surgery provider.

NYPHVM will renovate existing space on the first floor. Staffing is expected to increase by 15.2 FTEs in the first year after completion and increase to 18.9 FTEs by the third year of operation.

The project will result in NYPHVM's operating certificate changing to add the following certified services:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization - Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology (EP).

### 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 hospital will make special efforts to reach underserved populations in their primary service area. The target locations were specified in the application by ZIP codes (i.e., includes sections of Westchester, Putnam, Dutchess, and Orange Counties) and the demographics for the hospital's service were described. The high-risk population was specified according to high unemployment, median household income and no insurance. Access to this population is provided through community initiatives, engagement with the Prevention Agenda and having a medical office in Peekskill. Financial, linguistic and cultural barriers make it difficult for these populations to receive basic medical care and cardiac services. Increased access to care for these populations will improve diagnosis and treatment of cardiac risks and provide a continuum of care. The applicant provided a detailed breakdown for each of these metrics.

The applicant described in sufficient detail:

1. the interventions being implemented to support local Prevention Agenda goals;
2. engagement of local community partners in Prevention Agenda efforts; and
3. data being used to track progress.

Most of these activities emphasize health education (e.g., cooking demonstrations, farmers' markets, health fairs), rather than policy and environmental changes. Effort to form and sustain strategic partnerships, serve as an anchor institution in the community, and train OB staff on the benefits of breastfeeding are examples of the role that the hospital should play in promoting healthy behaviors. A greater emphasis on these actions would strengthen the hospital's role in advancing the Prevention Agenda priorities.

In 2017 the applicant spent \$1,370,603 on community health improvement services, representing 0.668% of total operating expenses.

### 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 renovation/demolition, moveable equipment, and construction is estimated at \$13,073,500, broken down as follows:

Renovation & Demolition	\$3,600,000
Site Development	\$15,500
Design Contingency	\$360,000
Construction Contingency	\$360,000
Architect/Engineering Fees	\$498,439
Other Fees	\$992,921
Movable Equipment	\$7,173,140
Application Fee	\$2,000
Additional Fee for Projects	<u>\$71,500</u>
Total Project Cost with Fees	\$13,073,500

Project costs are based on an eight-month construction starting February 2020. The applicant will finance the total project cost via \$13,073,500 equity.

### Operating Budget

The applicant submitted an incremental operating budget, in 2019 dollars, for Years One and Three:

<u>Revenues</u>	<u>Year One</u>	<u>Year Three</u>
Total Inpatient Rev	\$4,595,160	\$5,189,247
Total Outpatient Rev	<u>\$4,370,156</u>	<u>\$4,804,632</u>
Total Revenue	\$8,965,316	\$9,993,879
<u>Inpatient Expenses</u>		
Operating	\$4,916,487	\$5,441,522
Capital	<u>\$285,899</u>	<u>\$532,816</u>
Total Inpt Expense	\$5,202,386	\$5,974,338
<u>Outpatient Expenses</u>		
Operating	\$3,916,328	\$4,515,473
Capital	<u>\$428,849</u>	<u>\$799,223</u>
Total Outpt Expense	\$4,345,177	\$5,314,696
Total Expense	\$9,547,563	\$11,289,034
Net Income/(Loss)	<u>(\$582,249)</u>	<u>(\$1,295,155)</u>
<u>Utilization (Procedures)</u>		
Inpatient	200	212
Outpatient	<u>547</u>	<u>580</u>
Total	747	792
Avg Cost Per Procedure	\$12,781.21	\$14,253.83

The following is noted with respect to the operating budget:

- Revenues are based on prevailing payment rates by payor for cardiac catheterization procedures. The inpatient and outpatient payment rates are based upon the experience of NYP for cardiac services under Medicare and Medicaid payment methodologies, and commercial payor contracts that are based on negotiated rates.
- Utilization is based on the population characteristics of NYP/HV's service area, which includes sections of Westchester, Putnam, Dutchess and Orange Counties. The incidence and mortality rates from cardiovascular disease for these residents evidence the need for PCI and EP services.

- Expenses are based on the experience of NYP and include incremental labor costs for staff FTEs (physician’s assistants, registered nurses and technician/specialist), as well as the capital cost related to the expansion project.
- Utilization by payor source is as follows:

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial FFS	59	29.50%	63	29.72%
Medicare FFS	77	38.50%	82	38.68%
Medicare MC	29	14.50%	31	14.62%
Medicaid FFS	4	2.00%	4	1.89%
Medicaid MC	28	14.00%	29	13.68%
Private Pay/Other	3	1.50%	3	1.41%
Total Inpatient	200	100.00%	212	100.00%

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	103	29.68%	109	29.62%
Medicare FFS	133	38.33%	141	38.32%
Medicare MC	50	14.41%	54	14.67%
Medicaid FFS	7	2.02%	8	2.17%
Medicaid MC	48	13.83%	50	13.59%
Private Pay/Other	6	1.73%	6	1.63%
Total Outpatient	347	100.00%	368	100.00%

#### Capability and Feasibility

The total project cost of \$13,073,500 will be met entirely through accumulated funds. The submitted incremental budget demonstrates net losses of \$582,249 and \$1,295,155 in Year One and Year Three, respectively. The enterprise budget shows a net income of \$162,761,751 and \$162,048,845. The budget appears reasonable. As shown on BFA Attachment A, the facility has enough funds to cover the operating losses of the new service line.

BFA Attachment A is the 2017-2018 certified and internal financial statements of NYP/HV as of July 31, 2019, which shows positive working capital and net asset positions for the period. The facility also generated an average net income of \$1,646,500 for the 2017-2018 period and a net loss of \$2,309,000 for the period ended July 31, 2019. The losses in 2018 and 2019 were caused by investments the hospital and medical group made in primary care and physician specialties, including the recruitment of physicians. The operating losses will be offset and funded by working capital provided by ongoing hospital operations of New York-Presbyterian Hospital.

BFA Attachment B is the 2018 certified and internal financial statements of New York Presbyterian Hospital as of August 31, 2019, which shows positive working capital and net asset positions for the period shown. The facility also generated a net income of \$198,441,000 for 2018 and a net income of \$184,785,000 for the period ended August 31, 2019.

#### Conclusion

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

## Attachments

RNR Attachment A	Map
BFA Attachment A	2017-2018 certified and internal financial statements of NYP/Hudson Valley Hospital as of July 31, 2019
BFA Attachment B	2018 certified and internal financial statements of New York Presbyterian Hospital as of August 31, 2019



**Project # 172251-C  
Putnam Hospital Center**

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

**County:** Putnam  
**Acknowledged:** October 23, 2017

**Executive Summary**

**Description**

Putnam Hospital Center (PHC), a 164-bed, Article 28 acute care hospital located at 670 Stoneleigh Avenue, Carmel (Putnam County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services, with requisite construction. The catheterization laboratory will be operated as part of an integrated delivery model between PHC and Vassar Brothers Medical Center (VBMC), a 365-bed, Article 28 acute care hospital located at 45 Reade Place in Poughkeepsie. Both hospitals are part of Nuvance Health, an integrated healthcare delivery system formally known as HQ-WCHN Health Systems, Inc. Effective June 18, 2019, Nuvance became the sole member and active parent of Health Quest Systems, Inc. (Health Quest). In addition to PHC, Health Quest's New York licensed entities include Vassar Brothers Hospital and Northern Dutchess Hospital.

By integrating the resources of VBMC's cardiac capabilities into PHC's catheterization laboratory and coordinating the care from an integrated system perspective, PHC will be able to expand VBMC's cardiac program across the Nuvance/Health Quest System, enhancing clinical quality and outcomes by adopting common protocols, quality measures, and safety standards. Per the applicant, the system wide approach to cardiac care will offer the following benefits to patients in the region:

- Oversight & Management – PHC's cardiac catheterization laboratory will be staffed and overseen by physicians, directors, and administrators at Nuvance Health's employed cardiology group (The Heart Center). The cardiology group operates in

an integrated manner across all sites of care, and its physicians collaborate to deliver patient care through interdisciplinary committees and a centralized physician-led governance.

- Consistent Staffing Closer to Home - Patients in PHC's planning region are already being treated by cardiologists employed at The Heart Center. Bringing these physicians into PHC to perform cardiac catheterizations will promote continuity of care for both patient and cardiologist, enabling consistent and trusted care closer to home.
- Standardized EMS Protocols - EMS providers in the region are already familiar with VBMC's cardiac triage and cardiac catheterization protocols. Extending these same protocols into the PHC planning region will be seamless and ensure consistent EMS-to-hospital transfers and enhance integration in the event of a hospital-to-hospital transfer.
- Seamless & Safe Intra-System Transfers - PHC is only 37 miles from VBMC and the entire distance is covered by major thoroughfares (I-84 and Route 9), so any patient who needs advanced cardiac surgical care could be transferred from PHC's catheterization laboratory to VBMC's operating room in less than forty (40) minutes by ambulance. The hospitals are also on the same electronic medical record platform and other clinical systems (including PACS).

- Improved Quality & Safety - By leveraging the expertise of the VBMC staff and experience in operating the heart center, PHC can bring proven expertise and established protocols and measurement tools to monitor and improve care.
- Lower Costs & Faster Ramp-Up - By leveraging existing expertise, protocols, and staff, PHC can establish its catheterization laboratory faster and more efficiently than another hospital that is building a new catheterization program.

OPCHSM Recommendation  
Contingent Approval

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.

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018 Putnam County residents received 33 treatments outside of the Hudson Valley region. Putnam Hospital projects 36 emergency PCI procedures in Year One and beyond.

Financial Summary

Project costs of \$3,192,063 will be met with accumulated funds.

<u>Incremental</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$2,915,365	\$6,415,111
Expenses	<u>\$2,647,458</u>	<u>\$3,687,130</u>
Gain	\$267,907	\$2,727,981

## 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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
3. Submission of (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 and an expiration of the approval. [PMU]
2. Construction must start on or before April 1, 2020 and construction must be completed by November 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.

Council Action Date

**December 12, 2019**

# Need Analysis

## Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHHPC December Agenda that seek certification of Cardiac Catheterization- Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

In 2018 Putnam County residents received 33 treatments outside of the Hudson Valley region. Putnam Hospital projects 36 emergency PCI procedures in Year One and beyond.

## Analysis

Please refer **RNR Attachment A** - Hudson Valley PCI and Emergency PCI Procedures by County, by Resident, by Existing Provider, and by Applicant Projection.

<b>Table 1: 2018 Emergency (709.14: 09/25/19) PCI's Performed on Hudson Valley Residents: By: County, By Operational Hudson Valley Facilities, By: Location of Treatment.</b>											
Patient County of Residence	Operational Facilities in the Hudson Valley Region							Resident Outmigration			
	Good Samaritan Suff. (Rockland)	Orange Regional (Orange)	St Luke's Cornwall Newburgh (Orange)	Vassar Brothers (Dutchess)	New York Presbyterian Lawrence (Westchester)	Westchester Med (Westchester)	White Plains (Westchester)	Total	County Residents Treated: All Locations	County Residents Receiving Emergency PCI Treatment in Hudson Valley	County Residents Leaving Hudson Valley for Emergency PCI Treatment
Delaware				4			0	4	131	4	127
Dutchess		3	21	461	4	37	1	527	575	527	48
Orange	90	358	190	24	3	9	0	674	777	674	103
Putnam			2	30	10	55	7	104	137	104	33
Rockland	268	2	2	1	1	11	2	287	412	287	125
Sullivan		141		5		4	0	150	163	150	13
Ulster	3	19	26	263		9	0	320	359	320	39
Westchester		2		6	173	253	331	765	1,498	765	733
Total H. V. Residents receiving Emergency PCIs in Region	361	525	241	794	191	378	341	2,831	4,052	2,831	1,221

<b>Table 2: Applicant Facilities Projected Emergency PCI's</b>				
Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
152243	Northern Westchester Hospital	Westchester	115	115
162211	New York-Presbyterian Hudson Valley Hospital	Westchester	50	64
162148	Nyack Hospital	Rockland	100	100
171415	Northern Dutchess Hospital	Dutchess	51	51
172251	Putnam Hospital Center	Putnam	36	36
191260	Health Alliance Hospital Mary's Ave Campus	Ulster	103*	103

*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region.

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments as classified under New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region. Putnam Hospital projects 36 Emergency PCI procedures by Year One of operation.

By providing PCI-capable Cardiac Catheterization services, Putnam Hospital proposes to achieve the following goals:

- Improve regional access to advanced cardiac services including diagnostic cardiac catheterization and PCI services for the communities served by Putnam Hospital;
- Enhance clinical quality by adopting common protocols with Vassar Brothers Hospital.

#### Conclusion

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

## Program Analysis

#### Project Proposal

The proposed program will operate with clinical oversight from Vassar Brothers Medical Center (VBMC) in accordance with the terms of an executed clinical sponsorship agreement. VBMC and PHC are members of Nuvance Health, an integrated delivery system. Vassar Brothers Medical Center is a 365-bed hospital located at 45 Reade Place in Poughkeepsie (Dutchess County) which is a full-service cardiac surgery provider.

Upon completion of the project Putnam Hospital Center will have the following service added to their operating certificate:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29.

## 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 identified the Prevention Agenda priorities selected for action in the most recent Community Service Plan submitted on behalf of the member hospitals. They are in alignment with the jointly developed Community Health Improvement Plan. These priorities include:

- Reducing obesity in children and adults, and preventing chronic disease prevention, through education and workshops
- Promoting mental health and preventing substance abuse, by participating in Drug Take-Back Days and suicide prevention strategies such as Safe Talk, Assist and Postvention Program.
- Promote Healthy and Safe Environment, specifically focusing on preventing falls in older adults through Tai Chi classes.

The applicant specified the evidence-based interventions selected to address these priorities. The hospital has engaged with diverse local organizational partners in Prevention Agenda efforts to plan and/or implement appropriate interventions and will continue to do in the merged structure. The Prevention Agenda Dashboard is being used to measure progress toward the appropriate Prevention Agenda objectives

In the most recent Schedule H for 2016, Putnam Hospital reported Community Benefit Spending in the Community Health Improvement Services and Community Benefit operations category. In 2016, St Putnam Hospital spent \$275,063 on community health improvement services, representing 0.169% of total operating expenses.

## 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 renovations and the acquisition of moveable equipment is estimated at \$3,192,063, broken down as follows:

Renovation & Demolition	\$ 924,415
Asbestos Abatement or Removal	77,250
Design Contingency	92,441
Construction Contingency	92,441
Fixed Equipment	66,950
Architect/Engineering Fees	73,954
Other Fees (Consultant)	154,409
Movable Equipment	1,665,004
Telecommunications	25,750
CON Application Fees	2,000
Additional Processing Fee	<u>17,449</u>
Total Project Cost	<u>\$3,192,063</u>

Project costs are based on an eight-month construction starting April 2020. The applicant will finance the project via accumulated funds. BFA Attachment C shows sufficient accumulated funds for this project.

#### Incremental Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Revenues</u>		
Commercial MC	\$372,825	\$1,093,620
Medicare FFS	390,080	1,251,660
Medicare MC	72,560	235,820
Medicaid FFS	30,812	77,030
Medicaid MC	61,624	231,090
Private Pay/Other	6,252	18,756
Less: Bad Debt	<u>(15,991)</u>	<u>(58,153)</u>
Total Inpt Revenue	\$927,162	\$2,849,823
 <u>Outpatient Revenues</u>		
Commercial MC	\$1,394,420	\$2,505,020
Medicare FFS	374,128	675,664
Medicare MC	83,760	150,768
Medicaid FFS	21,126	39,234
Medicaid MC	111,666	199,188
Private Pay/Other	37,656	67,467
Less: Bad Debt	<u>(34,553)</u>	<u>(72,053)</u>
Total Outpt Revenue	\$1,988,203	\$3,565,288
 Total Revenues	 \$2,915,365	 \$6,415,111
 <u>Inpatient Expenses</u>		
Operating	\$752,866	\$1,141,789
Capital	<u>100,560</u>	<u>100,560</u>
Total Inpt Expenses	\$853,426	\$1,242,349
 <u>Outpatient Expenses</u>		
Operating	\$1,643,192	\$2,293,941
Capital	<u>150,840</u>	<u>150,840</u>
Total Outpt Expenses	\$1,794,032	\$2,444,781
 Total Expenses	 \$2,647,458	 \$3,687,130
 Excess Rev. over Exp.	 <u>\$267,907</u>	 <u>\$2,727,981</u>
 <u>Utilization (procedures)</u>		
Inpatient	49	152
Outpatient	263	473
Total	312	625
 Avg Cost Per Procedure	 \$8,485.44	 \$5,899.41

The following was noted with respect to the first- and third-year incremental budgets:

- The rates by payor were based on historical analysis, third party market data and certain ICD 9 billing codes utilized for billing Cardiac Catheterization patients. Revenue was then calculated based on a blended CMI applied to the observed payor mix of patients within the relevant diagnosis and inpatient/outpatient classifications.

- Utilization by payor source for inpatient and outpatient services for years one and three, is as follows:

<u>Inpatient</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	30.6%	28.9%
Medicare FFS	44.9%	45.4%
Medicare MC	8.2%	8.6%
Medicaid FFS	4.1%	3.3%
Medicaid MC	8.2%	9.9%
Self-Pay/Other	4.0%	3.9%

<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	43.0%	42.9%
Medicare FFS	25.5%	25.6%
Medicare MC	5.7%	5.7%
Medicaid FFS	2.7%	2.7%
Medicaid MC	14.1%	14.0%
Self-Pay/Other	9.0%	9.1%

- Utilization and expense projections are based on the experience of hospitals provided cardiac catheterization services and the expected market share of cardiac catheterization services within the PHC service area.

#### Capability and Feasibility

The project cost of \$3,192,063 will be met through hospital resources. BFA Attachment C is a financial summary for PHC, which indicates the availability of sufficient funds.

The submitted budget indicates an excess of revenues over expenses of \$267,907 and \$2,727,981 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for Cardiac Cath services. The budget appears reasonable.

BFA Attachment A is the 2017 and 2018 certified financial statements of Health Quest Systems, Inc. and Subsidiaries, which show the entity maintained positive working capital and net asset positions and generated net operating income of \$68,261,000 and \$79,554,000 in 2017 and 2018, respectively.

PHC is part of the Health Quest Systems, Inc. Obligated Group. BFA Attachment B is the Obligated Group's 2018 Balance Sheet and Statement of Operations, which shows that PHC maintained positive working capital and net asset positions and had net operating income of \$3,484,000.

BFA Attachment C is PHC's internal financial statements as of June 30, 2019, which indicates PHC maintained positive working capital and net asset positions and had excess revenue over expenses of \$1,436,579.

#### Conclusion

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

## Attachments

RNR Attachment A	Map
BFA Attachment A	Health Quest Systems, Inc and Subsidiaries - 2017 and 2018 certified financials
BFA Attachment B	2018 Health Quest Systems, Inc. and Subsidiaries Obligated Group
BFA Attachment C	Financial Summary, Putnam Hospital Center - internal as of June 30, 2019
BFA Attachment D	Nuvance Health Organizational Chart



Project # 171415-C Northern Dutchess Hospital

Program: Hospital Purpose: Construction

County: Dutchess Acknowledged: July 14, 2017

Executive Summary

Description

Northern Dutchess Hospital (NDH), an 84-bed, voluntary not-for-profit, Article 28 acute care hospital located at 6511 Springbrook Avenue, Rhinebeck (Dutchess County), request approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services, with requisite construction. The service will be provided within the main hospital operating room space that was recently renovated to enhance Interventional Radiology services (CON 172054-L). The catheterization laboratory will be operated as part of an integrated delivery model between NDH and Vassar Brothers Medical Center (VBMC), a 365-bed, Article 28 acute care hospital located at 45 Reade Place in Poughkeepsie. Both hospitals are part of Nuvance Health, an integrated healthcare delivery system formally known as HQ-WCHN Health Systems, Inc. Effective June 18, 2019, Nuvance became the sole member and active parent of Health Quest Systems, Inc. (Health Quest). In addition to NDH, Health Quest's New York licensed entities include Vassar Brothers Hospital and Putnam Hospital Center.

By integrating the resources of VBMC's cardiac capabilities into NDH's catheterization laboratory and coordinating the care from an integrated system perspective, NDH will be able to expand VBMC's cardiac program across the Nuvance/Health Quest System, enhancing clinical quality and outcomes by adopting common protocols, quality measures, and safety standards.

Per the applicant, the system-wide approach to cardiac care will offer the following benefits to patients in the region:

- Oversight & Management – NDH's cardiac catheterization laboratory will be staffed and overseen by physicians, directors, and administrators at Nuvance Health's employed cardiology group (The Heart Center). The cardiology group operates in an integrated manner across all sites of care, and its physicians collaborate to deliver patient care through interdisciplinary committees and a centralized physician-led governance.
• Consistent Staffing Closer to Home - Patients in NDH's planning region are already being treated by cardiologists employed at The Heart Center. Bringing these physicians into NDH to perform cardiac catheterizations will promote continuity of care for both patient and cardiologist, enabling consistent and trusted care closer to home.
• Standardized EMS Protocols - EMS providers in the region are already familiar with VBMC's cardiac triage and cardiac catheterization protocols. Extending these same protocols into the NDH planning region will be seamless and ensure consistent EMS-to-hospital transfers and enhance integration in the event of a hospital-to-hospital transfer.
• Seamless & Safe Intra-System Transfers - NDH is only 18 miles, by major state highway, from VBMC so any patient who needs advanced cardiac surgical care could be transferred from NDH's catheterization laboratory to VBMC's operating room in less than thirty (30) minutes by ambulance. The hospitals are also on the same electronic

medical record platform and other clinical systems (including PACS).

- Improved Quality & Safety - By leveraging the expertise of the VBMC staff and experience in operating the heart center, NDH can bring proven expertise and established protocols and measurement tools to monitor and improve care.
- Lower Costs & Faster Ramp-Up - By leveraging existing expertise, protocols, and staff, NDH can establish its catheterization laboratory faster and more efficiently than another hospital that is building a new catheterization program.

OPCHSM Recommendation  
Contingent Approval

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.

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018, Dutchess County saw 575 Hudson Valley residents treated for emergency PCI's. Forty-eight residents left the county to receive treatment. Northern Dutchess projects 51 emergency PCI treatments in Year One.

Financial Summary

Total project cost of \$481,360 will be met with accumulated funds.

<u>Incremental</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$6,442,357	\$10,939,252
Expenses	<u>\$3,307,301</u>	<u>\$4,995,323</u>
Gain	\$3,135,056	\$5,943,929

## 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-00 and DSG-01. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-00 and 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 and an expiration of the approval. [PMU]
2. Construction must start on or before January 15, 2020 and construction must be completed by May 15, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.

Council Action Date

**December 12, 2019**

## Need Analysis

### Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHHPC December Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Northern Dutchess and HealthAlliance Hospital Mary's Ave. Campus are close in proximity but separated by the Hudson River. In 2018, Dutchess County saw 575 Hudson Valley residents treated for emergency PCI's. Forty-eight residents left the county to receive treatment. Northern Dutchess projects 51 emergency PCI treatments in Year One. Ulster County saw 359 Hudson Valley Residents treated for emergency PCI's. Thirty-Nine residents left Ulster County to receive treatment. HealthAlliance Hospital Mary's Ave. projects 103 emergency PCI treatments in Year One (based on the transfer of AMI cases transferred with/without complications).

### Analysis

Please refer **RNR Attachment A** - Hudson Valley PCI and Emergency PCI Procedures by County, by Resident, by Existing Provider, and by Applicant Projection.

<b>Table 1: 2018 Emergency (709.14: 09/25/19) PCI's Performed on Hudson Valley Residents: By: County, By Operational Hudson Valley Facilities, By: Location of Treatment.</b>											
Patient County of Residence	Operational Facilities in the Hudson Valley Region							Resident Outmigration			
	Good Samaritan Suff. (Rockland)	Orange Regional (Orange)	St Luke's Cornwall Newburgh (Orange)	Vassar Brothers (Dutchess)	New York Presbyterian Lawrence (Westchester)	Westchester Med (Westchester)	White Plains (Westchester)	Total	County Residents Treated: All Locations	County Residents Receiving Emergency PCI Treatment in Hudson Valley	County Residents Leaving Hudson Valley for Emergency PCI Treatment
Delaware				4			0	4	131	4	127
Dutchess		3	21	461	4	37	1	527	575	527	48
Orange	90	358	190	24	3	9	0	674	777	674	103
Putnam			2	30	10	55	7	104	137	104	33
Rockland	268	2	2	1	1	11	2	287	412	287	125
Sullivan		141		5		4	0	150	163	150	13
Ulster	3	19	26	263		9	0	320	359	320	39
Westchester		2		6	173	253	331	765	1,498	765	733
Total H. V. Residents receiving Emergency PCIs in Region	361	525	241	794	191	378	341	2,831	4,052	2,831	1,221

**Table 2: Applicant Facilities Projected Emergency PCI's**

Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
152243	Northern Westchester Hospital	Westchester	115	115
162211	New York-Presbyterian Hudson Valley Hospital	Westchester	50	64
162148	Nyack Hospital	Rockland	100	100
171415	Northern Dutchess Hospital	Dutchess	51	51
172251	Putnam Hospital Center	Putnam	36	36
191260	Health Alliance Hospital Mary's Ave Campus	Ulster	103*	103

*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region.

Northern Dutchess Hospital projects 51 Emergency PCI procedures by Year One of operation.

By providing PCI-capable Cardiac Catheterization services, Northern Dutchess Hospital proposes to achieve the following goals:

- Improve regional access to advanced cardiac services including diagnostic cardiac catheterization and PCI services for the communities served by Northern Dutchess Hospital.
- Enhance clinical quality by adopting common protocols with Vassar Brothers Hospital.
- Utilize the integrated delivery system known as Health Quest Systems, Inc. (Health Quest). Health Quest is the largest system in the mid-Hudson Valley.

#### Conclusion

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

## Program Analysis

#### Project Proposal

The proposed program will operate with clinical oversight from Vassar Brothers Medical Center (VBMC) in accordance with the terms of an executed clinical sponsorship agreement. VBMC and NDH are members of Nuvance Health, an integrated delivery system. Vassar Brothers Medical Center is a 365-bed hospital located at 45 Reade Place in Poughkeepsie (Dutchess County) which is a full-service cardiac surgery provider.

The new catheterization laboratory will be staffed and overseen by interventional cardiologists employed by Health Quest, and the facilities are on the same electronic medical record (EMR) platform, allowing access to clinical information at both facilities. The applicant believes by leveraging staff and protocols, it can establish its catheterization laboratory faster and at a lower cost. The applicant also believes providing these services will enable patients to have their procedures closer to home, with the ability to rapidly and seamlessly move patients to a higher level of care as needed.

Upon completion of the project Northern Dutchess will have the following service added to their operating certificate:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29.

## 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 identified the Prevention Agenda priorities selected for action in the most recent Community Service Plan submitted on behalf of the member hospitals. They are in alignment with the jointly developed Community Health Improvement Plan. These priorities include:

- Reducing obesity in children and adults, and preventing chronic disease prevention, through education and workshops
- Promoting mental health and preventing substance abuse, by participating in Drug Take-Back Days and suicide prevention strategies such as Safe Talk, Assist and Postvention Program.
- Promote Healthy and Safe Environment, specifically focusing on preventing falls in older adults through Tai Chi classes.

The applicant specified the evidence-based interventions selected to address these priorities. The hospital has engaged with diverse local organizational partners in Prevention Agenda efforts to plan and/or implement appropriate interventions and will continue to do in the merged structure. The Prevention Agenda Dashboard is being used to measure progress toward the appropriate Prevention Agenda objectives

In the most recent Schedule H for 2016, Northern Dutchess Hospital reported negligible Community Benefit Spending in the Community Health Improvement Services and Community Benefit operations category. In 2016, Northern Hospital spent \$182 on community health improvement services, representing 0% of total operating expenses.

## 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 renovations and the acquisition of moveable equipment is estimated at \$481,360, broken down as follows:

Renovation & Demolition	\$31,500
Design Contingency	\$5,150
Construction Contingency	\$5,150
Architect/Engineering Fees	\$8,000
Movable Equipment	\$418,938
Telecommunications	\$8,000
CON Application Fees	\$2,000
Additional Processing Fee	<u>\$2,622</u>
Total Project Cost	<u>\$481,360</u>

Project costs are based on a four-month construction period. The applicant will finance the project via accumulated funds. BFA Attachment C shows sufficient accumulated funds for this project.

## Incremental Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Revenues</u>		
Medicare FFS	\$1,433,060	\$2,086,100
Medicare MC	\$399,080	\$598,620
Medicaid FFS	\$61,624	\$92,436
Medicaid MC	\$385,150	\$570,022
Commercial MC	\$1,541,010	\$2,286,660
Private Pay/Other	\$12,504	\$18,756
Less: Bad Debt	<u>(\$61,369)</u>	<u>(\$92,181)</u>
Total Inpt Revenue	\$3,771,059	\$5,560,413
<u>Outpatient Revenues</u>		
Medicare FFS	\$474,640	\$960,448
Medicare MC	\$139,600	\$279,200
Medicaid FFS	\$36,216	\$72,432
Medicaid MC	\$153,918	\$307,836
Commercial MC	\$1,863,340	\$3,751,360
Private Pay/Other	\$47,070	\$95,709
Less: Bad Debt	<u>(\$43,486)</u>	<u>(\$87,546)</u>
Total Outpt Revenue	\$2,671,298	\$5,379,439
Total Revenues	\$6,442,357	\$10,939,252
<u>Inpatient Expenses</u>		
Operating	\$1,278,098	\$1,953,307
Capital	<u>\$44,822</u>	<u>\$44,822</u>
Total Inpt Expenses	\$1,322,920	\$1,998,129
<u>Outpatient Expenses</u>		
Operating	\$1,917,147	\$2,929,960
Capital	<u>\$67,234</u>	<u>\$67,234</u>
Total Outpt Expenses	\$1,984,381	\$2,997,194
Total Expenses	\$3,307,301	\$4,995,323
Excess Rev. Over Exp.	<u>\$3,135,056</u>	<u>\$5,943,929</u>
Utilization (procedures)		
Inpatient	197	291
Outpatient	<u>356</u>	<u>716</u>
Total	553	1,007
Avg Cost Per Procedure	\$5,980.65	\$4,960.60

The following was noted with respect to the first- and third-year incremental budgets:

- The rates by payor were based on historical analysis, third party market data and certain ICD 9 billing codes utilized for billing Cardiac Catheterization patients. Revenue was then calculated based on a blended CMI applied to the observed payor mix of patients within the relevant diagnosis and inpatient/outpatient classifications.

- Utilization by payor source for inpatient and outpatient services for Years One and Three is:

<u>Inpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	40.10%	39.52%
Medicare MC	11.17%	11.34%
Commercial FFS	31.47%	31.62%
Medicaid FFS	2.03%	2.06%
Medicaid MC	12.69%	12.71%
Private Pay/Other	2.03%	2.06%
Charity Care	.51%	.69%

<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	23.88%	24.02%
Medicare MC	7.02%	6.98%
Commercial FFS	42.42%	42.46%
Medicaid FFS	3.37%	3.35%
Medicaid MC	14.33%	14.25%
Private Pay/Other	8.43%	8.52%
Charity Care	.55%	.42%

- Utilization and expense projections are based on the experience of hospitals provided cardiac catheterization services and the expected market share of cardiac catheterization services within the NDH service area.

#### Capability and Feasibility

The project cost of \$481,360 will be met through accumulated funds. BFA Attachment A is a financial summary for NDH, which indicates the availability of sufficient funds.

The submitted incremental budget indicates an excess of revenues over expenses of \$3,135,056 and \$5,943,929 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for Cardiac Cath services. The budget appears reasonable.

BFA Attachment A is the 2017 and 2018 certified financial statements of Health Quest Systems, Inc. and Subsidiaries, which show the entity maintained positive working capital and net asset positions and generated net operating income of \$68,261,000 and \$79,554,000 in 2017 and 2018, respectively.

NDH is part of the Health Quest Systems, Inc. Obligated Group. BFA Attachment B is the Obligated Group's 2018 Balance Sheet and Statement of Operations, which shows that NDH maintained positive working capital and net asset positions and had net operating income of \$20,939,000.

BFA Attachment C is NDH's internal financial statements as of August 31, 2019, which indicates NDH maintained positive working capital and net asset positions and had excess revenue over expenses of \$9,715,000.

#### Conclusion

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

## Attachments

RNR Attachment A	Map
BFA Attachment A	Health Quest Systems, Inc. and Subsidiaries - 2017 and 2018 certified financials
BFA Attachment B	2018 Health Quest Systems, Inc. and Subsidiaries Obligated Group
BFA Attachment C	Financial Summary, Northern Dutchess Hospital - internals as of August 31, 2019
BFA Attachment D	Nuvance Health Organizational Chart



**Project # 191260-C**  
**HealthAlliance Hospital Mary's Avenue Campus**

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

**County: Ulster**  
**Acknowledged: May 21, 2019**

**Executive Summary**

**Description**

HealthAlliance Hospital Mary's Avenue Campus (HA Mary's Ave), a 150-bed, Article 28 acute care hospital located at 105 Mary's Avenue, Kingston (Ulster County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services, with requisite renovations. The proposed PCI lab will be operated under the established, co-operated parent model, whereby Westchester County Health Care Corporation d/b/a Westchester Medical Center (WMC), the active parent of HA Mary's Ave and a cardiac surgery provider, will provide oversight of the proposed PCI program. HA Mary's Ave will implement this project in two phases, as follows:

- Phase 1 - Upgrade the existing lab for PCI and EP services. This will allow the Hospital to immediately perform both PCI and EP services within the existing diagnostic cardiac catheterization laboratory, which is located on the first floor of the Hospital. The upgrade represents a software upgrade only; there will be no construction.
- Phase 2 - Construct a second PCI-capable cardiac catheterization and EP laboratory on the 1st floor of the Hospital within existing shell space. This laboratory is located close to the existing diagnostic cardiac catheterization laboratory and cardiac testing areas and the future Emergency Department being constructed under CON 162234. Once this second lab is constructed, it will become the primary PCI/EP laboratory, and the lab upgraded under Phase 1 will become the backup lab.

Per the applicant, the proposed PCI and EP programs are needed resources for patients attributed to the WMC-led PPS who are living in the mid-Hudson Valley, enabling ready access to regional EP, PCI and other interventional cardiology services, without the need to travel significant distances to other PPS-based facilities certified to perform PCI and EP procedures, primarily located in the lower Hudson Valley region.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. In 2018, Ulster County saw 359 Hudson Valley Residents treated for emergency PCI's. Thirty-nine residents left Ulster County to receive treatment. HealthAlliance Hospital Mary's Ave. projects 103 emergency PCI treatments in Year One (based on the transfer of Acute MI cases transferred with/without complications).

**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 cost of \$6,908,803 will be met with cash equity of \$690,881 and financing through Philips Healthcare of \$6,217,922 at 6% interest for seven years.

<u>Incremental</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,085,808	\$7,485,929
Expenses	<u>\$4,012,133</u>	<u>\$5,949,389</u>
Gain	\$73,675	\$1,536,540

## 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 loan commitment with Philips Healthcare, acceptable to the Department of Health. (BFA)
3. Submission of Pre-Procedure Risk Stratification tool that ensures high-risk patients are treated at the Cardiac Surgery Center, acceptable to the Department. [HSP]
4. Submission of a fully executed Cardiac Surgery backup agreement., acceptable to the Department. [HSP]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. 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 and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2020 and construction must be completed by July 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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.

Council Action Date

**December 12, 2019**

## Need Analysis

### Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of service. Emergency PCI includes any procedure not scheduled and not elective. In the Hudson Valley Health Services Area, seven facilities currently provide PCI services. In 2018, 1,221 Hudson Valley Residents were treated outside of the HSA for currently defined emergency PCI procedures. The six Hudson Valley applicants on the Public Health and Health Planning Council-PHHPD December Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Northern Dutchess and HealthAlliance Hospital Mary's Ave. Campus are close in proximity but separated by the Hudson River. In 2018, Dutchess County saw 575 residents treated for emergency PCI's. Forty-eight residents left the County to receive treatment. Northern Dutchess projects 51 emergency PCI treatments in year one. In 2018, Ulster County saw 359 Hudson Valley Residents treated for emergency PCI's. Thirty-nine residents left Ulster County to receive treatment. HealthAlliance Hospital Mary's Ave. projects 103 emergency PCI treatments in Year One (based on the transfer of Acute MI cases transferred with/without complications). Accompanying patient selection criteria for Electrophysiology procedures has been submitted.

### Analysis

Please refer **RNR Attachment A** - Hudson Valley PCI and Emergency PCI Procedures by County, by Resident, by Existing Provider, and by Applicant Projection.

<b>Table 1: 2018 Emergency (709.14: 09/25/19) PCI's Performed on Hudson Valley Residents: By: County, By Operational Hudson Valley Facilities, By: Location of Treatment.</b>											
Patient County of Residence	Operational Facilities in the Hudson Valley Region							Resident Outmigration			
	Good Samaritan Suff. (Rockland)	Orange Regional (Orange)	St Luke's Cornwall Newburgh (Orange)	Vassar Brothers (Dutchess)	New York Presbyterian Lawrence (Westchester)	Westchester Med (Westchester)	White Plains (Westchester)	Total	County Residents Treated: All Locations	County Residents Receiving Emergency PCI Treatment in Hudson Valley	County Residents Leaving Hudson Valley for Emergency PCI Treatment
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Sullivan		141		5		4	0	150	163	150	13
Ulster	3	19	26	263		9	0	320	359	320	39
Westchester		2		6	173	253	331	765	1,498	765	733
Total H. V. Residents receiving Emergency PCIs in Region	361	525	241	794	191	378	341	2,831	4,052	2,831	1,221

**Table 2: Applicant Facilities Projected Emergency PCI's**

Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
152243	Northern Westchester Hospital	Westchester	115	115
162211	New York-Presbyterian Hudson Valley Hospital	Westchester	50	64
162148	Nyack Hospital	Rockland	100	100
171415	Northern Dutchess Hospital	Dutchess	51	51
172251	Putnam Hospital Center	Putnam	36	36
191260	Health Alliance Hospital Mary's Ave Campus	Ulster	103*	103

*\*Based on the transfer of Acute Myocardial Infarction with and without complications.*

In 2018, residents of the Hudson Valley underwent 4,052 emergency PCI treatments. Of these, 2,831 procedures were performed within the Hudson Valley Region and 1,221 were performed out of the region.

HealthAlliance Hospital Mary's Ave. Campus projects 103 Emergency PCI procedures by Year One of opening.

By providing PCI-capable Cardiac Cath and EP services, HealthAlliance Hospital Mary's Ave proposes to achieve the following goals:

- Improve regional access to advanced cardiac services including diagnostic cardiac catheterization, PCI, and EP services for the communities in the mid to lower Hudson Valley;
- Reduce travel for patients requiring cardiac services;
- Provide emergency services for patients otherwise forced to travel outside the service area.

**Conclusion**

Additional PCI programs will decrease the number of patients who have to leave the region in which they live to receive this service.

**Program Analysis**

**Project Proposal**

The proposed program will operate with clinical oversight under the established, co-operated parent model whereby Westchester Medical Center and a cardiac surgery provider, will provide strict oversight of the program. Westchester Medical Center will pursue a collaborative effort regarding cardiac services for the HealthAlliance service area with WMC providing oversight for the program. Westchester Medical Center is a 652-bed hospital located at 100 Woods Road in Valhalla (Westchester County) which is a full-service cardiac provider. Because WMC (the co-operator of the proposed PCI capable program) is 71.7 miles and 88 minutes travel time away from HealthAlliance-Mary's Avenue, the proposed cardiac surgery backup facility is Good Samaritan Hospital of Suffern (GSHS). GSHS is located at 255 Lafayette Avenue in Suffern (Rockland County). The applicant acknowledges that GSHS, which is 66.5 miles and 68 minutes travel time away, can and does meet the needs of the community.

Upon completion of the project HealthAlliance Mary's Avenue Campus will have the following service added to their operating certificate:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization – Electrophysiology Services

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Electrophysiology Services and they have assured the Department that their program will meet all of the requirements of 405.29 and 709.14.

### 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

Health Alliance Hospital – Mary's Avenue Campus identifies the highly ranked health needs in the community addressed in the *Prevent Chronic Disease* priority are coronary health disease and cardiovascular disease. The services that will be provided with this PCI certification are consistent with both community-identified disease health priorities.

The applicant provides many evidence-based interventions to address the *Prevent Chronic Disease* and *Promoting Mental Health* and *Preventing Substance Abuse* Prevention Agenda goals aligned with the community identified priority areas. Health Alliance Hospital – Mary's Avenue Campus describes active engagement with community partners including the Ulster County Department of Health and Mental Health in the development of the CHA/CHIP.

In addition to tracking the percentage of new mothers exclusively breastfed as inpatients to address the *Prevent Chronic Disease* goal, the applicant provides a variety of metrics tracking the impact on the two community identified goals.

In 2017 the applicant spent \$264,379 on community health improvement services, representing 0.421% of total operating expenses.

### 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

The total project costs for renovations and the acquisition of moveable equipment is estimated at \$6,908,803 broken down as follows:

Renovation & Demolition	2,861,200
Design Contingency	286,120
Construction Contingency	286,120
Architect/Engineering Fees	155,500
Other Fees	51,833
Moveable Equipment	3,017,357
Telecommunications	72,567
Interim Interest Expense	155,448
Application Fee	2,000
Processing Fee	20,658
Total Project Cost	6,908,803

Project costs are based on a seven-month construction starting January 2020. The applicant will finance the project with cash equity of \$690,881 and financing through Philips Healthcare of \$6,217,922 at 6% interest for seven years.

### Incremental Operating Budget

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

<u>Inpatient Revenues</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	\$97,167	\$155,466
Medicaid MC	\$347,884	\$483,172
Medicare FFS	\$1,003,982	\$1,356,257
Medicare MC	\$281,820	\$369,888
Commercial FFS & MC	\$612,000	\$850,000
Private/Charity	\$80,000	\$160,000
Other (Bad Debt)	<u>-\$116,075</u>	<u>-\$143,057</u>
Total Inpt Revenue	\$2,306,778	\$3,231,726
<u>Outpatient Revenues</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	\$44,460	\$106,317
Medicaid MC	\$140,079	\$334,972
Medicare FFS	\$636,738	\$1,522,635
Medicare MC	\$216,441	\$517,576
Commercial FFS & MC	\$1,032,361	\$2,468,689
Private/Charity	\$400,388	\$957,440
Other (Bad Debt)	<u>(\$691,437)</u>	<u>(\$1,653,426)</u>
Total Outpt Revenue	\$1,779,030	\$4,254,203
Total Revenues	\$4,085,808	\$7,485,929
<u>Expenses (Combined)</u>	<u>Year One</u>	<u>Year Three</u>
Operating	\$3,091,955	\$5,122,927
Capital	<u>\$920,178</u>	<u>\$826,462</u>
Total Expenses	\$4,012,133	\$5,949,389
Gain (Loss)	<u>\$73,675</u>	<u>\$1,536,540</u>
<u>Utilization (Procedures)</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient	116	160
Outpatient	<u>184</u>	<u>440</u>
Total Procedures	300	600
Average Cost Per Procedure	\$13,374	\$9,916

Utilization by payor for inpatient services is as follows:

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Medicaid FFS	5	4.3%	8	5.0%
Medicaid MC	18	15.5%	25	15.6%
Medicare FFS	57	49.2%	77	48.1%
Medicare MC	16	13.8%	21	13.1%
Commercial FFS & MC	18	15.5%	25	15.6%
Private Pay	1	.8%	2	1.3%
Charity Care	<u>1</u>	<u>.9%</u>	<u>2</u>	<u>1.3%</u>
Total	116	100.0%	160	100.0%

Utilization by payor for outpatient services is as follows:

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	13	7.1%	32	7.3%
Medicaid MC	43	23.4%	101	23.0%
Medicare FFS	47	25.5%	111	25.2%
Medicare MC	16	8.7%	38	8.6%
Commercial FFS & MC	54	29.3%	129	29.3%
Private Pay	4	2.2%	11	2.5%
Charity Care	<u>7</u>	<u>3.8%</u>	<u>18</u>	<u>4.1%</u>
Total	184	100.0%	440	100.0%

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

- The projected utilization is based on volume support letters provided by the interventional cardiologists and electrophysiologists who have committed to providing PCI and EP procedures at HA Mary's Ave. This utilization is based on expected market share within HA's service area.
- The number and mix of staff were determined based on the experience of WMC in staffing its existing PCI-capable cardiac catheterization and EP lab on its main campus in Valhalla. The Incremental expenses include labor costs related to new staff (1 FTE Nurse Practitioner, 5.5 FTE RNs and 2.0 to 2.5 FTE Respiratory Therapists) and increased medical supply costs including implants (total \$2.1M Year One, \$3.96M Year Three).
- Revenues are based on the prevailing payment rates by payor for cardiac catheterization procedures per the experience of WMC.

#### Capability and Feasibility

The total project costs of \$6,908,803 will be funded by cash equity of \$690,881 and financing through Philips Healthcare of \$6,217,922 at 6% interest for seven years.

The submitted budget indicates excess revenues over expenses of \$73,675 and \$1,536,540 in Years One and Three, respectively. The budget appears reasonable.

BFA Attachment A is the 2017 and 2018 certified financial statements of HealthAlliance, Inc, which indicate the entity had negative working capital and net asset positions and generated operational deficits of \$23,432,000 in 2018 and \$9,080,000 in 2017.

BFA Attachment B is the internal financial statements of HealthAlliance, Inc. as of August 31, 2019, which indicate the entity had negative working capital and net asset positions and had an operational deficit of \$14,484,000.

WMC became the active parent co-operator of HA effective February 26, 2019. Prior to affiliating with WMC, HA had experienced seven years of consecutive volume decline resulting in significant operating losses. Comparing 2017 to 2011, HA lost 15% market share and 2,957 inpatient cases due to its inability to attract and retain providers and lack of capital to invest. With the assistance of WMC to restructure operations, improve market share penetration and achieve efficiencies, recapturing just 21% of lost volume (616 discharges) is expected to enable HA to achieve financial stability with positive cash flow. WMC has invested substantial resources (approximately \$12M yearly) to support HA while actively rebuilding their clinical programs. As such, HA with WMC's management team have identified immediate inpatient and outpatient growth opportunities, including inpatient and outpatient cardiac catheterization services, aimed at recapturing lost volume. These growth opportunities align with continued strategic investments for 2019 including cardiology, primary care, obstetrics, and oncology. HA has been receiving state subsidy since 2014 via the IAAF, VAPAP and VBP-QIP programs, and is expected to continue receiving ongoing VAPAP and VBP-QIP funding in state fiscal years 2020 and 2021 to enable service line restructuring with an end goal of establish a financially sustainable hospital in Kingston.

#### Conclusion

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

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## Attachments

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RNR Attachment A	Map
BFA Attachment A	HealthAlliance, Inc 2016, 2017, 2018 Certified Financial Statements
BFA Attachment B	HealthAlliance, Inc August 31, 2019 Internal Financial Statements



**Project # 192045-C  
Samaritan Hospital**

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

**County: Rensselaer**  
**Acknowledged: August 1, 2019**

**Executive Summary**

**Description**

Samaritan Hospital of Troy NY, Inc. d/b/a Samaritan Hospital, a voluntary not-for-profit, Article 28 acute care community hospital located in Troy (Rensselaer County), requests approval to merge Memorial Hospital, Albany NY d/b/a Albany Memorial Hospital, a voluntary not-for-profit, Article 28 community hospital located in Albany (Albany County), into its operations. Samaritan Hospital will be the surviving hospital and corporation. Upon approval of the merger, the Memorial Hospital site will be known as Samaritan Hospital – Albany Memorial Campus. St. Peter's Health Partners (SPHP), a not-for-profit healthcare system in New York's Capital Region that operates numerous health facilities, is the sole member, active parent and co-operator of both hospitals. There will be no change in beds, services, or programs at this time as a result of this project.

Upon completion of this merger, Samaritan Hospital will have three hospital campuses and a net certified bed count of 442 beds. The campuses are as follows:

- Main Campus: 257 beds at 2215 Burdett Avenue, Troy;
- St. Mary's Campus: 20 beds (Chemical Dependency-Rehabilitation) at 1300 Massachusetts Avenue, Troy; and
- Albany Memorial Campus: 165 beds, at 600 Northern Blvd., Albany.

Integrating the various stand-alone hospitals of SPHP into a larger health system has been an objective of SPHP since its formation in 2011. Under SPHP's Master Facilities Plan (MFP), transforming the Memorial campus into a

hospital outpatient and/or ambulatory surgery and medical office location is under consideration. The 165-bed hospital has experienced declining average daily census for several years (40.6 in 2016 to 15.4 this year to date) with little expectation of rebounding, but outpatient volume remains significant. In 2017, the Centers for Medicare and Medicaid Services (CMS) issued guidance on the definition of a hospital, stating that in order to qualify for Medicare payments the facility must be "primarily engaged in providing inpatient services." SPHP is confident that Memorial currently qualifies as hospital. However, given the downward trend in inpatient patient care, there is growing concern as to how long Memorial will meet the CMS definition of a hospital. Memorial can ensure compliance with the regulation over the long term by merging into St. Peter's Hospital or Samaritan Hospital, as both are affiliates of SPHP. It is preferable for Memorial to merge into Samaritan, primarily because those hospitals are on the same information system (Meditech).

The MFP for the Memorial Hospital campus will take years to implement. In the meantime, the community relies greatly on the hospital's outpatient services, particularly its emergency services. The merger is expected to deliver more centralized governance, administrative and operational efficiencies by having a single management structure, reduce federal and state regulatory obligations, unify policies and procedures, and create economies of scale while enhancing centralized care for patients. Presently, SPHP, Samaritan and Albany Memorial have mirror boards. Post-merger,

SPHP and Samaritan will continue to have mirror boards and SPHP will retain the active parent reserve powers. Memorial will cease to exist as a separately licensed entity and will become a Division of Samaritan.

BFA Attachment A is the organizational charts for St. Peter's Health Partners before and after the merger.

OPCHSM Recommendation  
Contingent Approval

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

#### Program Summary

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

#### Financial Summary

There are no project costs or acquisition costs associated with this application.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$373,011,294	\$389,678,287
Expenses	<u>\$375,675,846</u>	<u>\$388,933,858</u>
Net Income	(\$2,664,552)	\$744,429

## 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 Plan of Merger Agreement, acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of a list of the Board of Directors of Trinity Health, acceptable to the Department. (CSL)
3. Submission of a photocopy of an executed Resolution of the Board of Directors of Trinity Health, acceptable to the Department. (CSL)
4. Submission of a photocopy of an executed Resolution of the Board of Directors of St. Peters Health Partners, acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed Resolution of the Board of Directors of Memorial Hospital, Albany, N.Y. (MHA), acceptable to the Department. (CSL)
6. Submission of a photocopy of the Certificate of Incorporation for MHA, acceptable to the Department. (CSL)
7. Submission of an Anti-Kickback Statement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an executed Resolution of the Board of Directors of Samaritan Hospital of Troy, NY (Samaritan Hospital), acceptable to the Department. (CSL)
9. Submission of a photocopy of an executed Amended and Restated Certificate of Incorporation of Samaritan Hospital, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Plan of Merger of Samaritan Hospital and MHA, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Certificate of Merger of Samaritan Hospital and MHA into Samaritan Hospital, acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

# Need and Program Analysis

## Project Proposal

Samaritan Hospital (Samaritan), a 257-bed, voluntary not-for-profit Article 28 acute care hospital, located at 2215 Burdett Ave in Troy (Rensselaer County), requests approval to acquire Albany Memorial Hospital (Memorial), a 165-bed hospital located approximately eight miles away, at 600 Northern Boulevard in Albany (Albany County). Both hospitals have St. Peter's Health Partners as their sole member, active parent and co-operator.

The Average Daily Census of Albany Memorial Hospital has been declining steadily.

Albany Memorial Hospital							
	2012	2013	2014	2015	2016	2017	2018
Average daily census	60.6	51.0	42.7	40.1	33.3	30.2	23.3
Total Occupancy	36.7%	30.9%	25.9%	24.3%	20.2%	18.3%	14.1%

As a result of a steady decline in its average daily census and Centers for Medicare and Medicaid Services (CMS) issuing guidance in 2017 to the State Survey Directors on the definitions of a "hospital", there is growing concern as to how long Memorial will meet the CMS definition of a hospital. Memorial can ensure compliance with the regulation over the long term by merging with Samaritan Hospital. Through this merger, Memorial aims to protect continued access to health services for area residents, including Emergency Room services which is valued greatly by the community. The merger promises to deliver significant tangible benefits to the hospitals and the communities which will improve the financial sustainability of the combined hospital, as well as the quality of care, including:

- *Governance, administrative, and operational efficiencies:* The single hospital would have one legal Board and CEO, one set of local policies and procedures, one medical and nursing staff, and many unified departments.
- *Reduction in regulatory obligations:* The reporting and other obligations imposed by a long list of federal and state regulatory agencies will have to be satisfied by one entity.
- *Coordination of care:* The merger will facilitate the coordination of care of the patients who may need services at both sites.
- *340-B Discounts:* Memorial outpatient services will benefit from the eligibility for 340-B discounts under Samaritan 340-B program.

The applicant is not requesting to decertify any beds at this time. The applicant is requesting, per 10 NYCRR §401.3(e), to operate at less than the certified capacity as theSPHPs works on a Master Facility Plan for all St. Peter's Health Partners hospitals, in anticipation of a request to reallocate the beds, if required. As a result, there would be no change to the authorized services, number or type of beds due to this application.

## Prevention Agenda

The combination of the two hospitals "does nothing to change, dilute, or in any way, diminish" the activities to support their Community Service Plan or address Prevention Agenda priorities (summarized below).

Consistent with a previous CON application, the applicant identified the Prevention Agenda priorities selected for action in the most recent Community Service Plan submitted on behalf of the member hospitals. They are in alignment with the jointly-developed Community Health Improvement Plan for Rensselaer County. These priorities include:

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

The applicant specified the evidence-based interventions selected to address these priorities. Both hospitals have engaged with diverse local organizational partners in Prevention Agenda efforts to plan and/or implement appropriate interventions and will continue to do so in the merged structure. The Prevention Agenda Dashboard is being used to measure progress toward the appropriate Prevention Agenda objectives.

In their most recent Schedule H forms, both hospitals reported Community Benefit Spending in the Community Health Improvement Services and Community Benefit Operations category. In 2017, Albany Memorial Hospital spent \$357,718 on community health improvement services, representing 0.37% of total operating expenses. In 2016, Samaritan Hospital spent \$435,920 on community health improvement services, representing 0.2% of total operating expenses.

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

The Department issued a Stipulation and Order (S&O) dated August 18, 2016 and fined St. Peter's Hospital \$2,000 based on findings from a validation survey that was completed on January 7, 2016. Deficient practice was cited in the area of Food and Dietetic Services. Specifically, staff identified that the solutions used to clean the food preparation surfaces was below the required concentration to assure the areas are properly sanitized.

#### Conclusion

There would be no change in beds or services as a direct 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

#### Plan of Merger Agreement

The applicant has submitted a draft Plan of Merger Agreement to be effectuated upon Public Health and Health Planning Council approval. The terms are summarized below:

Merging Entities:	Samaritan Hospital of Troy, Inc. and Memorial Hospital, Albany NY
Surviving Entity:	Samaritan Hospital of Troy, Inc.
Terms/Conditions:	The terms and conditions of the merger, including the manner and basis of converting membership or other interest in each constituent corporation into membership or other interest in the surviving corporation, or the cash or other consideration to be paid in exchange for membership in each constituent corporation provides that: St. Peter's Health Partners will remain the sole member of the surviving corporation; and no cash or other consideration will be paid in exchange for any membership interest.
Purchase Price:	\$0

The sole member of Samaritan Hospital is SPHP, a New York not-for-profit corporation, and the sole member of SPHP is Trinity Health Corporation, an Indiana nonprofit corporation.

## Operating Budget

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

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Inpatient	\$108,120,289	\$113,355,502	\$116,732,873
Outpatient	<u>\$239,470,307</u>	<u>\$247,767,276</u>	<u>\$256,330,529</u>
Net Patient Rev	\$347,590,596	\$361,122,778	\$373,063,402
Other Op. Rev*	\$13,032,265	\$12,592,745	\$13,150,062
Non-Op. Rev**	<u>(\$5,805,555)</u>	<u>(704,229)</u>	<u>\$3,464,823</u>
Total Revenues	\$354,817,306	\$373,011,294	\$389,678,287
<u>Expenses</u>			
Operating	\$340,812,705	\$359,778,581	\$373,454,321
Capital	<u>\$14,980,411</u>	<u>\$15,897,265</u>	<u>\$15,479,537</u>
Total Expenses	\$355,793,116	\$375,675,846	\$388,933,858
Net Income (Loss)	<u>(\$975,810)</u>	<u>(\$2,664,552)</u>	<u>\$744,429</u>
Discharges	11,702	11,416	11,746
Visits	966,011	1,018,235	1,074,852

\*Other revenue includes: cafeteria, grant revenue, rent, and assets released from restrictions.

\*\*Non-operating revenue: gains and loss from investment.

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

<u>Inpatient</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial-FFS	6.51%	7.10%	7.94%
Commercial- MC	13.96%	13.43%	14.27%
Medicare-FFS	30.39%	28.77%	26.98%
Medicare-MC	25.60%	26.77%	25.04%
Medicaid-FFS	4.77%	5.29%	5.10%
Medicaid-MC	17.48%	17.63%	19.68%
Private Pay	0.65%	0.46%	0.45%
Charity Care	<u>0.63%</u>	<u>0.56%</u>	<u>0.54%</u>
Total	100.00%	100.00%	100.00%
<u>Outpatient</u>			
Commercial-FFS	11.66%	11.45%	11.08%
Commercial-MC	27.08%	26.85%	26.99%
Medicare-FFS	21.25%	20.50%	20.31%
Medicare-MC	19.21%	19.89%	19.97%
Medicaid-FFS	1.89%	1.78%	1.81%
Medicaid-MC	16.66%	16.82%	17.49%
Private Pay	1.52%	1.72%	1.61%
Charity Care	<u>0.74%</u>	<u>0.98%</u>	<u>0.74%</u>
Total	100.00%	100.00%	100.00%

Budget projections are based on the following:

- While the three facilities when combined for budget reasons indicate a slight loss in the current and first year, merging the facilities will cut costs and allow for centralized management staff to run more efficient operations, which will result in a positive third-year net income.
- The Year One loss is expected to increase as Samaritan and Albany Memorial Hospital implement strategies to right-size all the facilities under one operation.
- Revenue assumptions are based on current reimbursement methodologies as well as current and historical utilization.
- Albany Memorial Hospital is experiencing a lower average daily census, creating an opportunity to right-size the facility to the community need.
- In contrast, outpatient volume appears to be rising and should provide some opportunities for growth.

#### Capability and Feasibility

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

BFA Attachment B is the 2017 and 2018 consolidated certified financial statements of St. Peter's Health Partners Albany, NY, which shows positive working capital and net asset position for both years. For 2017, SPHP achieved operating income of \$6,302,000 before other items and experienced an operating loss of \$1,752,000 before other items in 2018. Inclusive of other operating and non-operating items, SPHP achieved an excess of revenue over expenses of \$37,861,000 in 2017 and \$8,113,000 in 2018. The reason for the operating loss before other items in 2018 was due to inefficiencies in various programs and full-time salary expenses. SPHP has developed an action plan to include patient progression efficiency, voluntary separation programs and integrating electronic medical records systems to streamline patient care.

As shown on the BFA Attachment B, supplemental schedule for 2018, Samaritan Hospital of Troy achieved excess revenues over expenses of \$9,108,000 and Albany Memorial Hospital achieved an excess of revenues over expenses of \$2,505,000. Seton Health Systems Inc. d/b/a St. Mary's had an excess revenue over expenses of (\$12,589,000). The combined loss is \$976,000 which SPHP can absorb. Once the planned strategies are fully implemented and cost efficiencies are in place, the budget in Year Three indicates that the facilities will have positive net income.

BFA Attachment C is SPHP's internal financial statement as of fiscal year end June 30, 2019, which shows positive working capital and net asset positions. During 2019, SPHP shows operating income of \$2,185,000 and excess of revenues over expenses of \$24,951,000.

SPHP will actively review the overall MFP once Albany Memorial is merged into Samaritan Hospital to assess community needs and implement recommendations of consolidating beds and services.

The budget shows a first-year loss of \$2,664,552 and a third-year gain of \$744,429. SPHP completed a projected operating budget based on integration, streamlining services between campuses, cost savings initiatives, and centralizing work flow. Future initiatives for restructuring, including centralizing leadership and administrative services will help decrease costs. Right-sizing in various areas will improve sustainability in the future. The budget appears reasonable.

#### Conclusion

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

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## Attachments

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- BFA Attachment A Organizational Charts – Pre & Poster Merger
- BFA Attachment B (SPHP) Consolidated Certified Financial Statements - Fiscal Years June 2017 and 2018, including Hospital Supplemental Schedules.
- BFA Attachment C (SPHP) Draft 2019 Fiscal Year End Financial Statements (June 2019)



Project # 192123-C  
Blythedale Childrens Hospital

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

**County:** Westchester  
**Acknowledged:** September 6, 2019

**Executive Summary**

**Description**

Blythedale Children’s Hospital (Blythedale), an 86 bed, voluntary not-for-profit, Article 28 specialty children’s hospital located at 95 Bradhurst Avenue, Valhalla (Westchester County), requests approval to certify eight additional Traumatic Brain Injury (TBI) beds and perform requisite renovations. Blythedale is currently certified for seven TBI and three coma recovery beds. The beds as located in a dedicated Brain Injury/Coma Recovery Unit consisting of ten single-bedded rooms. This project will convert eight of the single-bedded rooms to double-bedded rooms, increasing the bed count of the Unit from ten to 18. Upon approval of this application, the Hospital will have a total of 15 TBI beds and a final certified bed count of 94 beds.

From January 2017 through May 2019 Blythedale has stated they were forced to turn away 147 children suffering from TBI – an average of more than five children every month – because the Hospital did not have enough certified TBI bed capacity to treat those patients. Of the 147 pediatric TBI patients, 118 were admitted to facilities that do not have specialized, dedicated pediatric programs.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
The addition of these beds would help alleviate the high utilization rates and the lack of available beds.

**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 costs of \$2,011,227 will be met through cash equity.

<u>Incremental Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,483,076	\$5,286,903
Expenses	\$1,664,957	\$2,171,310
Gain/(Loss)	\$1,818,119	\$3,115,593

## 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 and an expiration of the approval. [PMU]
2. 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]
3. Construction must start on or before March 15, 2020 and construction must be completed by July 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]

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Background

The Hospital currently has 86 beds, including 46 Medical/Surgical beds, 30 Physical Medicine and Rehabilitation (PM&R) beds, seven Traumatic Brain Injury (TBI) beds and three Coma Recovery beds. Blythedale is seeking approval to certify eight additional TBI beds. Upon approval, the Hospital will have 15 TBI beds and a total of 94 beds.

A traumatic brain injury (TBI) is defined as an alteration in brain function, or other evidence of brain pathology, caused by an external force. A non-traumatic brain injury is an alteration in brain function or pathology caused by an internal force, such as post-infectious diseases (including meningitis or Anti-NMDA receptor encephalitis (ANMDAR)), hypoxia, brain tumors and stroke. Blythedale provides both types of acquired brain injury (ABI): traumatic and non-traumatic and is the only dedicated post-acute pediatric brain injury unit in New York State.

### Analysis

Bed Type	Current Beds	Request	Proposed
Coma Recovery	3		3
Medical/Surgical	46		46
Phy. Medicine and Rehab.	30		30
Traumatic Brain Injury	7	+8	15
<b>Total</b>	<b>86</b>	<b>8</b>	<b>94</b>

Source: HFIS

Average Daily Census, Length of Stay, and Occupancy							
		2017			2018		
	Beds	ADC	ALOS	Occupancy Rate	ADC	ALSO	Occupancy Rate
<b>Med/Surg</b>	86	66.4	44.5	77.20%	81.3	53.5	85.70%

Source: SPARCS

The table below displays a census of approximately 30 pediatric TBI patients per year in Westchester County alone. These patients tend to have a long average length of stay. The addition of eight beds will allow these patients to stay in the area and receive care at a pediatric facility.

Westchester Pediatric Residents with TBI diagnosis (21 and Under)						
Year	2013	2014	2015	2016	2017	2018
Pediatric TBI Patients	48	34	33	25	30	30

Source: SPARCS

The applicant has stated through 2019 its TBI beds have been 95% utilized and its PM&R beds were at 93% with an overall facility utilization of 88%. From January 2017 through May 2019 Blythedale has stated they were forced to turn away 147 children suffering from TBI – an average of more than five children every month – because the Hospital did not have enough certified TBI bed capacity to treat those patients. Of the 147 pediatric TBI patients, 118 were admitted to facilities that do not have specialized, dedicated pediatric programs.

It is anticipated that current year staffing is expected to increase as a result of this project from 11.1 FTEs in Year One to 14.5 FTEs in Year Three. There are no expected programmatic changes and no other change in services.

## Prevention Agenda

Blythedale Children's Hospital proposes to use their platform as a child focused community engaged facility to address the Prevention Agenda goal to Prevent Chronic Diseases by Reducing Obesity in Children. This goal is in alignment with the Westchester County Prevention Agenda Coalition and the 2018 County Health Improvement Plan. The applicant will provide education to at-risk children and their families on the importance of nutrition and healthy eating, as well as to provide them with the necessary tools to establish lifelong healthy habits. The applicant will work with schools to provide on-site education as well as convening community health screening events.

The applicant states that the second Prevention Agenda goal selected by the Westchester County Prevention Agenda Coalition – Prevent Mental Health and Substance Use Disorders is not within the applicant's mission and scope of practice. Blythedale has selected another Prevention Agenda priority goal - Prevent Healthcare-Associated Infections. The applicant proposes to improve their ability to reduce health care associated infections through multiple clinical strategies and interventions.

The applicant references involvement in community wide discussions convened by the Westchester County Department of Health around the selection of county-wide Prevention Agenda priorities. However, the 2018 community health planning documents were developed separately by each institution rather than creating a combined CHA/CHIP.

The applicant provides a general list of performance measures developed to track the educational and community- based activities related to reducing obesity in children. These include numbers of materials distributed, number of attendees at health fairs, number of classroom visits and analytics related to social media but do not provide objectives for these activities.

By 2018, Blythedale will maintain hospital acquired infection rates less than 1.1 per 1,000 central line days and 1.7 per 1,000 indwelling catheter days using QI and educational strategies.

In 2017 the applicant spent \$183,119 on community health improvement services, representing 0.242% of total operating expenses.

## Conclusion

The addition of these beds would help alleviate the high utilization rates and the lack of available 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

### Project Costs

Total project costs for the renovations is estimated at \$2,011,227 broken down as follows:

Renovation & Demolition	\$1,360,918
Design Contingency	136,092
Construction Contingency	136,092
Architect/Engineering Fees	131,112
Construction Manager Fees	34,023
Moveable Equipment	200,000
CON Application Fee	2,000
Additional Processing Fee	<u>10,990</u>
Total Project Cost	\$2,011,227

Project costs are based on a start date of March 2020, with a four-month construction period. Financing to meet the total project costs will be met with cash equity from the applicant.

### Operating Budget

The applicant has submitted the incremental first and third year projected operating budget for the eight additional TBI beds, in 2019 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$132,707	\$265,414	\$128,931	\$386,793
Medicaid MC	\$93,416	840,745	\$87,517	1,225,233
Commercial FFS	\$125,101	<u>2,376,917</u>	\$131,246	<u>3,674,877</u>
Total Revenues		\$3,483,076		\$5,286,903
<u>Expenses</u>				
Operating	\$50,140	\$1,504,209	\$44,679	\$2,010,562
Capital	<u>\$5,358</u>	<u>160,748</u>	\$3,572	<u>160,748</u>
Total Expenses	\$55,499	\$1,664,957		2,171,310
Excess Revenues		\$1,818,119		\$3,115,593
Incremental Discharges		30		45
TBI Unit Occupancy		61.40%		89.49%

Incremental utilization by payor source for Years One and Three is summarized below:

Payor	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	2	6.67%	3	6.67%
Medicaid MC	9	30.00%	14	31.11%
Commercial FFS	<u>19</u>	<u>63.33%</u>	<u>28</u>	<u>62.22%</u>
Total	30	100.00%	45	100.00%

The following is noted with respect to the operating budget:

- Utilization is based on the incremental volume associated with the eight additional TBI inpatient beds and historical volume experience of the current TBI beds. Reimbursement rates reflect the current and projected rates of the Unit.
- The Medicaid FFS and Medicaid Managed Care rates are conservatively forecasted to be essentially unchanged.
- The non-Medicaid rates are conservatively forecasted to increase 0.5% while historically non-Medicaid rates increase 2.0% to 3.5% annually.
- Medicaid Managed Care plans pay the Hospital 100% of the published rate but in TBI cases Blythedale has a small amount of cases that pay 85% of the published rate.
- Increased operating cost include incremental salary, wages and employee benefits related to additional staff (5.7 FTE registered nurses, 2.9 FTE Aides/Orderlies, 2.3 therapists) and additional medical supplies. The incremental capital pertains to depreciation expense for project costs related to the renovation and moveable equipment.

#### Capability and Feasibility

The total project cost of \$2,011,227 will be met via equity from the Hospital. BFA Attachment A is the 2017 and 2018 certified financial statements of Blythedale Children's Hospital, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects an incremental net income of \$1,818,119 and \$3,115,593 in the first and third years of operation of the additional beds, respectively. Revenues are based on the current reimbursement methodologies for TBI services. The budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2017 through 2018. Also, the entity achieved an average excess of revenues over expenses of \$4,040,346 from 2017 through 2018.

BFA Attachment B is the internal financial statements of Blythedale Children's Hospital as of the August 31, 2019. As shown, the entity had a positive working capital position and a positive net asset position and achieved an excess of revenues over expenses of \$1,645,873 through August 31, 2019.

#### Conclusion

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

## Attachments

- BFA Attachment A 2017 and 2018 Certified Financial Statements of Blythedale Children's Hospital.  
BFA Attachment B Internal Financial Statements of Blythedale Children's Hospital as of 08-31-19



**Project # 192051-C  
Specialists' One-Day Surgery Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Construction    **Acknowledged:** July 26, 2019

**Executive Summary**

**Description**

Specialists' One-Day Surgery, LLC (SODS) is the operator of a proprietary Article 28 freestanding ambulatory surgery center (FASC) in Syracuse (Onondaga County). Prior to opening its extension clinic facility at 5801 East Taft Road, Syracuse, SODS operated a dual-single-specialty (Orthopedics and Pain Management) FASC at 190 Intrepid Lane, Syracuse. Under CON 172083 and effective March 27, 2019, SODS renovated and reconfigured its Intrepid Lane facility and opened the East Taft Road site, moving Orthopedic services to this new location. Pain Management services remain at the Intrepid Lane site, which is certified for single specialty – pain management services. Per this application, SODS requests approval to certify a second specialty, Pain Management, at the East Taft Road site to become a dual single-specialty FASC (Orthopedics and Pain Management).

The applicant indicates that a small number of pain management procedures currently performed at the Intrepid Lane site require anesthesia. Since the anesthesia service line was relocated to the East Taft Road site, the Intrepid Lane site is required to make separate arrangements for anesthesia which becomes costly and creates scheduling inefficiencies. SODS wants the flexibility to permit its current pain management medical staff to perform pain management cases at the East Taft Road site on an as needed basis. No additional staff and

no modifications of the East Taft Road site will be required to accommodate pain management procedures. There will be no change in services at the Intrepid Lane site and most pain management cases will continue to be performed at there.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
This project will enhance access to pain management surgery services for the residents of Onondaga County.

**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 costs of \$14,503 will be funded via cash from accumulated funds.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$67,608	\$67,608
Expenses	12,300	12,300
Gain/(Loss)	\$55,308	\$55,308

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Background

Specialists' One-Day Surgery Center currently operates two ambulatory surgery centers, one offering orthopedic surgery and one offering pain management surgery services. The applicant is requesting to add a second specialty (pain management) to its orthopedic surgery site so that a small number of pain management procedures (approximately 10) which require anesthesia can be performed more easily and efficiently.

The Center was designed and constructed to meet the standards of a multi-specialty surgery center. Currently, it operates eight (8) operating rooms, each of which are at least 410 square feet in area. The Center has the capacity to handle additional pain management cases in addition to the surgical cases currently being performed and would like the flexibility to the medical staff.

It is anticipated that there will be no change in the current staffing to accommodate projected incremental increase in cases. Dr. Alan Lemley will continue to serve as the Medical Director and the existing transfer and affiliation agreement with St. Joseph's Hospital Health Center will remain in effect.

### Analysis

The service area is Onondaga County. The table below show the number of patient visits at ambulatory surgery centers in Onondaga County for 2017 and 2018, which increased 17.8 percent year-over-year.

ASC Type	Facility Name	Total Patient Visits	
		2017	2018
Multi	Camillus Surgery Center <sup>1</sup>	2,462	1,901
Gastroenterology	Digestive Disease Center of Central NY <sup>1</sup>	11,389	19,887
Gastroenterology	Endoscopic Procedure Center	6,005	5,986
Gastroenterology	Endoscopy Center of Central NY	4,148	7,435
Pain Management	Heritage One-Day Surgery	16,851	17,977
Pain Management	Specialists' One-Day Surgery Center	14,778	16,685
Orthopedics	Specialists' One-Day Surgery Center (opened 3/27/19)	N/A	N/A
Multi	Specialty Surgery Center of Central NY <sup>1</sup>	12,685	13,644
Gastroenterology	Syracuse Endoscopy Associates	6,762	6,590
Ophthalmology	Syracuse Surgery Center	1,491	1,790
Gastroenterology	University Gastroenterology at the Philip G. Holtzaple Endoscopy Center	2,160	1,694
Orthopedics	Upstate Orthopedics Ambulatory Surgery Center	5,501	5,609
<b>Total Visits</b>		<b>84,232</b>	<b>99,198</b>

<sup>1</sup> 2018 data is an estimation, based upon partial year information

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Conclusion

Approval of this project will enhance access to pain management surgery services for the residents of Onondaga County. 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.

<h2>Financial Analysis</h2>
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Total Project Cost and Financing

Total project costs for the acquisition of moveable equipment is estimated at \$14,503, broken down as follows:

Movable Equipment	\$12,435
Application Fees	\$2,000
Additional Processing Fees	<u>\$68</u>
Total Project Cost	\$14,503

The project cost will be funded via cash from the Company's accumulated funds. BFA Attachment B provides the 2017 - 2018 certified financial statements of Specialists' One-Day Surgery, LLC, which show sufficient resources to meet the equity requirement for total project cost.

Operating Budget

The applicant submitted the current year operations for pain management services, and the projected first- and third-year operating budgets, in 2019 dollars, summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Medicaid-MC	\$3,204	\$6,408	\$3,204	\$6,408	\$3,204	\$6,408
Medicare-FFS	\$6,700	\$13,400	\$6,700	\$13,400	\$6,700	\$13,400
Commercial-FFS	\$9,000	\$36,000	\$9,000	\$36,000	\$9,000	\$36,000
Private Pay	\$5,700	<u>\$11,400</u>	\$5,700	<u>\$11,400</u>	\$5,700	<u>\$11,400</u>
Total		\$67,208		\$67,208		\$67,208
 <u>Expenses</u>						
Operating	\$1,230	\$12,300	\$1,230	\$12,300	\$1,230	\$12,300
Capital	<u>0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
	\$1,230	\$12,300	\$1,230	\$12,300	\$1,230	\$12,300
 Net Income		<u>\$54,908</u>		<u>\$54,908</u>		<u>\$54,908</u>
 Procedures		10		10		10

Incremental revenues and expenses associated with pain procedures at the East Taft Road site are expected to be nominal and immaterial.

Utilization by payor source for the current year, and years one and three is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid-MC	2	20%	2	20%	2	20%
Medicare-FFS	2	20%	2	20%	2	20%
Commercial-FFS	4	40%	4	40%	4	40%
Private Pay	2	20%	2	20%	2	20%
Total	10	100%	10	100%	10	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based upon the current reimbursement rates received by the applicant at the 190 Intrepid Lane ASC.
- Expense assumptions are based upon current experience and consist of medical and surgical supply costs. There will be no need for additional staff to handle pain management cases. The current medical staff who perform cases at the Intrepid Lane site will perform pain management procedures at the East Taft Road site on an as needed basis.
- Utilization assumptions are based on the current cases at 190 Intrepid Lane site.
- Breakeven is approximately two procedures (20% of first year procedures).

#### Capability and Feasibility

Total project costs of \$14,503 will be funded in cash from the SODS's accumulated funds. The working capital requirement is estimated at \$2,050, based on two months of first year incremental expenses. Funding will come from SODS's internally generated funds including those that otherwise would be available for distribution to its members. BFA Attachment B is the 2017 - 2018 certified financial statements of Specialists' One-Day Surgery, LLC, which shows positive working capital, positive net assets and positive net income of \$8,968,470 in year 2018. BFA Attachment C is the entity's internal financials as of June 30, 2019, which shows positive working capital, positive net assets and net income of \$3,170,208.

The submitted budget indicates net income of \$54,908 during Year One and Year Three after certification of the pain management services at the East Taft Road site. The budget appears reasonable.

#### Conclusion

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.

St. Joseph's Hospital Health Center -- **No Response**

301 Prospect Avenue  
Syracuse, New York 13203

Crouse Hospital -- **No Response**

736 Irving Avenue  
Syracuse, New York 13210

University Hospital SUNY Health Science Center -- **No Response**

750 East Adams Street  
Syracuse, New York 13210

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.

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## Attachments

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- BFA Attachment A Certified Financial Statements of Specialists' One-Day Surgery, LLC for 2017 and 2018
- BFA Attachment B Internal Financial Statements of Specialists' One-Day Surgery, LLC as of June 30, 2019



**Project # 121223-C  
Excellent Home Care Services, LLC**

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

**County:** Kings  
**Acknowledged:** April 18, 2012

**Executive Summary**

**Description**

Excellent Home Care Services, LLC (Excellent), an existing Special Population Certified Home Health Agency (CHHA) serving Bronx, Kings, New York, Queens and Nassau Counties, requests approval to become a General Purpose CHHA to serve the same counties.

On December 8, 2011, the Public Health Council adopted an amendment to Section 760.5 of Title 10 NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies or expand the approved geographic service areas and/or approved population of existing CHHA's. Excellent submitted an application in response to the competitive RFA and was awarded RFA approval. This CON application is in response to the RFA approval.

In 2018, approximately eighty percent (80%) of Excellent's patient population was comprised of OPWDD patients. Excellent proposes that by converting to a General Purpose CHHA, the agency will be able to expand its patient population, which in turn would allow for increased financial stability and ultimately enable Excellent to continue to maintain its commitment to serving the OPWDD population.

Concurrently under review is CON 191075 in which the current operators, Benjamin Landa (50%) and the Guttman Estate (50%), seek approval to transfer 100% membership interest in Excellent to Excel Health LLC (50%) and Superb Health LLC (50%).

**OPCHSM Recommendation  
Approval**

**Need Summary**  
The CON determination of need was based on the applicant's response to the RFA.

**Program Summary**  
This proposal will have no impact on the counties served or services provided by Excellent Home Care Services, LLC. Excellent will continue to serve the OPWDD population while broadening their focus to include those outside that population.

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$44,270,093	\$50,406,522
Expenses	<u>\$42,947,003</u>	<u>\$47,139,297</u>
Net Income	\$ 1,323,090	\$ 3,267,225

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**December 12, 2019**

# Need Analysis

## Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with fewer than 2 existing CHHAs.

## Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012. Applicants were permitted to submit questions to the Department to seek additional clarification regarding this process. The Department's answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

Applicants that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17, 2012 and September 27, 2012 were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant in 2012.

## Competitive Review

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

Excellent Home Care Services, LLC provided the following details regarding how the agency would operate in support of several Medicaid Redesign Team (MRT) initiatives:

### **MRT #5 Reduce and Control Utilization of Certified Home Health Agency Services.**

Excellent states that they will continue working towards preventing unnecessary utilization, which is a particular concern for the high-risk and high-cost population currently served by the CHHHA. As an existing CHHA, Excellent already has the necessary infrastructure and relationships with other health care providers to ensure continued efficiency and effectiveness upon conversion to a General Purpose CHHA.

**MRT #89** Health Homes for High Cost, High Need Enrollees

This MRT goal is particularly relevant to Excellent given its Special Population designation. The OPWDD population served by Excellent often requires a higher volume of services. Excellent is currently a partner in three health Homes and is working to become a part of Health Homes in other counties. Excellent's participation promotes continuity of care and a seamless transition between hospital, home care, and community programs in which Excellent's clients may participate.

**MRT #90** Mandatory Enrollment in MLTC Plans/ Health Home Conversion

Excellent Home Care Services, LLC currently has contracts with four Managed Long Term Care Plans (MLTCPs) and is working on securing additional contracts. Excellent intends to work closely with its contracted MLTCPs in order to meeting Medicaid Redesign Team initiatives.

**MRT #191** Decrease the Incidence and Improve the Treatment of Pressure Ulcers.

Excellent is a participant in the Gold Stamp Program to Reduce Pressure Ulcers. The Centers for Medicare and Medicaid Services (CMS) collects and reports data regarding the quality of patient care for certified home health agencies and compares it to both the state and national averages. As of July 31, 2019, the New York State and National Average for the quality indicator "How often patients developed new or worsened pressure ulcers" is 0.4%. Excellent exceeds the state and national average for this indicator, with a measurement of 0.0%.

The applicant has stated that their clinically sophisticated program of care, which is focused on disease states and management, emphasizes coordination of care, leads to a personalized plan of care for each patient and is able to reduce avoidable hospital and nursing home admissions and readmissions while maintaining and improving patient health. The disease-centered plan of care is supported by the use of an Electronic Medical Record (EMR) and enables Excellent to focus on each client's core health issues in a unique and individualized manner. Excellent's health IT system has helped the agency control utilization and adapt to reimbursement changes.

Excellent Home Care Services, LLC provided data from a variety of sources as well as a detailed analysis of the data that demonstrated public need as specified in 10 NYCRR 709.1(a) and community need in each of the counties proposed. The applicant projected growth in the elderly populations, persons receiving income support, disabled elderly population, mortality rates and Prevention Quality Indicator (PQI) rates by race/ethnicity.

**Program Analysis**

**Review Summary**

This application was previously presented for consideration in May 2013 and January 2014 in response to the Department's Request for Applications (RFA). In both instances the application was deferred by the Establishment and Project Review Committee of PHHPC.

Per the applicant, Excellent is proposing to convert to a General Purpose CHHA in order to strengthen and stabilize the agency's operating capabilities by allowing the addition of new patients, which previously had to be turned away due to the Special Population designation. The applicant sites low reimbursement rates as a major obstacle to maintaining operations and states that these low rates have placed the agency in financial jeopardy and at risk of closure. In 2018, approximately eighty percent (80%) of Excellent's patient population was OPWDD patients. Excellent proposes that by converting to a General Purpose CHHA, the agency will be able to expand its patient population, which in turn would allow for increased financial stability and ultimately enable Excellent to continue to maintain its commitment to serving the OPWDD population.

This proposal will not change the counties served or services provided by Excellent Home Care Services, LLC. Excellent will continue to serve the OPWDD population and will also begin their approved services of Nursing, Physical Therapy, Occupational Therapy, Home Health Aide, Personal Care Aide, Speech & Language Pathology, Respiratory Therapy, Medical Social Work, Medical Supplies, Equipment and Appliances and Nutrition to client's outside of the OPWDD population.

Excellent Home Care Services, LLC has made significant progress toward becoming compliant with their conditional approval to serve the developmentally disable population. In 2010, patients from the special population made up 30% of the total number of patients served by Excellent. In 2012, that number grew to approximately 58%. The percentage has continued to grow, with reports of 67% in 2015, 78% in 2016, 81% in 2017 and 82% in 2018.

#### Facility Compliance/Enforcement

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.

<b>CHHA Quality of Patient Care Star Ratings</b> as of August 1, 2019	
<b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Excellent Home Care Services, LLC	3 out of 5 stars

#### Conclusion

Excellent Home Care Services, LLC is currently in compliance with all applicable codes, rules and regulations.

## Financial Analysis

#### Operating Budget

The applicant submitted their current year results (2018), and their projected first- and third-year operating budgets, in 2019 dollars as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Commercial-FFS	\$1,269,491	\$1,318,360	\$1,843,276
Medicare-MC	\$6,409,306	\$7,027,270	\$8,044,174
Medicaid-FFS	\$27,289,745	\$29,556,098	\$33,285,542
Medicaid-MC	<u>\$5,842,611</u>	<u>\$6,368,365</u>	<u>\$7,233,530</u>
Total Revenue	\$40,811,153	\$44,270,093	\$50,406,522
<u>Expenses</u>			
Operating	\$39,788,448	\$42,523,392	\$46,715,686
Capital	<u>\$423,611</u>	<u>\$423,611</u>	<u>\$423,611</u>
Total Expenses	\$40,212,059	\$42,947,003	\$47,139,297
Net Income	<u>\$599,094</u>	<u>\$1,323,090</u>	<u>\$3,267,225</u>
Total Visits *	70,573	83,133	103,804
Total Hours **	1,132,996	1,208,046	1,331,546

\*Nursing, PT, OT, Speech Pathology, Medical Social Services

\*\*Hours are for Home Health Aide

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

<u>Payor</u>	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
Commercial-FFS	6.97%	6.15%	5.22%
Medicare-MC	38.32%	35.59%	32.54%
Medicaid-FFS	46.13%	48.51%	51.17%
Medicaid-MC	7.41%	8.46%	9.63%
Charity Care	1.17%	1.30%	1.44%
Total	100%	100%	100%

The following is noted with respect to the submitted budget:

- Revenues, expenses and utilization are based on historical experience. The projected Year One and Year Three increases reflect the expansion in utilization expected as if CON 121223 is approved to convert from a Special Population CHHA to a General Purpose CHHA.
- Capital cost includes annual rent expense of \$399,964 (verified per the 2018 certified financial statements) that are expected to continue upon re-negotiation of the expired lease.
- According to the 2018 cost report, the average cost per hour is \$25.53 for Home Health Aide Hours. Medicare, Medicaid, and Commercial revenues are based on an episodic payment methodology. Projected Medicaid revenue is based on the 2018 CHHA Medicaid payment rate as proxy.
- Utilization is based on existing historical services and the current footprint it currently services using historical data and projections based on increased need as projected under companion CON 121223.
- The CHHA has an existing charity care policy which will continue to be utilized after the transfer of membership interest.

#### Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net income of \$1,323,090 and \$3,267,225 in the first and third year, respectively. Revenues are based on the current reimbursement methodologies for the current services provided. The submitted budget is reasonable based on the population expansion approval of this application will enable.

BFA Attachment A is the 2017 and 2018 certified financial statements of Excellent Home Care Services, LLC, which indicate the facility achieved positive net asset and working capital positions and generated positive net income for the periods shown. BFA Attachment B is their internal financial statement as of July 31, 2019, which shows a positive net asset position of \$4,610,328, a positive working capital position of \$8,450,819 and net income of \$3,099,393.

The working capital requirement will be funded via operations as provided in CON 191075, which is concurrently under review.

## Attachments

BFA Attachment A	2017 and 2018 Certified Financial Statements
BFA Attachment B	Internal Financial Statements (January 1, 2019 – July 31, 2019)



**Project # 191075-E  
Excellent Home Care Services, LLC**

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

**County:** Kings  
**Acknowledged:** June 6, 2019

**Executive Summary**

**Description**

Excellent Home Care Services, LLC (Excellent), a New York limited liability company that operates an Article 36 Certified Home Health Agency (CHHA) located at 91-93 South Third Street, Brooklyn (Kings County), requests approval to transfer 100% membership interest in the CHHA. Per their establishment approval effective November 10, 2004, Excellent was certified as a Special Population CHHA with services limited to the Office for People with Developmental Disabilities population. The agency is authorized to serve Bronx, Kings, New York, Queens and Nassau Counties, and is licensed to provide Home Health Aide, Personal Care, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Respiratory Therapy and Speech Language Pathology services. There will be no change in services or counties served as a result of this application.

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

<b>Excellent Home Care Services, LLC</b>	
<b><u>Current Members</u></b>	
Benjamin Landa	50%
Guttman Estate	50%
<b><u>Proposed Members</u></b>	
Excel Health, LLC	50%
Joseph Goldberger (100%)	
Superb Health LLC	50%
Samuel Rosenbaum (92%)	
Ryvkie Goldberger (8%)	

As shown, the current members of Excellent are Benjamin Landa (50%) and the Guttman Estate (50%). Mr. Jeno Guttman passed away in December 2007 and his membership interest rights passed to his wife, Ms. Szerena Guttman, who subsequently passed away in November 2012. As executor of Ms. Guttman's last will and testament, her daughter, Ms. Ryvkie Goldberger, is authorized to represent Ms. Guttman's interest in Excellent and to execute all legal documents to complete the sale of the Guttman's interest in the CHHA.

On July 21, 2017, Joseph and Ryvkie Goldberger entered into a Membership Interest Purchase Agreement (MIPA) with Benjamin Landa to purchase his 50% membership interest in Excellent for \$700,000. Subsequently, on August 29, 2019, Joseph and Ryvkie Goldberger executed an Assignment Agreement to assign this 50% membership interest to Excel Health LLC, whose sole member is Joseph Goldberger. On September 12, 2018, Superb Health LLC, an existing New York limited liability company, entered into a MIPA to purchase the Guttman Estate's 50% membership interest in Excellent for \$700,000. All transactions will be effectuated upon Public Health and Health Planning Council (PHHPC) final approval.

Concurrently under review is CON 121223 in which the CHHA seeks to convert the Special Population CHHA to a General Purpose CHHA.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no Need recommendation of this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The applicant will acquire 100% membership interest in the CHHA for a total purchase price of \$1,400,000 apportioned as follows: \$700,000 due from Joseph and Ryvkie Goldberger (paid and held in escrow until closing), and \$700,000 due from Superb Health LLC funded via a Promissory Note for a seven-year term (level debt payments) with interest at 6%. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$44,270,093	\$50,406,522
Expenses	<u>\$42,947,003</u>	<u>\$47,139,297</u>
Net Income	\$1,323,090	\$3,267,225

## 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 Promissory Note for the sale of the Guttman Estate's membership interest, acceptable to the Department of Health. [BFA]
2. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of documentation confirming repayment of the loan made to Benjamin Landa, acceptable to the Department of Health. [BFA]
4. Submission of documentation confirming repayment of the loan made to the Guttman Estate, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming repayment of the loan Joseph Goldberger made to Excellent Home Care Services, LLC, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended and executed Membership Interest Purchase Agreement for Benjamin Landa to Excel Health LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended and executed Membership Interest Purchase Agreement for the Estate of Szerena Guttman to Superb Health LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed Management Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Articles of Organization for Excel Health LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Operating Agreement for Excel Health LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Articles of Organization for Superb Health LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an amended and executed Operating Agreement for Superb Health 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]

Council Action Date

**December 12, 2019**

## Program Analysis

### Program Description

Excellent Home Care Services, LLC, a limited liability company, requests approval for a 100% change in members of Excellent Home Care Services, LLC, an existing Special Population CHHA serving the Office for People with Development Disabilities population in Bronx, Kings, New York, Queens and Nassau Counties. There will be no changes to the counties served or services provided as a result of this application. The applicant has entered into a management agreement with Excel Health, LLC, which was approved by the Department July 10, 2019.

Concurrently under review is CON 121223, where Excellent seeks approval to convert from a Special Population CHHA to a General Purpose CHHA.

The current and proposed membership of Excellent Home Care Services, LLC is as follows:

<b>Name</b>	<b>Current</b>	<b>Proposed</b>
Benjamin Landa	50%	0%
Guttman Estate	50%	0%
Excel Health, LLC	--	50%
<i>Joseph Goldberger (100%)</i>		
Superb Health, LLC	--	50%
<i>Samuel Rosenbaum (92%)</i>		
<i>Ryvkie Goldberger (8%)</i>		

Mr. Jeno Guttman passed away in December 2007. Upon his death, the rights to his membership interest in Excellent Home Care Services, LLC transferred to his wife, Szerena Guttman. Mrs. Guttman passed away in November 2012. The executor of Szerena Guttman's last will and testament is her daughter, Ryvkie Goldberger. As the executor, Ms. Goldberger is authorized to represent the Guttman's interested in Excellent Home Care Services, LLC and will execute all legal documents to support and complete sale of the CHHA.

### Character and Competence Review

#### **Joseph Goldberger**

CEO, Excellent Home Care (CHHA)

#### **Ryvkie Goldberger**

Director of Human Resources, Excellent Home Care (CHHA)  
 President, Dependable Check Cashing

#### Affiliations

Brookhaven Rehabilitation & Health Care Center (RHCF)

#### **Samuel Rosenbaum**

Asset Manager, Tonelle Center LLC

Joseph Goldberger disclosed that there are pending lawsuits against a business in which he is a capital investor.

Ryvkie Goldberger disclosed that she is named as a defendant in an open lawsuit that alleges a nurse did not receive overtime pay.

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

Facility Compliance/Enforcement

The Bureau of Quality and Surveillance has reviewed the compliance history of the above-mentioned Skilled Nursing Facilities and reports as follows:

- **Brookhaven Rehabilitation & Health Care Center** was fined \$12,000.00 pursuant to Stipulation and Order NH-17-033 for inspection findings during a complaint survey conducted on July 26, 2016.

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

<b>CHHA Quality of Patient Care Star Ratings</b> as of March 7, 2019 <b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Excellent Home Care Services, LLC	3 out of 5 stars

Conclusion

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

Membership Interest Purchase Agreements (MIPA) and Assignment Agreement  
The applicant has submitted two executed MIPAs to acquire the 100% of the CHHA membership, to be effectuated upon PHHPC approval. The terms are summarized below:

**MIPA #1**

Date:	July 21, 2017
Purpose:	Purchase Seller's 50% membership interest in Excellent Home Care Services, LLC
Seller:	Benjamin Landa (50% member)
Buyers:	Joseph Goldberger and Ryvkie Goldberger
Assets Transferred:	Seller's right, title, and interest in the company; upon closing, the right to receive any and all distributions subsequent to the effective date, free and clear of all liens.
Purchase Price:	\$700,000
Payment of the Purchase Price:	Paid (held in escrow)

Assignment Agreement related to MIPA #1

Date:	August 29, 2019
Assignors:	Joseph Goldberger and Ryvkie Goldberger
Assignee:	Excel Health LLC
Assignment Price:	All rights, title, and interest as Purchasers under the MIPA with Benjamin Landa
Price:	\$0

**MIPA #2**

Date:	September 12, 2018
Purpose:	Purchase Seller's 50% membership interest in Excellent Home Care Services, LLC
Seller:	Estate of Szerena Guttman (50% member)
Buyer:	Superb Health LLC
Assets Transferred:	Seller's right, title, and interest in the company; upon closing, the right to receive any and all distributions subsequent to the effective date, free and clear of all liens.
Purchase Price:	\$700,000
Payment of the Purchase Price:	\$700,000 via Promissory Note

The purchase price for the Guttman Estate's membership interest will be paid via a Promissory Note at 6% interest for seven-year term, payable in equal monthly installments of \$10,225.99 per month over 84 months. BFA Attachment A is the proposed members' net worth statement, which indicates sufficient liquid resources. It is noted that liquid resources may not be available in proportion to the proposed ownership interest of Superb Health LLC. Ryvkie Goldberger provided an affidavit stating her willingness to contribute resources disproportionate to her membership interest in the entity.

## Governmental Payor Liabilities

**Medicaid**

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing Excellent of its liability and responsibility. As of September 10, 2019, the facility had \$1,365,022 in outstanding Medicaid liabilities pursuant to audits conducted by the New York State Office of Medicaid Inspector General (OMIG). The details and current Medicaid recoupment status of these audit is as follows:

- #11-6186: Covers Medicaid claims for dates of service (DOS) January 1, 2008 – December 31, 2010; final overpayment determination = \$404,561; Stipulation and Settlement fully executed July 16, 2019; repayment terms provide for a \$20,000 initial withhold with remaining to be recouped via withholds of \$15,000 per week against Medicaid payable claims plus interest accruing starting 90 days from execution date; balance due as of October 3, 2019 = \$268,162.73.
- #18-7945: Covers Medicaid claims for DOS April 1, 2016 – November 8, 2016; final overpayment issued = \$610,119.45; posted to eMedNY on July 15, 2019; recoupment at 50% due to lack of response from the provider/their legal representative; claimed legal representative was not copied on disposition; placed on hold pending provider's legal response due in early October.
- #19-3459: Covers Medicaid claims for DOS October 1, 2016 – June 24, 2017; final overpayment issued = \$426,739.94; posted to eMedNY on July 29, 2019; recoupment at 50% due to lack of response from the provider/their legal representative; provider requested reissue of drafts for their legal representative to review; placed on hold pending provider's legal response due in early October.

**Medicare**

The Centers for Medicare and Medicaid Services (CMS) performed an audit of the CHHA, which indicated a Medicare overpayment of \$1,201,733 for DOS January 1, 2011 – December 31, 2012 (APROV-CLA-935). Excellent reached a settlement agreement with CMS to pay back the amount via fixed monthly payments of \$38,565.32 (level debt payments of principal and interest at 9.625%) for a 36-month periods commencing September 1, 2018. The payments are to be collected automatically through payment withholds on the 1<sup>st</sup> of each month. The terms provide that should the facility default on any one payment, the agreement becomes null and void and the facility would be placed on a 100% withhold until the outstanding liability has been fully repaid. BFA Attachment G is the repayment schedule agreed to between the parties. The applicant provided an affidavit attesting that they are current with all payments with a balance due of \$774,957.67 as of October 1, 2019.

## Rental Agreement

The existing lease was executed June 1, 2010. The lease term expired December 31, 2016. The applicant indicated that a month-to-month arrangement is currently in place.

Premises:	91-93 South Third Street, Brooklyn, NY 11211
Landlord:	Seymour Realty, LLC
Tenant:	Excellent Home Care Services, LLC
Term:	Month-to-Month
Rent:	\$399,964 per year (\$33,330.33 per month)
Provisions:	Maintenance, repairs, sanitation, taxes (40%), and utilities

Joseph Goldberger, CEO of Excellent, provided an affidavit attesting that Excellent continues to lease the space on a month-to-month basis pursuant to a verbal agreement with the landlord and is currently in negotiations for a long-term lease. The existing lease is an arm's-lengths agreement as there is no relationship between the landlord and tenant.

## Interim Consulting Agreement

The applicant provided an executed Interim Consulting Agreement:

Effective Date	September 12, 2018
Consultant:	Excel Health, LLC
Facility:	Excellent Home Care Services, LLC
Services:	Assist with day-to-day operations including: ensuring appropriate patient care services are provided; review overall charge structure; personnel administration services; evaluate purchases and leases; oversee policies and procedures; maintain medical and clinical records; billing, collections, payment of accounts and indebtedness, maintaining financial records and deposit of funds on behalf of the managing members; quality control; and, development and implementation of complaint procedures.
Compensation:	\$33,333 monthly or \$400,000 annually.
Terms:	Term is within 30-days' notice or upon closing of the purchase agreement.

The agreement provides that the Licensed Operator retains "full authority and ultimate and control" of the Agency. Upon PHHPC approval, the interim consulting agreement will cease, and the management agreement will take effect.

## Management Agreement

The applicant provided an executed Management Agreement, which has been reviewed and approved by the Department on July 10, 2019:

Date:	September 12, 2018
Consultant:	Excel Health, LLC
Facility:	Excellent Home Care Services, LLC
Manager Responsibilities:	Manage the day-to-day operations including: supervision, clerical and support services, monitor patient care, charges relating to business negotiations, rates and filing of cost reports, personnel administration related to pay wage and benefits, purchasing care policies and procedures, patient records management, quality control indicators, complaint procedures development, contract services, policy and procedure development, management reports, compliance reports, insurance, maintain licenses, permits, accreditation and provider numbers, maintenance of fiscal stability.
Compensation:	\$400,000 per year payable in 12 equal monthly installments
Terms:	3-year term on anniversary of the effective date.
Provisions:	Either party may terminate the agreement with cause with 30 days' notice. Either party may terminate with 90 days of written notice. The agreement shall terminate in the event a party terminates the Purchase Agreement in accordance with the provisions of the Purchase Agreement, effective upon the effective date of termination of the Purchase Agreement.

The management agreement mirrors the interim agreement for oversight of the day to day operations and is become effective upon PHHPC approval of this application.

### Operating Budget

The applicant submitted their current year results (2018), and their projected first- and third-year operating budgets, in 2019 dollars as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Commercial-FFS	\$1,269,491	\$1,318,360	\$1,843,276
Medicare-MC	\$6,409,306	\$7,027,270	\$8,044,174
Medicaid-FFS	\$27,289,745	\$29,556,098	\$33,285,542
Medicaid-MC	<u>\$5,842,611</u>	<u>\$6,368,365</u>	<u>\$7,233,530</u>
Total Revenue	\$40,811,153	\$44,270,093	\$50,406,522
<u>Expenses</u>			
Operating	\$39,788,448	\$42,523,392	\$46,715,686
Capital	<u>\$423,611</u>	<u>\$423,611</u>	<u>\$423,611</u>
Total Expenses	\$40,212,059	\$42,947,003	\$47,139,297
Net Income	<u>\$599,094</u>	<u>\$1,323,090</u>	<u>\$3,267,225</u>
Total Visits *	70,573	83,133	103,804
Total Hours **	1,132,996	1,208,046	1,331,546

\* Nursing, PT, OT, Speech Pathology, Medical Social Services

\*\* Hours are for Home Health Aide

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

<u>Payor</u>	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
Commercial-FFS	6.97%	6.15%	5.22%
Medicare-MC	38.32%	35.59%	32.54%
Medicare-FFS	46.13%	48.51%	51.17%
Medicaid-MC	7.41%	8.46%	9.63%
Charity Care	1.17%	1.30%	1.44%
Total	100%	100%	100%

The following is noted with respect to the submitted budget:

- Revenues, expenses and utilization are based on historical experience. The projected Year One and Year Three increases reflect the expansion in utilization expected as if CON 121223 is approved to convert from a Special Population CHHA to a general purpose CHHA.
- Capital cost includes annual rent expense of \$399,964 (verified per the 2018 certified financial statements) that are expected to continue upon re-negotiation of the expired lease.
- According to the 2018 cost report, the average cost per hour is \$25.53 for Home Health Aide Hours. Medicare, Medicaid, and Commercial revenues are based on an episodic payment methodology. Projected Medicaid revenue is based on the 2018 CHHA Medicaid payment rate as proxy.
- Utilization is based on existing historical services and the current footprint it currently services using historical data and projections based on increased need as projected under companion CON 121223.
- The CHHA has an existing charity care policy which will continue to be utilized after the transfer of membership interest.

#### Capability and Feasibility:

There are no project costs associated with this application. The applicant will acquire 100% membership interest in the CHHA for a total purchase price of \$1,400,000. Joseph and Ryvkie Goldberger have paid \$700,000 (held in escrow until closing) for Benjamin Landa's membership interest. Payment was required 120 days after July 21, 2017, the effective date of the MIPA. The remaining \$700,000 is due from Superb Health LLC and will be funded via a Promissory Note for a seven-year term (equal monthly payments) with interest at 6%. On August 29, 2019, Joseph and Ryvkie Goldberger executed an Assignment Agreement to assign their 50% membership interest to Excel Health LLC, whose sole member is Joseph Goldberger. BFA Attachment A is the net worth statements of the proposed members, which indicates sufficient resources to meet the terms of the transactions.

The submitted budget projects gain of \$1,323,090 and \$3,267,225 in the first and third year, respectively. Revenues are based on the current reimbursement methodologies. The submitted budget is reasonable based on the current services and population expansion requested under CON 121223.

BFA Attachment C is the 2017 and 2018 certified financial statements of Excellent Home Care Services, LLC, which indicate the facility achieved positive net asset and working capital positions and generated positive net income for the periods shown. BFA Attachment D is their internal financial statement as of July 31, 2019, which shows a positive net asset position of \$4,610,328, a positive working capital position of \$8,450,819 and net income of \$3,099,393.

The working capital requirement is estimated at \$7,157,833 based on two months of first-year expenses to be funded via operations. BFA Attachment E is the Pro Forma Balance Sheet that suggests working capital resources of \$8,450,818. However, current assets include an amount "Due from Members" of \$6,469,283. Amounts "Due from Members" are also presented in prior year certified financial statements as a current asset (\$7,347,058 in 2017, \$7,883,469 in 2018). No details are provided in the Notes to the financial statements. The applicant indicated this receivable pertains to loans made to current members Benjamin Landa (\$5.71M) and the Guttman estate (\$761.3K) in 2010 (some in 2012 and 2013). The loans are non-interest-bearing demand loans that can be called in as needed. No determination has been made regarding when they will be paid off. Current assets also include "Other Current Assets" of \$1,647,971, which includes "other loans and exchanges" of \$1.51M directly related to the short-term loan listed under current liabilities. At the end of 2018, Excellent borrowed \$2.7M from Mr. Goldberger in a non-interest-bearing loan to ensure sufficient cash flow. Approximately \$1.2M has been used and the remaining \$1.51M is the current balance available from the loan. The remaining "Other Current Assets" consist of prepaid expenses (\$39,621.77) and loans made to multiple line-level employees (\$101,883.45) that are being repaid via monthly employee paycheck deductions. Lastly, "Other Current Liabilities" include short term notes (\$43.7K), accrued payroll (\$10.6K), deferred taxes (\$49.1K), and other accrues expenses (\$211.8K) incurred in the normal course of business payable this year when due. Given the above, the working capital resources available as of the first day of operations is assessed at \$1,117,692 based on cash plus cash accounts minus accounts payable. The various loans to the current members and from the proposed member to Excellent must be repaid in full by all respective parties prior to final approval of this application.

BFA Attachment F provides details related to three lawsuits against Excellent that remain pending final determination. The amounts identified as potential liabilities were disclosed by the applicant as a possible outcome of the litigation. Disclosure of the Medicare and Medicaid audit liabilities are also provided. BFA attachment G is the repayment schedule agreed to by Medicare to resolve the overpayment. The applicant remains current and has not defaulted on repayment.

## Attachments

BFA Attachment A	Personal Net Worth Statement-Proposed Members of Excellent CHHA
BFA Attachment B	Organizational Chart
BFA Attachment C	2017 and 2018 Certified Financial Statements
BFA Attachment D	Internal Financial Statements (January 1, 2019 – May 31, 2019)
BFA Attachment E	Pro Forma Balance Sheet of Excellent
BFA Attachment F	Pending and Settled Lawsuits, Governmental Payor Liabilities
BFA Attachment G	Medicare – Repayment Schedule



**Project # 191123-E  
Preferred Certified, LLC**

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

**County:** Bronx  
**Acknowledged:** March 7, 2019

**Executive Summary**

**Description**

Preferred Certified, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Park Gardens CHHA, a proprietary, Article 36 certified home health agency (CHHA) located at 6677-B Broadway, Bronx (Bronx County). The CHHA is currently owned and operated by Park Gardens Rehabilitation and Nursing Center LLC, which also operates a 200-bed residential health care facility located at 6585 Broadway, Riverdale (Bronx County). The CHHA is certified to serve Bronx, New York and Westchester counties and is licensed to provide the following services: Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech-Language Pathology Therapy. Upon Public Health and Health Planning Council (PHHPC) approval of this application, the agency will be called Preferred Certified. There will be no change in counties served or services provided.

On June 13, 2018, Park Gardens Rehabilitation and Nursing Center LLC and Preferred Certified, LLC entered into an Asset Purchase Agreement (APA) for the sale and acquisition of the CHHA operations and certain assets for a purchase price of \$250,000. The APA will close upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, the applicant executed an Interim Consultative Agreement (ICA) and a Management Agreement (MA) proposal to manage the day-to-day activities of the CHHA. The applicant has been managing the CHHA under the terms of the ICA

since June 13, 2018, then subsequently under the MA which received Department of Health approval on August 28, 2018. The MA will continue in full force until PHHPC approval of the change in ownership.

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

<u>Current Operator</u>	
Park Gardens Rehabilitation and Nursing Center LLC	
<u>Member</u>	<u>%</u>
Solomon Abramczyk	100%

<u>Proposed Operator</u>	
Preferred Certified, LLC	
<u>Members</u>	<u>%</u>
Samuel Ari Weiss	66.67%
Shmuel Berry Weiss	33.33%

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 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 proposal. The purchase price for the assets is \$250,000 to be met via equity.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,277,452	\$2,300,226
Expenses	<u>1,549,306</u>	<u>1,570,969</u>
Net Income	\$728,146	\$729,257

## 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. Provide a copy of the Articles of Organization of Preferred Certified LLC, acceptable to the Department. (CSL)
2. Provide a copy of the lease for the premises, acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Proposal

Preferred Certified, LLC a limited liability company, requests approval to become the new operator of Park Gardens Rehabilitation and Nursing Center, LLC d/b/a Park Gardens CHHA under Article 36 of the Public Health Law.

Under an approved Management Agreement, Preferred Certified, LLC has been managing the day-to-day activities of Park Gardens Rehabilitation and Nursing, LLC d/b/a Park Gardens CHHA since August 28, 2018 and are now seeking approval to be established as the new operator of Park Gardens CHHA. Upon approval of this project, the Management Agreement will be terminated. Additionally, the name of the CHHA will change from Park Gardens Rehabilitation and Nursing Center, LLC d/b/a Park Gardens CHHA to Preferred Certified.

Park Gardens Rehabilitation and Nursing Center, LLC d/b/a Park Gardens CHHA serves Bronx, New York and Westchester counties from an office located at 6677B Broadway, Bronx, 10471. Upon approval of this project, the CHHA will be located at 5223 Broadway, Bronx, 10463. The CHHA is licensed to provide the following services, which will not change after approval: Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech-Language Pathology Therapy.

In 2017, Park Gardens Rehabilitation and Nursing Center, LLC d/b/a Park Gardens CHHA was unable to provide charity care due to low utilization and higher than expected operating expenses. The new proposed operator, Preferred Certified, LLC has committed to providing one percent (1%) charity care in Year One and two percent (2%) by Year Two of project implementation. Preferred Certified, LLC plans to implement a new business plan for the CHHA which includes stronger community outreach, increased advertising and building a strong referral system to achieve this goal.

### Character and Competence Review

The membership of Preferred Certified, LLC is as follows:

**Samuel A. Weiss** – Managing Member, 66.67%

President, NAE Edison, LLC d/b/a Edison Home Health Care (LHCSA)

#### Affiliations

- NAE Edison, LLC d/b/a Edison Home Health Care (LHCSA)
- Assistcare Home Health Services LLC d/b/a Preferred Home Care Of New York (LHCSA)
- The W Group of Goshen d/b/a Goshen Manor (ACF) (October 2017 – Present)
- The W Assisted Living at New Broadview (ACF) (February 2018 – Present)
- New Broadview Manor Home for Adults LHCSA (February 2018 – Present)

**Shmuel B. Weiss** – CEO Member, 33.33%

President/CEO, Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York (LHCSA)

#### Affiliations

- Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York (LHCSA)
- New Broadview Manor Home for Adults LHCSA (February 2018 – Present)
- The W Group of Goshen d/b/a Goshen Manor (ACF) (October 2017 – Present)
- The W Assisted Living at New Broadview (ACF) (February 2018 – 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.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance and the Division of Home and Community Based Services has indicated that the applicant has provided sufficient

supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings</b> as of September 30, 2019 <b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Park Gardens Rehabilitation and Nursing Center, LLC d/b/a Park Gardens CHHA	1.5 out of 5 stars

**Conclusion**

The establishment of Preferred Certified, LLC as the new operator will result in no changes to the services or service area of the CHHA. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

<h2>Financial Analysis</h2>
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**Asset Purchase Agreement (APA)**

The applicant has submitted an executed APA for the purchase of the CHHA:

Date:	June 13, 2018
Purpose:	To purchase all rights of the Seller to own and operate the CHHA, and all of the CHHA's assets.
Seller:	Park Gardens Rehabilitation and Nursing Center LLC
Buyer:	Preferred Certified, LLC
Assets Acquired:	All of Seller's right, title and interest in the following: CHHA business and operation; the name "Park Gardens CHHA" and "Park Gardens Home Care" and all other trade names, logos, trademarks, service marks and intellectual property rights; policies, procedures manual and computer software; telephone and fax numbers, domain names and social media accounts used by the business; all patient records relating to the business; copies of all other books and records relating to the business; seller's Medicare and Medicaid provider agreements and provider numbers; all licenses, registrations, CONs, authorizations, permits and any other regulatory approvals held or owned by seller relating to the ownership or operation of the business and the assets; all cash and cash equivalents; all rights to accounts receivable for services rendered by seller on and after the Closing Date; all insurance claims and all other assets of any kind.
Assumed Liabilities:	Buyer shall not assume any obligations, expense or liability of the Seller.
Purchase Price:	\$250,000
Payment of the Purchase Price:	\$250,000 cash at Closing.

The applicant will fund the purchase price via proposed members' equity. BFA Attachment A is the net worth statements of the proposed members, which shows sufficient equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/r surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 22, 2019, the facility had no outstanding Medicaid liabilities.

### Lease Rental Agreement

The applicant has submitted an executed lease (modified and extended) for the site that they will occupy, which is summarized below:

Date:	July 1, 2015
Premises:	Store front office space located at 6677B Broadway, Bronx, NY 10471
Landlord:	6677 Broadway RMR LLC
Tenant:	Park Gardens Rehabilitation and Nursing Center LLC
Term:	5 years
Rent:	\$60,482.42 for the first year with a 2.5% increase each year thereafter

The landlord's predecessor-in-interest, Baron 551 LLC, and the Tenant entered into a lease agreement dated March 23, 2010, regarding store front space located at 6677A and 6677B Broadway, Bronx. This original lease, which expired on June 30, 2015, was modified and extended for a term of five years commencing on July 1, 2015. This current master lease agreement expires on June 30, 2020.

The applicant has attested that the lease is an arm's length arrangement, as the landlord and tenant have no relationship.

### Sublease Agreement

The applicant has submitted an executed sublease for the site they will occupy, summarized below:

Date:	February 1, 2019
Premises:	Store front office space located at 6677B Broadway, Bronx, NY 10471.
Landlord:	6677 Broadway RMR LLC
Tenant:	Park Gardens Rehabilitation and Nursing Center LLC
Subtenant:	Preferred Certified, LLC
Term:	Lease term commenced on February 1, 2019 and expires June 30, 2020
Rent:	\$2,713.87 per month. (\$32,566.44 annually)

The existing Sublease Agreement will remain in place until June 30, 2020. After PHHPC approval the CHHA will be located at 5223 Broadway, Bronx, 10463

### Operating Budget

The applicant has submitted the current year (2018) results and an operating budget for the first and third years, in 2019 dollars, which is summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare FFS	\$6,101	\$795,774	\$803,732
Medicaid FFS	0	141,262	142,674
Private Pay	162	0	0
All Other #	<u>86,072</u>	<u>1,340,416</u>	<u>1,353,820</u>
Total Revenues	\$92,335	\$2,277,452	\$2,300,226
<u>Expenses</u>			
Operating	\$246,340	\$1,516,740	\$1,538,403
Capital	<u>32,491</u>	<u>32,566</u>	<u>32,566</u>
Total Expenses	\$278,831	\$1,549,306	\$1,570,969
Net Income (Loss)	<u>(\$186,496)</u>	<u>\$728,146</u>	<u>\$729,257</u>
Utilization: (Visits)*	576	14,359	14,653
Utilization: (Hours)**	3	27,259	27,531

\* Nursing, PT, OT, SP, and Medical Social Services

\*\* Home Health Aide hours

# Managed Care and MLTC

The following is noted with respect to the submitted budget:

- The applicant indicated that the low utilization and revenue in 2018 were due to the current operator's focus on selling and ceasing its operation of the CHHA.
- Year One and Year Three payor rates are based on the average \$160 of revenue per visit reflected in the 2018 cost report (i.e., \$92,335 of revenue in 2018 divided by 576 total visits in 2018).
- Upon approval of this application, Preferred Certified, LLC intends to increase the CHAA's utilization by acquiring additional contracts with the following MLTC plans: Metropolitan Jewish Health System, Visiting Nurse Services and ArchCare. The applicant expects to enroll 100 new patients from the community through existing and new MLTC plans and from the applicant's existing referral sources in order to support the projected increase in utilization in Year One. The referral sources include: The W Assisted Living at Riverdale, a 256-bed Adult home that includes a 200-bed-ALP; Edison Home Health Care, a Licensed Home Care Service Agency (LHCSA); Preferred Home Care of New York, a LHCSA; and The W Senior Living at Goshen, a 120-bed Adult Home.
- The applicant expects to achieve the first-year net operating income as follows:
  - Securing patient referrals from facilities and agencies that are affiliated with members of the applicant as stated above, thus increasing visits and hours.
  - Enrolling new patients through MLTC plans that will support the projected increase in utilization.
  - Increasing staff and providing ongoing staff training, in-service education and re-education of the RN staff in order to ensure that patients are monitored properly and receiving appropriate services, and that increased volume can be handled when received.

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

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	6.60%	34.57%	34.22%
Medicaid FFS	0.17%	6.14%	6.07%
Charity Care	0.00%	1.06%	2.07%
All Other	<u>93.23%</u>	<u>58.24%</u>	<u>57.63%</u>
	100.00%	100.00%	100.00%

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

#### Capability and Feasibility

Preferred Certified, LLC will acquire the CHHA's operations for \$250,000 funded by members' equity. BFA Attachment A is the net worth statements of the proposed members, which shows sufficient equity.

The working capital requirement is estimated at \$258,218 based on two months of first year expenses and will be funded from the proposed members' equity. BFA Attachment, the members' net worth statements, reveals sufficient resources to meet the working capital needs. BFA Attachment C is the pro forma balance sheet, which shows the entity will start with \$258,218 in equity.

The submitted budget projects a net income of \$728,146 and \$729,257 in the first- and third-year budgets, respectively. The budget appears reasonable.

BFA Attachment B is the financial summary for Park Gardens Rehabilitation and Nursing Center. The applicant indicated that the current operator's 2018 certified financial statements were prepared on a consolidated basis for the RHCF and CHHA. In 2018, the Park Gardens Rehabilitation and Nursing Center maintained an operating net income of \$505,314.

#### Conclusion

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

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## Attachments

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BFA Attachment A Personal Net Worth Statement- Proposed Members of Preferred Certified, LLC  
BFA Attachment B Financial Summary for Park Gardens Rehabilitation & Nursing Center LLC  
BFA Attachment C Pro Forma Balance Sheet of Preferred Certified, LLC



**Project # 192009-E  
VNA of Staten Island**

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

**County:** Richmond  
**Acknowledged:** August 2, 2019

**Executive Summary**

**Description**

Through approval of this application, Richmond Medical Center d/b/a/ Richmond University Medical Center (RUMC), a voluntary not-for-profit, Article 28 acute care hospital whose main campus is located at 355 Bard Avenue, Staten Island (Richmond County), will become the sole corporate member/parent and Bridge Regional Health System, Inc. will become the grandparent of VNA of Staten Island, an Article 36 Certified Home Health Agency (CHHA) operated by Visiting Nurse Association Health Care Services, Inc. (VNAHCS) whose office is located at 400 Lake Avenue on Staten Island. VNAHCS is a voluntary not-for-profit entity approved to provide CHHA, Long Term Home Health Care Program (LTHHCP), Early Intervention, Nursing Home Transition and Diversion Medicaid Waiver Program, and Traumatic Brain Injury Medicaid Waiver Program services. The sole member of VNAHCS is Visiting Nurse Association of Staten Island, Inc. (VNASI). VNASI is also the sole owner of Healthwatch-Lifeline, Inc. (HWL), a for-profit supplier of Personal Emergency Response Systems, and Visiting Nurse Plus, Inc. (VNP), a dormant not-for-profit entity that previously operated a Licensed Home Care Service Agency. Through this project, VNASI will merge into RUMC and all assets, including the CHHA's office site which is owned by VNASI, will become assets of RUMC.

The CHHA and LTHHCP are authorized to serve the residents of Richmond County. The CHHA is certified to provide nursing, physical, occupational and speech language pathology therapies, medical social services, medical supplies/equipment/appliances, nutritional services and home health aide services. Since

the LTHHCP does not currently see patients, the operating certificate will be surrendered upon implementation of this project. There will be no change in the authorized services or service area of the CHHA as a result of the proposed project. Upon approval by the Public Health and Health Planning Council (PHHPC), the assumed name of the CHHA will be changed to VNA of Staten Island: An Affiliate of Richmond University Medical Center.

Through approval of this application, VNASI will merge into RUMC. HWL, VNP, and VNAHCS will survive as separate legal entities under RUMC. The transition of the other VNAHCS programs and HWL to RUMC do not require submission of a CON application. RUMC will work with the Department to transition those services/programs to the Medical Center through separate processes. Upon completion of the merger, VNASI will cease to exist.

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

<u>Current</u>	
Operator:	Visiting Nurse Association Health Care Services, Inc.
Parent:	Visiting Nurse Association of Staten Island, Inc.

<u>Proposed</u>	
Operator:	Visiting Nurse Association Health Care Services, Inc.
Parent:	Richmond University Medical Center
Grandparent:	Bridge Regional Health System, Inc.

BFA Attachment A presents an organizational chart pre- and post-transition to RUMC.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
This project will have no impact on the counties served or services provided by the CHHA.

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 purchase price associated with this application.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,770,000	\$12,062,000
Expenses	<u>\$10,592,755</u>	<u>\$11,627,455</u>
Net Income	\$177,245	\$434,545

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed merger agreement between Visiting Nurse Association of Staten Island, Inc. and Richmond Medical Center d/b/a Richmond University Medical Center (surviving entity), acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of an executed Resolution of the Board of Directors of Bridge Regional System, Inc., acceptable to the Department. (CSL)
3. Submission of a photocopy of an executed Resolution of the Board of Directors of Richmond Medical Center, acceptable to the Department. (CSL)
4. Submission of a photocopy of an executed Resolution of the Board of Directors of Visiting Nurse Association Health Care Services, Inc., acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed Resolution of the Board of Directors of Visiting Nurse Association of Staten Island, Inc., acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Proposal

Richmond Medical Center d/b/a Richmond University Medical Center (“RUMC”), a not-for-profit corporation operating an Article 28 hospital, seeks approval for a change in controlling persons of Visiting Nurse Association Health Care Services, Inc. (VNAHCS) d/b/a VNA of Staten Island Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law.

VNAHCS, which serves Richmond county, has been experiencing financial difficulties for the past several years. In 2016, the CHHA experienced a net operating loss of \$1,480,145.00 and in 2017 the loss was even greater at \$2,576,801. Richmond University Medical Center has had a strong, collaborative working relationship with VNAHCS in the form of referrals to the agency. Due to this close collaboration, Richmond University Medical Center understands the importance of continuing the provision of CHHA services and is proposing this change in ownership in response to the unstable financial situation of VNAHCS

Richmond Medical Center d/b/a Richmond University Medical Center is currently parented by Bridge Regional Health System, Inc. Upon approval of this project RUMC will become a parent entity of Visiting Nurse Association Health Care Services, Inc. with Bridge Regional Health System, Inc. becoming the grandparent of the CHHA.

Visiting Nurse Association Health Care Services, Inc. also operates a Long Term Home Health Care Program (LTHHCP). The LTHHCP does not currently have a patient load and the operating certificate for the program will be surrendered upon implementation of this project.

This project will have no impact on the counties served or services provided by the CHHA. The applicant proposes to change the assumed name of the CHHA. Upon approval, the full legal name of the CHHA will be Visiting Nurse Association Health Care Services, Inc. d/b/a VNA of Staten Island: An Affiliate of Richmond University Medical Center.

### Character and Competence Review

The Board of Directors of Bridge Regional Health System, Inc. and Richmond University Medical Center are identical and as follows:

<p><b>Tony Baker, Sr.</b> Pastor, St. Philips Baptist Church <u>Affiliation</u> Richmond University Medical Center</p>	<p><b>Alan S. Bernikow</b> Retired <u>Affiliation</u> Richmond University Medical Center</p>
<p><b>Pietro Carpenito, MD</b> Executive Vice President, RUMC <u>Affiliation</u> Richmond University Medical Center</p>	<p><b>Katherine Connors, PT</b> Physical Therapist Consultant <u>Affiliations</u> Richmond University Medical Center Carmel Richmond Nursing Home (RHCF)</p>
<p><b>Thomas DelMastro</b> CEO, Staten Island Marine Development, LLC <u>Affiliation</u> Richmond University Medical Center</p>	<p><b>Sara Gardner</b> Executive Director, FPHNYC <u>Affiliation</u> Richmond University Medical Center</p>
<p><b>Gina Gutzeit</b> Senior Managing Director, FTI Consulting, Inc. <u>Affiliation</u> Richmond University Medical Center</p>	<p><b>Timothy C. Harrison</b> Manager, TCH Realty &amp; Development Co., LLC <u>Affiliation</u> Richmond University Medical Center</p>

<p><b>Steven M. Klein</b>  President &amp; CEO, Northfield Bank  <u>Affiliations</u>  Richmond University Medical Center  CentraState Medical Center (NJ)</p>	<p><b>Marianne La Barbera, MD</b>  Medical Doctor, Amboy Medical  <u>Affiliation</u>  Richmond University Medical Center</p>
<p><b>Daniel J. Messina, NHA (NJ)</b>  President, CEO, Richmond University Medical Center  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>James Molinaro</b>  Lobbyist, Pitta Bishop &amp; Del Giorno  <u>Affiliation</u>  Richmond University Medical Center</p>
<p><b>Jill O'Donnell-Tormey</b>  CEO, Director of Scientific Affairs, Cancer Research Institute  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>Pankaj Patel, MD</b>  Consultant, Richmond University Medical Center  <u>Affiliation</u>  Richmond University Medical Center</p>
<p><b>Catherine Paulo, Esq.</b>  Owner, Paulo Financial Advisors, LLC  Attorney, Catherine M. Paulo, Esq.  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>Ronald A. Purpora</b>  President, R.A. Purpora Consulting  <u>Affiliation</u>  Richmond University Medical Center  Staten Island Heart Institute</p>
<p><b>Dennis W. Quirk</b>  President, NYS Court Officers Union  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>John C. Santora</b>  Vice Chairman, President of New York Region, Cushman &amp; Wakefield  <u>Affiliation</u>  Richmond University Medical Center</p>
<p><b>John V. Scalia, Sr., Funeral Director</b>  Owner, John Vincent Scalia Home for Funerals, Inc.  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>Samala Swamy, MD</b>  Physician, Self-Employed  <u>Affiliation</u>  Richmond University Medical Center</p>
<p><b>John G. Tapinis</b>  President, John Tapinis &amp; Associates Ltd.  <u>Affiliation</u>  Richmond University Medical Center</p>	<p><b>Kathryn K. Rooney, Esq.</b>  Attorney, Law Officers of Kathryn K. Rooney  <u>Affiliations</u>  Richmond University Medical Center  Carmel Richmond Nursing Home (RHCF)  Kateri Residence (RHCF)  The Mary Manning Walsh Nursing Home Company, Inc. (RHCF)  St. Vincent de Paul Residence (RHCF)  Terence Cardinal Cooke Health Care Center (RHCF)  Homemakers of Staten Island (LHCSA)  ArchCare at Home (CHHA)  Ferncliff in Rhinebeck (RHCF)  ArchCare Senior Life (LHCSA)</p>

Pankaj Patel was named as a defendant in a malpractice suit in the 1980s against the staff of the Psychiatry Inpatient Unit at Bayley Seton Hospital. The case was resolved in favor of the hospital and staff.

Marianne La Barbera disclosed an alleged negligent medical treatment claim. The complaint was filed November 9, 2012 and the case was settled November 8, 2013.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 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.

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct indicate no issues with the licensure of the health professionals associated with this application.

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

Facility Compliance/Enforcement

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

<b>CHHA Quality of Patient Care Star Ratings</b> as of October 10, 2019	
<b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Visiting Nurse Association Health Care Services, Inc. d/b/a VNA of Staten Island	4 out of 5 stars

Conclusion

The establishment of new controlling persons will not result in any changes to the county being served or to the services provided. Review of the personal qualifying information indicates that the applicant has the required character and competence to operate a certified home health agency.

<h2>Financial Analysis</h2>
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Agreement and Plan of Merger

The applicant submitted a Draft Agreement and Plan of Merger, summarized below:

Purpose:	This sole Staten Island CHHA has been experiencing financial difficulties for several years. Operations are unsustainable and a new parent is needed to allow the CHHA to continue operating. RUMC was chosen due to their strong working relationship with VNAHCS and their strong financial standing.
Merging Entities:	Visiting Nurse Association of Staten Island, Inc.
Survivor Entity:	Richmond University Medical Center
Assets Acquired:	All Assets associated with the operations of the CHHA
Assumed Liabilities:	All debts, liabilities and duties of the Merging entities
Purchase Price:	\$0

The Merger Agreement provides the RUMC will assume all debts and liabilities; hence, any Medicaid overpayment liabilities would transfer to the survivor entity. The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 25, 2019, the CHHA had no outstanding Medicaid overpayment liabilities.

### Management Agreement

On July 10, 2019, RUMC executed an Interim Consulting Agreement (ICA) with VNAHCS to assist with the day-to-day operations of the CHHA, pending Department approval of a concurrently executed Management Agreement (MA) between the parties. The MA was approved by the Department on September 10, 2019, and the ICA was effectively terminated. The MA will cease upon PHHPC approval of this application.

### Operating Budget

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

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicaid	\$1,639,519	\$2,000,000	\$2,241,000
Medicare	\$4,344,735	\$5,306,000	\$5,941,000
Commercial	\$2,853,133	\$3,457,000	\$3,872,000
Private Pay	\$6,480	\$7,000	\$8,000
All Other-CTI	<u>\$438,545</u>	<u>\$0</u>	<u>\$0</u>
Total Revenues	\$9,282,412	\$10,770,000	\$12,062,000
<u>Expenses</u>			
Operating	\$9,923,102	\$10,298,755	\$11,333,455
Capital	<u>\$231,452</u>	<u>\$294,000</u>	<u>\$294,000</u>
Total Expenses	\$10,154,554	\$10,592,755	\$11,627,455
Net Income	<u>(\$872,142)</u>	<u>\$177,245</u>	<u>\$434,545</u>
Utilization (Visits)	61,920	69,343	77,668
HHA Hours	39,986	44,780	50,150

Care Transitions Intervention (CTI) is a Delivery System Reform Incentive Payment Program (DSRIP) program addressing Staten Island Performing Provider System's (PPS) Project 2.b.iv goal of reducing 30-day hospital admissions. Unless a federal extension is granted, DSRIP is scheduled to end March 31, 2020. VNAHCS has kept the CTI program in its operating budget projections and is working with the Staten Island PPS to secure continued funding should DSRIP sunset. If CTI funding is not renewed, the applicant will assess options for continuing the program in a financially sustainable manner. The current CTI operating budget, and projected year one and year three budgets should the program be continued, is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
CTI Revenue	\$438,545	\$438,545	\$438,545
Operating Expenses	<u>\$438,545</u>	<u>\$438,545</u>	<u>\$438,545</u>
Total Income	\$0	\$0	\$0

Visit utilization by payor for the current, first and third years (all identical) is as follows:

<u>Payor</u>	<u>%</u>
Medicaid	16.86%
Medicare	36.48%
Commercial	46.59%
Charity Care	.02%
Private Pay	<u>.05%</u>
Total	100.00%

Hour utilization (Home Health Aide) by payor for the current, first and third years (all identical) is as follows:

<u>Payor</u>	<u>%</u>
Medicaid	3.55%
Medicare	53.10%
Commercial	43.35%
Total	100.00%

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization assumptions are based on the historical experience of the CHHA, with increases projected as a result of the merger.
- Utilization is based on the current year with a 6% annual increase due to a closer relationship with RUMC and a physical presence in the hospital.
- Revenues are based on the increased utilization, projected increases in contracted reimbursement rates and increased efficiencies primarily due to investment and improvements in technology.
- Technology Improvements include:
  - New electronic platform for Clinical Patient Management (Netsmart);
  - New iPad/iPhone for improved efficiency in “Point of Service” data collection for field Clinicians;
  - New and more efficient phone system for improved communication;
  - New electronic fax system to support improved communication from physicians’ offices and other referral sources; and
  - Implementation of a new automated Patient Revenue Management System.
- The facility incorporated a 4% to 4.5% increase in payment rates for Year One for commercial, Medicare and Medicaid payors, and a slight decrease in the private pay rate based on operational efficiencies due to upgraded technology and standard rate progression from year to year. As a conservative estimate, the rates for Year Three remain static.
- Expenses are based on the increase in utilization, the reorganization of CHHA staffing and the effect of merging the operations with RUMC.

#### Capability and Feasibility

There are no project costs or purchase prices associated with this application. There is no working capital need associated with this application, as all the operations are going concerns that have been in operation for many years. Any future working capital needs will be provided by the survivor entity, RUMC, which has significant positive working capital of \$46,206,589 as of December 31, 2018.

The submitted budget projects a positive net income of \$177,245 and \$434,545 in the first and third year of operations, respectively. Revenues are based on current reimbursement methodologies with a slight increase in the per visit rate. The budget appears reasonable.

BFA Attachment B is the 2017-2018 certified financial statements of Visiting Nurse Association of Staten Island, Inc. and Subsidiaries. As shown, the entity had average positive working capital and net asset positions and an average operating loss before other changes of \$2,224,807 for the 2017-2018 period. The losses were due to the movement of approximately 300 patients from the LTHHCP service line to Managed Care. Since VNASI/VNAHCS did not have access to many managed care contracts, the shift resulted in a rapid decline in daily patient census and patient revenue. The losses were primarily due to the inability of the organization to quickly reduce fixed costs at the same rate as the rapid reduction in revenue. There was gradual improvement in 2018 which is expected to continue into 2019-2020. To improve operations the facility is working to reduce operational fixed costs, implement improvements in technology, negotiate new Managed Care contracts with new payors to broaden their referral base, and collaborating with Richmond University Medical Center

BFA Attachment C is the 2017 and 2018 certified financial statements of Visiting Nurse Association of Staten Island, Inc. and Subsidiaries broken out by entity. As shown, Visiting Nurse Association of Staten Island, Inc. had average positive working capital and net asset positions and an average operating loss before other changes of \$166,556 for the 2017-2018 period. As of June 30, 2019, the CHHA had positive working capital and net asset positions and an operating loss of \$22,643.

BFA Attachment D is the internal financial statements for Visiting Nurse Association Health Care Services, Inc as of June 30, 2019.

BFA Attachment E is the 2017-2018 certified and internal financial statements for Richmond University Medical Center as of June 30, 2019. As shown, the entity had average positive working capital position and net asset positions, and an average operating loss of \$2,336,387 for the 2017-2018 period. As of June 30, 2019, the entity had positive working capital and net asset positions and a net loss of \$4,245,196. The loss was due to the timing of the ramp-up of new service lines and ambulatory locations in which the Medical Center has invested. RUMC has implemented numerous Management Action Plans over the past several years to mitigate operating losses of the Medical Center.

#### Conclusion

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

## Attachments

- BFA Attachment A Pre and Post Closing Organization Chart
- BFA Attachment B Visiting Nurse Association of Staten Island, Inc. and subsidiaries 2017-2018 Certified and 1/1/2019-6/30/2019 Internal Financial Statement.
- BFA Attachment C Visiting Nurse Association of Staten Island, Inc. 2017-2018 Certified and 1/1/2019-6/30/2019 Internal Financial Statement.
- BFA Attachment D Visiting Nurse Association Health Care Services, Inc. 1/1/2019-6/30/2019 Internal Financial Statement
- BFA Attachment E Richmond University Medical Center 2017-2018 Certified and 1/1/2019-6/30/2019 Internal Financial Statement



**Project # 192014-E**  
**Always There Family Home Health Services**

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

**County:** Ulster  
**Acknowledged:** July 19, 2019

**Executive Summary**

**Description**

The Dominican Sisters Family Health Services, Inc. d/b/a ArchCare at Home, a voluntary not for profit (NFP), Article 36 Certified Home Health Agency (CHHA) located at 115 East Stevens Avenue, Valhalla (Westchester County), requests approval to merge and consolidate Ulster Home Health Services, Inc. d/b/a Always There Family Home Health Services (Always There), a voluntary NFP, Article 36 CHHA located at 918 Ulster Avenue, Kingston (Ulster County), into its operation. ArchCare at Home is authorized to provide CHHA services in Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester counties and is certified to provide home health aide, medical social services, physical therapy, medical supplies equipment and appliances, nursing, nutritional, occupational therapy, physical therapy, and speech language pathology services. Always There is authorized to serve Ulster County and is licensed to provide the same CHHA services as ArchCare at Home. Upon Public Health and Health Planning Council (PHHPC) approval, Always There will close and ArchCare at Home will expand its geographic service area to include Ulster County. There will be no changes to the services provided by ArchCare at Home.

Catholic Health Care System d/b/a ArchCare, an NFP located in New York County, is the sole corporate member of The Dominican Sisters Family Health Services, Inc. The sole corporation member of ArchCare is Providence Health Services, an NFP corporation. On June 7, 2018, ArchCare became the sole corporate member of Always There. On November 28, 2018, the New York State Department of Health

approved a management agreement between Always There and ArchCare at Home (manager), which will terminate upon closing of this application.

BFA Attachment A shows the before and after ownership of the CHHA.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no net impact to patient/resident services provided. Always There Family Home Health Services is certified to provide services in Ulster County. Upon approval of this merger, Always There will close, and Ulster County will be added to ArchCare at Home's operating certificate.

**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 Catholic Health Care System and The Catholic Health Care Foundation of the Archdiocese of New York will provide the working capital via cash equity.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$47,012,814	\$48,536,978
Expenses	\$46,606,898	\$48,015,751
Net Income	\$405,916	\$521,227

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building sub-lease agreement, acceptable to the Department of Health. (BFA)
2. Submission of an executed transfer agreement, acceptable to the Department of Health. (BFA)
3. Submission of a photocopy of an executed Resolution of the Board of Directors of Catholic Health Care System d/b/a ArchCare, acceptable to the Department. (CSL)
4. Submission of a photocopy of an executed Resolution of the Board of Directors of Providence Health Services (PHS), acceptable to the Department. (CSL)
5. Submission of a photocopy of the Certificate of Incorporation of PHS, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Proposal

The Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home, a not-for-profit corporation, requests approval to acquire and merge the assets of a Ulster Home Health Services, Inc. d/b/a Always There Family Home Health Services (Always There), an existing Article 36 Certified Home Health Agency (CHHA) serving Ulster county.

ArchCare at Home, is an existing CHHA operating in Westchester, Bronx, Suffolk, Kings, New York, Queens, Richmond, Orange, Putnam, Rockland and Nassau Counties. The ArchCare at Home CHHA is parented by Catholic Health Care System d/b/a ArchCare, which is ultimately parented by Providence Health Services.

As part of project 181191, Catholic Health Care System d/b/a ArchCare was approved to become the sole corporate member of the Always There Family Home Health Services CHHA, with Providence Health Services becoming the ultimate parent corporation as of June 7, 2018. Additionally, as part of an approved management agreement, Dominican Sisters Family Health Service, Inc. has been managing the operations of Always There Family Home Health Services since November 28, 2018.

This project seeks approval of a transfer agreement wherein Always There Family Home Health Services agrees to transfer all of its assets to ArchCare at Home. Upon approval, Always There Family Home Health Services will close and ArchCare at Home will add Ulster County to its approved geographical service area.

### Character and Competence Review

The Board of Directors of The Dominican Sisters Family Health Services d/b/a ArchCare at Home is comprised of the following individuals:

<p><b>Karen A. Gray</b> HR Director, Christie's, Inc.</p>	<p><b>Joseph P. LaMorte</b> Vicar General/Chancellor, Archdiocese of New York <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (12/2018 – Present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (12/2018 – Present)</li> </ul>
<p><b>Thomas M. O'Brien</b> Vice Chairman, Emigrant Bank President, Naples Commercial Finance <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (2015-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2005-present)</li> <li>• Empire State Home Care Services, Inc. (2015-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2005-present)</li> <li>• Kateri Residence (2005-8/28/2013)</li> <li>• Mary Manning Walsh Home (2005-present)</li> <li>• St. Teresa's Nursing Home (1/1/2013-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2005-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2005-present)</li> </ul>	<p><b>Charles J. Fahey</b> Retired - 2001 <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare Advantage (2014-present)</li> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• ArchCare Senior Life (2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present)</li> <li>• Kateri Residence (2006-8/28/2013)</li> <li>• Mary Manning Walsh Home (2006-present)</li> <li>• St. Teresa's Nursing Home (2006-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2006-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2006-present)</li> </ul>

<p><b>John T. Dunlap, Esq.</b> Partner, Dunnington, Bartholow &amp; Miller LLP <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present)</li> <li>• Kateri Residence (2006-8/28/2013)</li> <li>• Mary Manning Walsh Home (2006-present)</li> <li>• St. Teresa's Nursing Home (2006-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2006-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2006-present)</li> </ul>	<p><b>Eric P. Feldmann</b> Retired – April 30, 2013 <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2005-present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present)</li> <li>• Kateri Residence (2009-2013)</li> <li>• Mary Manning Walsh Home (2009-present)</li> <li>• St. Teresa's Nursing Home (2009-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2009-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2009-present)</li> </ul>
<p><b>Rory Kelleher, JD</b> Senior Counsel, Sidley Austin LLP <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (1/1/2008-3/1/2012 &amp; 1/1/2013-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (1/1/2008-3/1/2012 &amp; 1/1/2013-present)</li> <li>• Kateri Residence (2005-3/1/2012 &amp; 1/1/2013-8/28/2013)</li> <li>• Mary Manning Walsh Home (1/1/2008-3/1/2012 &amp; 1/1/2013-present)</li> <li>• St. Teresa's Nursing Home (1/1/2008-3/1/2012 &amp; 1/1/2013-2/1/2013)</li> <li>• St. Vincent de Paul Residence (1/1/2008-3/1/2012 &amp; 1/1/2013-present)</li> <li>• Terence Cardinal Cooke Health Care Center (1/1/2008-3/1/2012 &amp; 1/1/2013-present)</li> </ul>	<p><b>Jeffrey J. Hodgman</b> Retired – August 19, 2005 <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (11/2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (7/1/2016-present)</li> <li>• Empire State Home Care Services, Inc. (7/1/2016-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (7/1/2016-present)</li> <li>• Mary Manning Walsh Home (7/1/2016-present)</li> <li>• St. Vincent de Paul Residence (7/1/2016-present)</li> <li>• Terence Cardinal Cooke Health Care Center (7/1/2016-present)</li> </ul>
<p><b>Thomas J. Fahey, Jr., MD</b> Retired <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• Calvary Hospital (2000-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2009-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present)</li> <li>• Kateri Residence (2009-8/28/2013)</li> <li>• Mary Manning Walsh Home (2009-present)</li> <li>• St. Teresa's Nursing Home (2009-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2009-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2009-present)</li> </ul>	<p><b>Tara Cortes, PhD, RN</b> Executive Director/Professor, The Hartford Institute for Geriatric Nursing at NYU College of Nursing <u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (2013-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)</li> <li>• Kateri Residence (2013-8/28/2013)</li> <li>• Mary Manning Walsh Home (2013-present)</li> <li>• St. Teresa's Nursing Home (2013-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2013-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2013-present)</li> </ul>

<p><b>Francis J. Serbaroli, Esq., Chairman</b> Partner, Greenberg Traurig, LLP</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare Advantage (1/2008-present)</li> <li>• ArchCare at Home (5/2014-present)</li> <li>• ArchCare Senior Life (11/2008-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2008-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2008-present)</li> <li>• Kateri Residence (2008-8/28/2013)</li> <li>• Mary Manning Walsh Home (2008-present)</li> <li>• St. Teresa's Nursing Home (2008-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2008-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2008-present)</li> </ul>	<p><b>Kathryn K. Rooney, Esq.</b> Attorney, Law Offices of Kathryn K. Rooney</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (1/2001-present)</li> <li>• Empire State Home Care Services, Inc. (2014-10/4/2016)</li> <li>• Safe Harbor Healthcare Services (1988-present)</li> <li>• Kateri Residence (2005-8/28/2013)</li> <li>• Mary Manning Walsh Home (2005-present)</li> <li>• Richmond University Medical Center (1/2007-present)</li> <li>• St. Vincent de Paul Residence (2005-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2005-present)</li> </ul>
<p><b>Gerald T. Walsh</b> Vicar, Archdiocese of New York</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (2013 – Present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2013 – Present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)</li> <li>• Kateri Residence (2013 – 8/28/2013)</li> <li>• Mary Manning Walsh Home (2013-present)</li> <li>• St. Teresa's Nursing Home (2013 – 2/1/2013)</li> <li>• St. Vincent de Paul Residence (2013 – Present)</li> <li>• Terence Cardinal Cooke Health Care Center (2013 – Present)</li> <li>• Isabella Geriatric Center (7/1/1999 – Present)</li> </ul>	<p><b>Thomas E. Alberto</b> Retired – October 31, 2013</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (1990-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)</li> <li>• Kateri Residence (2013-8/28/2013)</li> <li>• Mary Manning Walsh Home (2013-present)</li> <li>• St. Teresa's Nursing Home (2008-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2008-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2008-present)</li> </ul>
<p><b>George B. Irish</b> Eastern Director, Hearst Foundations</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (3/8/2017-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (3/8/2017-present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (3/8/2017-present)</li> <li>• Mary Manning Walsh Home (3/8/2017-present)</li> <li>• St. Vincent de Paul Residence (3/8/2017-present)</li> <li>• Terence Cardinal Cooke Health Care Center (3/8/2017-present)</li> </ul>	<p><b>Clarion E. Johnson, MD (Maryland)</b> Retired - March 31, 2013</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare at Home (7/1/2016-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (7/1/2016-present)</li> <li>• Empire State Home Care Services, Inc. (7/1/2016-10/4/2016)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (7/1/2016-present)</li> <li>• Mary Manning Walsh Home (7/1/2016-present)</li> <li>• St. Vincent de Paul Residence (7/1/2016-present)</li> <li>• Terence Cardinal Cooke Health Care Center (7/1/2016-present)</li> </ul>

<p><b>Gerald T. Sweeney</b> Chief Information Officer, Healthfirst</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare Advantage (2012-present)</li> <li>• ArchCare at Home (5/1/2014-present)</li> <li>• ArchCare Senior Life (2012-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (2012-present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (2012-present)</li> <li>• Kateri Residence (2012-8/28/2013)</li> <li>• Mary Manning Walsh Home (2012-present)</li> <li>• St. Teresa's Nursing Home (2012-2/1/2013)</li> <li>• St. Vincent de Paul Residence (2012-present)</li> <li>• Terence Cardinal Cooke Health Care Center (2012-present)</li> </ul>	<p><b>Gennaro J. Vasile, PhD</b> Retired</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• ArchCare Advantage (2014-present)</li> <li>• ArchCare Senior Life (2014-present)</li> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (1/1/2013-present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (1/1/2013-present)</li> <li>• Kateri Residence (1/1/2013-8/28/2013)</li> <li>• Mary Manning Walsh Home (1/1/2013-present)</li> <li>• St. Teresa's Nursing Home (1/1/2013-2/1/2013)</li> <li>• St. Vincent de Paul Residence (1/1/2013-present)</li> <li>• Terence Cardinal Cooke Health Care Center (1/1/2013-present)</li> </ul>
<p><b>Scott P. LaRue, RD</b> President/CEO, ArchCare</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> <li>• Carmel Richmond Healthcare &amp; Rehabilitation Center (03/2011 – Present)</li> <li>• Ferncliff Nursing Home &amp; Rehabilitation Center (03/2011 – Present)</li> <li>• Kateri Residence (03/2011 – Present)</li> <li>• Mary Manning Walsh Home (03/2011 – Present)</li> <li>• St. Teresa's Nursing Home (03/2011 – 02/01/2013)</li> <li>• St. Vincent de Paul Residence (03/2011 – Present)</li> <li>• Terence Cardinal Cooke Health Care Center (03/2011 – Present)</li> <li>• ArchCare Senior Life (03/2011 – Present)</li> <li>• ArchCare Advantage (03/2011 – Present)</li> <li>• Calvary Hospital (03/2011 – Present)</li> <li>• ArchCare at Home (04/2016 – Present)</li> </ul>	

The Board of Directors of Catholic Health Care System d/b/a ArchCare is identical to the Board of The Dominican Sisters Family Health Services d/b/a ArchCare at Home, disclosed above.

The Board members of Catholic Health Care System d/b/a ArchCare have attested to being the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud. In 2013, the U.S. Attorney's Office, District of Massachusetts, undertook an investigation of therapy provided in three of the nursing homes sponsored by Catholic Health Care System (CHCS) by a subcontractor, an affiliate of Kindred Healthcare, Inc. CHCS and its nursing homes were not the target of the investigation. The investigation focused on allegations that the three facilities submitted claims to Medicare that sought inflated amounts of reimbursement based on either the provision of unreasonable or unnecessary rehabilitation therapy. On February 24, 2014, CHCS entered into a settlement agreement regarding this investigation. On March 12, 2014, CHCS made a \$3.5 million payment to the U.S. Department of Justice in connection with this matter. There were no findings of False Claims Act violations, the Department of Justice noted CHCS's cooperation and the changes it made in reaching the resolution.

The Board of Trustees of Providence Health Services is comprised of the following individuals:

<b>Timothy M. Dolan</b> Archbishop, Archdiocese of New York
<b>Gerald T. Walsh</b> Disclosed Above
<b>William Whiston</b> CFO, Archdiocese of New York <u>Affiliation</u> <ul style="list-style-type: none"> <li>• New York State Catholic Health Plan, Inc. (MLTCP)</li> </ul>

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 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. The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, indicates no issues with the licensure of the health professionals associated with this application.

#### Facility Compliance/Enforcement

The compliance history of the following providers, parented by Catholic Health Care System d/b/a ArchCare, were reviewed as part of this application:

- Calvary Hospital
- Calvary Hospital CHHA
- Calvary Hospital Hospice Care
- Carmel Richmond Healthcare & Rehabilitation Center
- Ferncliff Nursing Home
- Empire State Home Care Services, Inc. (CHHA) (*Closed October 2016*)
- Mary Manning Walsh Home (RHCF)
- St. Vincent DePaul Residence (RHCF)
- St. Vincent DePaul Assisted Living Program
- Terence Cardinal Cooke Health Care Center (RHCF)
- ArchCare Senior Life (HMO)
- ArchCare Community Life (MLTCP)
- Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home (CHHA)
- Family Home Health Care, Inc. (LHCSA)

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers, the Division of Home and Community Based Services, the Office of Managed Care, the Bureau of Managed Care Certification and Surveillance, the Division of Adult Care Facilities and Assisted Living Surveillance, and the Bureau of Quality and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings</b> as of October 24, 2019	
<b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home	3.5 out of 5 stars
Ulster Home Health Services, Inc. d/b/a Always There Family Home Health Services	2.5 out of 5 stars
Calvary Hospital CHHA	Not Available

## Conclusion

There will be no net impact to patient/resident services provided. 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

### Transfer Agreement

The applicant has submitted a draft transfer agreement for the right, title and interest in the transferor's CHHA business property and materials. The terms of the agreement are summarized below.

Execution Date:	Proposed transfer agreement to be executed upon satisfaction of all closing conditions and deliverables of the transferee and transferor, completion of Department of Health closing conditions, and judicial approval of sale or dissolution upon closure.
Transferor:	Ulster Home Health Services Inc. d/b/a Always There Family Home Health Services (Always There)
Transferee:	The Dominican Sisters Family Health Services, Inc., d/b/a ArchCare at Home
Included Assets:	Land, building and equipment of \$101,977 net of additional accumulated depreciation at closing.
Liabilities Assumed:	Transferee shall not assume any liabilities or obligations of Transferor arising and to be performed before the closing date.
Purchase Price:	Not applicable - There is not acquisition cost or purchase agreement involved in the transfer agreement

The applicant submitted an affidavit, acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of November 5, 2019, the facility had no outstanding Medicaid overpayment liabilities.

### Lease Agreement

The applicant has submitted the master lease agreement for the Kingston site. The terms are summarized below:

Date:	March 27, 2009
Premises:	15,583 sq. ft. of usable and rentable space hereinafter referred to as the Office Space and in addition 577 sq. ft. of usable and rentable space hereinafter referred to as the Storage Space on south portion of 918 Ulster Avenue, Kingston, New York.
Landlord:	SMCBC, LLC
Tenant:	UMC Ulster Home Health Care, Inc. D/B/A Always There, Guarantor
Term:	20 Years commencing November 1, 2009 and ending October 31, 2029
Rental Payments:	Office and Adult Day Care Space as follows: Year 1-5: \$564,883.80 with \$9,414.73 paid monthly; Year 6-10: \$681,756.00 with \$11,362.60 paid monthly; Year 11-15: \$973,937.40 with \$16,232.29 paid monthly; Year 16-20: \$1,071,331.20 with \$17,855.52 paid monthly. Rent of Storage Space: Year 1-5: \$11,539.20 with \$193.32 paid monthly; Year 6-10: \$14,425.20 with \$240.42 paid monthly; Year 11-15: \$17,310.00 with \$288.50 paid monthly; Year 16-20: \$20,194.80 with \$336.58 paid monthly.
Provisions:	Plus 50% of Gas & Utilities, HVA repair and maintenance, and electrical service; and 28% of building operating expenses.

The applicant has provided an affidavit stating the landlord and tenant are not related entities and therefore the master lease is an arm's length agreement.

#### Sub-Lease Agreement

The applicant submitted a draft sub-lease for the site to be occupied. The terms are summarized below:

Premises:	15,583 rentable sq. ft. located at 918 Ulster Avenue, Kingston, New York, 12401
Sub-Lessor:	UMC Inc.
Sub-Lessee:	The Dominican Sisters Family Health Services Inc. dba Arch Care at Home
Term:	20 years commencing November 1, 2019 and ending October 31, 2029.
Sublease Annual Base Rent:	Office and Adult Day Care Space shall be as follows: Year 1-5: \$564,883.80 with \$9,414.73 paid monthly; Year 6-10: \$681,756.00 with \$11,362.60 paid monthly; Year 11-15: \$973,937.40 with \$16,232.29 paid monthly; Year 16-20: \$1,071,331.20 with \$17,855.52 paid monthly. Rent of Storage Space: Year 1-5: \$11,539.20 with \$193.32 paid monthly; Year 6-10: \$14,425.20 with \$240.42 paid monthly; Year 11-15: \$17,310.00 with \$288.50 paid monthly; Year 16-20: \$20,194.80 with \$336.58 paid monthly.
Provisions:	Provisions of Master Lease

The applicant has provided an affidavit stating there is a common affiliation between the sub-tenant and the sub-landlord, and therefore is a non-arm's length agreement.

#### Operating Budget

The applicant submitted their current year (2018) results (ArchCare at Home) and an operating budget, in 2019 dollars, for the first and third year of operations subsequent to the merger, summarized below:

<u>Revenues</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	\$281,681	\$437,773	\$446,528
Medicare FFS	10,852,816	20,322,600	20,729,052
Commercial FFS	1,233,267	1,062,618	1,083,870
Commercial MC	2,877,623	2,479,439	2,529,028
Private Pay	0	21,300	21,300
All Other	19,874,514	22,689,084	23,727,200
Total Revenues	\$35,119,901	\$47,012,814	\$48,536,978
<u>Expenses</u>			
Operating	\$36,861,419	\$45,473,764	\$46,884,201
Capital	<u>1,132,882</u>	<u>1,133,134</u>	<u>1,131,550</u>
Total Expenses	\$37,994,301	\$46,606,898	\$48,015,751
Net Income	(\$2,874,400)	\$405,916	\$521,227
Utilization (Visits)	215,230	293,516	307,029
HHA Hours	693,129	908,797	953,052

Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	0.39%	0.70%	0.69%
Medicare FFS	21.89%	32.53%	32.34%
Commercial FFS	3.89%	1.70%	1.69%
Commercial MC	9.08%	3.97%	3.94%
Private Pay	0.00%	0.03%	0.03%
All Other	<u>64.75%</u>	<u>61.07%</u>	<u>61.30%</u>
Total	100.00%	100.00%	100.00%

The current year revenue and expenses are based on the draft 2018 CHHA Cost Report, and include Metro NY, Hudson Valley, and Long Island Regions. ArchCare at Home closed its branch offices on Long Island during 2018. The first and third-year forecast includes Metro NY, Hudson Valley and Ulster County, and excludes the Long Island Region. The region changes result in a significant shift in budgeted revenues, expenses and census.

Medicare Fee for Service and Medicaid Fee for Service payor revenue and utilization are expected to increase in Year One and Year Three by the additional operations of ArchCare at Home. Total revenues are budgeted to increase 34% in Year One and 38% in Year Three of operations. Commercial Fee for Service and Managed Care payor revenue and utilization are budgeted to decline by 12% to 14% in the first and third year of operation. Reimbursement assumptions are based on Medicare rates held constant at the overall current rate by region and include a Case Mix Index of 1.02 and an average Low Utilization Payment Adjustment (LUPA) of 8.5%. The Medicare and Medicaid rates were reduced each year by the 2% mandatory sequestration factor. Total operating costs are budgeted to increase 23% in Year One and 26% in Year Three due to increases in supervisory salaries, transportation, purchased services, medical supplies, and other miscellaneous costs. Expenses are budgeted to decline in non-medical supplies, administrative management salaries, and general office costs.

#### Capability and Feasibility

There are no project costs, acquisition costs or purchase agreement associated with this application. Working capital requirements are estimated at \$1,670,242, which is equivalent of two months of incremental third year expenses. The Catholic Health Care System and The Catholic Health Care Foundation of the Archdiocese of New York will provide the working capital via cash equity. BFA Attachment F is the 2017 and 2018 certified financial statements of Catholic Health Care System, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget projects a positive net income position of \$405,898 and \$521,227 in the first and third year of operations, respectively. Revenues are based on current reimbursement methodologies for CHHA services. The budget appears reasonable.

BFA Attachment B is the 2018 and 2017 certified financial statements for Dominican Sisters Family Health Service, Inc. and Family Home Health Care, Inc., which indicate an average negative working capital position, an average negative net asset position, and an average operational loss. The reason for the negative positions are the following: ArchCare has purchased many financially distressed home care agencies requiring ArchCare capital to cover financial deficits; the expenses of implementing an electronic medical records system; moving the patient population to managed care; DSFHS experienced reductions in revenue due to utilization declines caused by the closing of branch offices and termination of contracts with managed care entities reimbursing below direct cost of services; and DSFHS professional fee expenses increased with the contracting of Black Tree Healthcare Consulting to improve the effectiveness of the billing and collection process, and the efficiency of the insurance eligibility and authorization processes. The entity implemented the following steps to improve operations: DSFHS increased efforts to consolidate Human Resources, Finance, Information Technology and leased space after ArchCare became the sole corporate member of DSFHS and DSFHS was awarded a \$6 million Statewide Health Care Facility Transformation Program II grant for debt relief including capital for long-term accounts payable, working capital and transformation expense.

BFA Attachment C is the internal financial statements Dominican Sisters Family Health Service, Inc. as of June 30, 2019, which indicate a negative working capital position, a negative net asset position and an operational loss. BFA Attachment D is the 2018 certified financial statements for UMC, d/b/a Always There and Subsidiaries, which indicate a negative working capital position, negative net asset position and a net loss. The operating loss was caused by staffing losses and census instability. BFA Attachment E is the internal financial statements for Ulster Home Health Services, Inc. as of June 30, 2019, which indicates a negative working capital position, negative net asset position and an operating loss. Operational losses in 2019 were caused by ongoing staffing issues and census instability.

## Conclusion

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

## Attachments

BFA Attachment A	Organizational Chart before and after implementation of the transfer agreement.
BFA Attachment B	2018 & 2017 Certified Financial Statement - Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home and Family Home Health Care, Inc.
BFA Attachment C	Internal Financial Statement as of June 30, 2019 - Dominican Sisters Family Health Service, Inc.
BFA Attachment D	Certified Financial Statement as of December 31, 2018 – UMC, Inc. d/b/a Always There and Subsidiaries
BFA Attachment E	Internal Financial Statement of as of June 30, 2019 - Ulster Home Health Services. Inc.
BFA Attachment F	June 30, 2019 internal financial statements of Catholic Health Care System
BFA Attachment G	2018 Certified Financial Statements of Catholic Health Care System



**Project # 192109-E  
Tender Loving Care, an Amedisys Company**

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

**County: Nassau  
Acknowledged: August 30, 2019**

**Executive Summary**

**Description**

Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care, an Amedisys Company (TLC), a proprietary, Article 36 Certified Home Health Agency (CHHA) located at 100 Garden City Plaza, Garden City (Nassau County), requests approval to acquire the CHHA assets of Premier Home Health Care Services, Inc. (Premier) and thereby add Bronx, New York and Westchester Counties to its operating certificate. Premier is a New York proprietary business corporation that operates a CHHA located at 5 Bryant Park, 1065 Avenue of the Americas, New York (New York County). Premier also operates other lines of business including licensed home care services agencies (LHCSAs) and an Article 49 licensed entity. On July 25, 2019, TLC entered into an Asset Purchase Agreement (APA) with Premier to purchase the CHHA assets for \$1,500,000. Upon approval of the merger by the Public Health and Health Planning Council (PHHPC), Premier will divest of the CHHA operation but continue to operate its other lines of business.

TLC is authorized to provide CHHA services in Kings, Queens, Nassau and Suffolk counties and is certified to provide Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional Services, Occupational Therapy, Physical Therapy, and Speech-Language Pathology services. Premier's CHHA is authorized to provide services in Kings, Queens, Bronx, New York and Westchester counties and is certified to provide all CHHA services TLC currently offers, plus Homemaker, Housekeeper, Personal Care, Respiratory Therapy and Physician services. The merger will expand

TLC's geographic service area to include Bronx, New York and Westchester counties. However, there will be no expansion of TLC's services to include the five additional CHHA services Premier currently provides. TLC currently operates an office at 1721 North Ocean Avenue in Medford (Suffolk County) and plans to open an additional branch office in Westchester County to accommodate the expanded service area post-merger.

TLC is subsidiary of Amedisys, Inc., a national home care and hospice company that operates in 38 states. As of June 30, 2019, the company owned and operated 322 Medicare-certified home health care agencies and 137 Medicare-certified Hospice programs. Amedisys, Inc.'s corporate office is located at 3854 American Way, Baton Rouge, Louisiana.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

All the counties served by TLC and Premier prior to the acquisition will continue to be served by the surviving CHHA, TLC. However, in the Bronx and Westchester, TLC will not be providing Homemaker, Housekeeper, Personal Care, Respiratory and Physician services previously offered by Premier.

**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 acquisition price for Premier CHHA is \$1,500,000 to be funded from Amedisys, Inc.'s existing borrowing of a \$725,000,000 Senior Secured Credit Facility. The Credit Facility consists of a \$175,000,000 term loan and a \$550,000,000 Revolving Credit Facility, of which \$410,000,000 is available to be drawn as of June 30, 2019. The Credit Facility

is composed of a syndicate of ten lenders and has a maturity date of February 4, 2024, with Bank of American, N.A. serving as the Administrative Agent.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$11,503,126	\$13,628,051
Expenses	<u>7,849,574</u>	<u>9,277,833</u>
Gain/(Loss)	\$3,653,552	\$4,350,218

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's amended and fully executed Lease Agreement, acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Program Description

Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care, an Amedisys Company (TLC), a limited liability company, seeks approval to acquire and merge the assets of the certified home health agency (CHHA) currently operated by Premier Home Health Care Services, Inc. ("Premier") under Article 36 of the Public Health Law.

On July 25, 2019 TLC and Premier entered into an Asset Purchase Agreement (APA) wherein Premier Home Health Care Services, Inc. CHHA will be effectively merged into the existing operations of the TLC CHHA. As a result of this transaction, the Premier Home Health Care Services, Inc. CHHA will close, but Premier Home Health Care Services, Inc. will continue to operate its other lines of business.

Tender Loving Care, an Amedisys Company is an existing CHHA serving Nassau, Kings, Queens and Suffolk counties from an office located at 100 Garden City Plaza, Suite 100, Garden City, New York 11530. Premier Home Health Care Services, Inc. serves Kings, New York, Queens, Bronx and Westchester counties. Upon approval of this project, TLC will add Bronx, New York, and Westchester counties to their approved geographical service location. To support the expanding service area and patients of the Premier CHHA, TLC will open an additional branch office in Westchester County.

TLC is parented by TLC Health Care Services, LLC, which is parented by TLC Holdings I, LLC. TLC Holdings I, LLC is parented by Amedisys TLC Acquisition LLC, which is parented by Amedisys Holding, LLC, which is parented by Amedisys, Inc., a corporation formed in Delaware with authority to do business in New York State. Please see Program Attachment A for further details.

Amedisys, Inc. is a national home care and hospice company operating in 38 states. As of June 30, 2019 Amedisys, Inc. owns and operates 322 Certified Home Health Agencies and 137 Hospices. Amedisys, Inc. has ownership interest in the following Certified Home Health Agencies in New York State:

- Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care (Garden City)
- Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care (Medford)
- Tender Loving Care Health Care Services of Erie Niagara, LLC d/b/a Amedisys Home Health Care

Please see Program Attachment B – Out-of-State Affiliations for the list of healthcare entities in which Amedisys, Inc. has ownership interest outside of New York State.

### Character and Competence

The Board of Tender Loving Care Health Care Services of Nassau Suffolk, LLC is as follows:

<b>Paul B. Kusserow</b> – President President, CEO, Amedisys, Inc.
<b>Jennifer R. Guckert</b> , Esq. (FL, LA, MS, TN) - Secretary Senior VP of Legal, Deputy General Counsel, Corporate Secretary, Amedisys, Inc.
<b>Scott G. Ginn</b> - Treasurer CFO, Amedisys, Inc.

The Boards of TLC Health Care Services, LLC, TLC Holdings, LLC, Amedisys TLC Acquisition, LLC, and Amedisys Holding, LLC are identical. The Boards for these entities are as follows:

<b>Paul B. Kusserow – President</b> Disclosed Above
<b>Scott G. Ginn – Vice President &amp; Treasurer</b> Disclosed Above
<b>Jennifer R. Guckert, Esq. (FL, LA, MS, TN) - Secretary</b> Disclosed Above

The Board of Amedisys, Inc. is as follows:

<b>Paul B. Kusserow – President &amp; Chief Executive Officer</b> Disclosed Above
<b>Scott G. Ginn – Treasurer &amp; Chief Financial Officer</b> Disclosed Above
<b>Jennifer R. Guckert, Esq. (FL, LA, MS, TN) - Secretary</b> Disclosed Above
<b>Jeffrey A. Rideout, MD (CA)</b> CEO, Integrated Healthcare Association CEO, Rideout Advisors LLC
<b>Richard A. Lechleiter</b> President, Catholic Education Foundation
<b>Donald A. Washburn</b> Retired
<b>Jake L. Netterville</b> CPA, Postlethwaite & Netterville
<b>Bruce D. Perkins</b> Strategic Executive, Barona Midco, LLC
<b>Julie D. Klapstein</b> Retired

The Board of Amedisys, Inc. disclosed several legal actions in which the company was involved. Please see Program Attachment C – Record of Legal Actions for further details.

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

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

#### Facility Compliance / Enforcement

The West Virginia Department of Health and Human Resources reports as follows:

- Amedisys West Virginia, LLC d/b/a Amedisys Hospice of Vienna had condition level findings for violations of 42 CFR 418.78 and was on a 90-day termination track in November 2015. The agency was found to be back in compliance following a revisit survey on January 11, 2016 and the termination track was lifted.
- Amedisys West Virginia, LLC d/b/a Amedisys Hospice of Bluefield had condition level findings for violations of 42 CFR 418.72 and was on a 90-day termination track in April 2012. The agency was found to be back in compliance following a revisit on May 29, 2012 and the termination track was lifted.

No findings were reported for the remaining West Virginia agencies in which Amedisys, Inc. has ownership.

The Texas Department of Health and Human Services reports as follows:

- Compassionate Care Hospice of Central Texas, LLC was fined \$1,000 for survey findings on May 1, 2017. The penalty was paid in full on July 27, 2017.
- Compassionate Care Hospice of Bryan Texas, LLC was fined \$750 for survey findings on December 19, 2017, the fine was paid on May 14, 2018. This agency was also fined \$750 for survey findings on March 29, 2018, the fine was paid on September 13, 2018.
- Amedisys Hospice, LLC d/b/a Amedisys Hospice of San Antonio was fined \$650 for survey findings on March 22, 2019. The penalty was paid in full on July 29, 2019.

No findings were reported for the remaining Texas agencies in which Amedisys, Inc. has ownership.

Nine states did not respond to the requests for compliance information. The applicant submitted affidavits attesting to the compliance history of the health care facilities in the following states: Missouri, Michigan, District of Columbia, Arkansas, Indiana, Connecticut, Kentucky, Ohio and Massachusetts. The applicant reports that any statements of deficiencies issued have been resolved and no fines were assessed.

#### Quality

<b>CHHA Quality of Patient Care Star Ratings</b> as of November 1, 2019	
<b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care (Garden City)	5 out of 5 stars
Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care (Medford)	4 out of 5 stars
Tender Loving Care Health Care Services of Erie Niagara, LLC d/b/a Amedisys Home Health Care	4 out of 5 stars

#### Conclusion

There will effectively be no change in counties served or services provided as a result of this acquisition. 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 to acquire the CHHA's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	July 25, 2019
Seller:	Premier Home Health Care Services, Inc.
Purchaser:	Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care, an Amedisys Company (TLC)
Assets Transferred:	All rights, title and interest in the business assets free and clear of any liens. Included assets: books and records relating to business operations; patients record of the business on census as of the closing date; business goodwill; to the extent assignable licenses, registrations, certificates of need, authorizations, permits and any other regulatory approvals held or owned relating to the business.
Excluded Assets:	Seller's licenses to operate licensed home care services agencies, seller's license under Article 49, seller's National Provider Identifier (NPI), seller's Medicare and Medicaid provider numbers associated businesses not being sold.
Assumed Liabilities:	None.
Purchase Price:	\$1,500,000
Payment:	\$1,500,000 due at closing.

The purchase price is proposed to be satisfied from the existing \$725,000,000 Senior Secured Credit Facility that has a maturity date of February 4, 2024, of which \$410,000,000 is available as of June 30, 2019. The Credit Facility is composed of a syndicate of ten lenders with Bank of America, N.A. serving as the Administrative Agent. A commitment to fund the purchase price has been provided by Amedisys, Inc.

BFA Attachments A and B are Amedisys, Inc. and Subsidiaries' 2017 and 2018 certified financial statement and their 2019 second quarter 10-Q filing, respectively, which document sufficient resources to meet the funding 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. The facility has a no outstanding Medicaid Assessment liability as of October 16, 2019.

### Lease Agreement

The lease terms for the real property (offices) located at 100 Garden City Plaza are summarized below:

Date:	Estimated to be December 1, 2016
Premises:	Located at 100 Garden City Plaza, Garden City, NY 11530
Owner/Landlord:	TL GCP Owner, LLC
Lessee:	Tender Loving Care Health Care Services of Nassau Suffolk, LLC
Term:	7 years (estimated to be November 30, 2023)
Rent:	\$201,567 per yr. (includes electric) (\$16,797 monthly) Increase approx. 3.2% yrly.
Provisions:	Maintenance and increase in taxes and utilities

The lease terms for the real property (offices) located at 1721 North Ocean Avenue are summarized below:

Date:	Third amendment dated April 4, 2016
Premises:	1721 North Ocean Avenue, Medford, NY 11763
Owner/Landlord:	North Ocean Properties
Lessee:	Tender Loving Care Home Health Care Services of Nassau Suffolk, LLC
Term:	3 years from June 1, 2018 (Amended Term Commencement Date). Has the right to renew
Rent:	\$68,451 per year (\$5,704 monthly) Increase 3% yearly.
Provisions:	Maintenance, taxes and utilities

The applicant has attested that the leases are arm's length agreements.

#### Operating Budget

The applicant has submitted its current results for 2018, and the projected first- and third-year operating budgets, in 2019 dollars, as summarized below:

	<u>Current</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicare - MC	\$254.44	\$1,306,812	\$228.55	\$10,332,652	\$222.17	\$12,215,927
Commercial - FFS	\$155.37	32,938	\$132.46	442,945	\$121.15	684,595
Commercial - MC	\$246.50	5,423	\$222.08	727,529	\$222.08	727,529
Charity Care		0		230,063		272,561
Bad Debt		<u>-250,874</u>		<u>-230,063</u>		<u>-272,561</u>
Total Revenues		\$1,094,299		\$11,503,126		\$13,628,051
 <u>Expenses</u>						
Operating	\$262.51	\$1,409,676	\$138.16	7,391,999	\$132.16	\$8,820,258
Capital	<u>\$43.76</u>	<u>234,976</u>	<u>\$8.56</u>	<u>457,575</u>	<u>\$6.86</u>	<u>457,575</u>
Total Expenses	\$306.27	\$1,644,652	\$146.72	7,849,574	\$139.02	\$9,277,833
 Net Income (Loss)		<u>(\$550,353)</u>		<u>\$3,653,552</u>		<u>\$4,350,218</u>
 Utilization (visits)		5,370		53,502		66,738

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

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Payor</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicare -MC	5,136	95.64%	45,210	84.50%	54,984	82.38%
Commercial -FFS	212	3.95%	3,344	6.25%	5,651	8.47%
Commercial -MC	22	.41%	3,276	6.12%	3,276	4.91%
Charity Care	<u>0</u>	<u>0%</u>	<u>1,672</u>	<u>3.13%</u>	<u>2,827</u>	<u>4.24%</u>
Total	5,370	100%	53,502	100%	66,738	100%

The applicant indicated they will ensure the provision of charity care for each fiscal year to meet the requirement of no less than two percent (2%) of the projected annual operating cost for that fiscal year, in accordance with Title 10 NYCRR Section 763.11(a)(11). The commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay, as well as funding needed programs that are not self-supporting through existing reimbursement programs or sources. Charity care will be part of TLC's outreach program and its marketing personnel will communicate their charity care policy to the referring sources.

The following is noted with respect to the submitted budget:

- The Year One and Year Three budget was based on the 2019 annualized data of the Garden City site, the addition of the Premier CHHA, and the addition of a Westchester County branch location.
  - At the end of 2018, in an effort to reduce physical space and market overlap, TLC consolidated its main Hicksville site (980 South Broadway, Hicksville (Nassau County) into the Garden City site. As a result of the closure of the Hicksville site, all patients of the closed site were discharged and re-admitted to the Garden Center site at the end of 2018.
  - As of August 2019, TLC's Garden City site had approximately 350 patients and performs approximately 3,800 visits per month. The Garden City site admits approximately 160 new patients each month.
  - TLC proposes to strengthen the services offered to the community through the development of additional outreach efforts to hospitals, nursing homes and other community-based agencies explaining the acquisition and the nature of services offered.
- The applicant estimated an average Medicare episodic rate of approximately \$3,600 per episode, which is based on the 2018 average rate that the Garden City site experienced. This payment rate was used in the budget projections.
- The applicant did not forecast any Medicaid revenues. TLC is currently contracted with Medicaid and certain Medicaid Managed Care plans (Fallon, Elderwood Health Plan, Centers for Healthy Living, Independent Health, MVP Health Plan, Univera and Emblem); however, TLC has not experienced any volume for Medicaid or Medicaid Managed Care at its Garden City, Medford or Hicksville sites. TLC does have and anticipates continuing to have dually-eligible patients, whose secondary insurance is Medicaid and primary insurance is Medicare.
- Managed Care rates were based on TLC's experience at its existing sites.
- Expenses are based on the applicant's experience at its other existing sites.

#### Capability and Feasibility

The acquisition price for Premier CHHA is \$1,500,000 to be funded from Amedisys, Inc.'s existing borrowing of a \$725,000,000 Senior Secured Credit Facility. The Credit Facility consists of a \$175,000,000 term loan and a \$550,000,000 Revolving Credit Facility, of which \$410,000,000 is available to be drawn as of June 30, 2019. The Credit Facility is composed of a syndicate of ten lenders and has a maturity date of February 4, 2024, with Bank of American, N.A. serving as the Administrative Agent. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,034,154 based on two months of first year incremental expenses. Funds will be provided from cash on hand by Amedisys, Inc. and ongoing operations from TLC. A review of BFA attachment A and B shows sufficient liquid resources to meet this requirement.

TLC projects the first and third years will show a surplus of \$3,653,552 and \$4,350,218, respectively. The budget appears to be reasonable.

BFA Attachments A and B are, respectively, Amedisys, Inc. and Subsidiaries' 2017-2018 certified financial statements and their June 30, 2019, Second Quarter 10-Q financials, which show average positive working capital and during this period the organization maintain an average equity position of \$520,667,000. For the year ending December 30, 2018, Amedisys had net income of \$120,129,000, and net income was \$65,613,000 for the half-year ending June 30, 2019.

#### Conclusion

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

## Attachments

BFA Attachment A	Financial Summary, Amedisys, Inc. & Subsidiaries 2017 and 2018 certified financial statements
BFA Attachment B	Financial Summary, Amedisys, Inc. and Subsidiaries June 30, 2019 Second Quarter 10-Q
BFA Attachment C	TLC Organizational Chart
Program Attachment A	Amedisys Organizational Chart
Program Attachment B	Out-of-State Affiliations
Program Attachment C	Record of Legal Actions



Project # 192157-E

SLHS Massena, Inc. d/b/a Massena Hospital

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

**County:** St. Lawrence  
**Acknowledged:** October 7, 2019

## Executive Summary

### Description

St. Lawrence Health System, Inc. (SLHS), a not-for-profit health care organization, requests approval to establish SLHS Massena, Inc., a New York not-for-profit corporation, as the new operator of Massena Memorial Hospital (MMH), a 25-bed, public municipal, Article 28 sole community hospital located at 1 Hospital Drive, Massena (St. Lawrence County), and to establish SLHS as the hospital's active parent and co-operator. The hospital's sponsorship will be converting to a 501(c)(3) governance structure. Upon approval by the Public Health and Health Planning Council (PHHPC), SLHS will change its name to Massena Hospital, Inc., and be known as Massena Hospital. Recently under CON 191208, the hospital decertified 25 beds and requested approval to operate as a Critical Access Hospital (CAH). Approval of CAH designation by the Centers for Medicare and Medicaid Services (CMS) is pending.

The proposed governance restructuring and affiliation with SLHS are part of an overall sustainability plan to preserve essential health care services in the Town of Massena and enable the hospital to become financially sustainable.

The parties to this Transaction are SLHS (Purchaser) and the Town of Massena and Massena Memorial Hospital (collectively Seller). The Seller and Purchaser executed a Management Agreement dated June 19, 2019, whereby the Purchaser is providing general management services to MMH. The Seller, Purchaser and NYSDOH are parties to a Supervisory Agreement effective June 19, 2019, whereby the NYSDOH provides oversight to the

arrangement. On July 30, 2019, the Seller and Purchaser executed an Asset Purchase Agreement (APA) that provided for the transfer of all the hospital's assets, including the real property, and the assignment and assumption of certain liabilities and obligations relating to MMH prior to Closing. The purchase consideration is \$8,000,000 and provides a commitment of capital and the funding of services including providing financial support for workforce liabilities. The APA provides that consideration for the transfer of assets and assumption of liabilities shall be determined and agreed upon by the parties prior to closing based upon a fair market valuation of the assets and liabilities at that time. The transfer will not result in any change to hospital beds or services or result in any workforce/medical staff reduction. There will be no change in the daily operations of the hospital.

The applicant indicated that the purpose of this conversion is to strengthen health care delivery in Massena and the surrounding region. As a municipal facility, the Hospital has had limited flexibility in responding to healthcare market and regulatory changes. A conversion to a 501(c)(3) will allow for participation in joint ventures, partnerships and affiliations, as well as relieve taxpayers of the responsibility of debt incurred by the current governance authority. The transfer will allow the hospital to cease participation in the New York State Civil Service Retirement System, allowing for a renegotiation of labor contracts with the intent of revising both the Health Insurance and Pension provisions.

On July 31, 2019, the Town of Massena was awarded a \$20 million Statewide Health Care Facility Transformation Program Phase II grant. The purpose of the grant is to retire debt and support the conversion of MMH from a public hospital to a voluntary non-profit hospital affiliated with SLHS. The NYSDOH notified MMH that the grant is conditioned upon, among other things, the conversion of the hospital to a voluntary non-profit 501(c)(3) hospital corporation that is co established with SLHS pursuant to an APA agreement acceptable to the Department. SLHS is a not-for-profit 501(c)(3) organization that serves as the sole corporate member, active parent and co-operator of Canton-Potsdam Hospital (CPH) and Gouverneur Hospital (GH), both located in St. Lawrence County.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no change to beds or services 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

There are no project costs associated with this project. The currently identified acquisition price is valued at approximately \$8,000,000 and includes assumption of liabilities, commitment of capital, and the funding of services including providing financial support for workforce liabilities. Consideration for the transfer of assets and assumption of liabilities will be determined and agreed upon prior to closing based upon a fair market valuation.

<u>Budget</u>	<u>Current Year</u>
Revenues	\$51,460,734
Expenses	<u>\$63,526,226</u>
Net Income/(Loss)	(\$12,065,492)

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$53,427,636	\$54,627,693
Expenses	<u>\$55,408,808</u>	<u>\$54,608,808</u>
Net Income/(Loss)	(\$1,981,172)	\$18,985

## 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 Certificate of Amendment to the Certificate of Incorporation of St. Lawrence Health System, Inc. (Health System), acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of the Health System, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Resolution of the Board of Directors of the Health System, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Resolution of the Town Council of the Town of Massena, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Certificate of Incorporation of SLHS Massena, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation of SLHS Massena, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of the bylaws of Massena Hospital, Inc., acceptable to the Department.
8. Submission of a photocopy of an amended and executed Asset Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Background

MMH is currently certified for 25 beds and through project 191208 is seeking to become designated as a Critical Access Hospital (CAH). CMS approval of the CAH designation is pending. With the change in ownership, there are no additional projected changes in the services or beds. The approval of this project will allow St. Lawrence Health System to coordinate an integrated system to improve quality, access and decrease costs.

### Character and Competence

The initial Board of Directors of SLHS Massena Inc. are:

<b>Name</b>	<b>Title/Position</b>
Edward Mucenski	Director
Mark Cornett	Director
Mark Brackett	Director
Michael Burgess	Director
Donald Dangremond	Director

The SLHS Massena, Inc Board of Directors subsequent to final PHHPC approval are:

<b>Name</b>	<b>Title/Position</b>
Bedros Bakirtzian, MD	Director
Michael Cook	Director
Real C. Coupal	Director
Susanne Day, MD	Director
Dawn Hewlett	Director
David LeClair, Jr.	Director
Lenore Levine	Director
G. Michael Maresca	Director
Paul B. Morrow	Director
Loretta Perez	Director

**Mr. Bedros Bakirtzian, M.D.** is an Orthopedic Surgeon who has been in private practice for 29 years. He received his medical degree from the University De Sherbrooke in Canada. He is board-certified in Orthopedic Surgery.

**Mr. Mark Brackett** is a retired pharmacist with over 45 years of practice at a local pharmacy. He was also the Vice President of Human Resources for the pharmacy.

**Mr. Michael Burgess** is the Vice President of Financial Planning and Treasury Services for a national provider of pharmaceutical and healthcare services company. He is a Secretary of the Board for the St. Lawrence Health System and Chair of the Board for Gouverneur Hospital.

**Mr. Michael Cook** is employed as the Director of Health Operations of the St. Regis Mohawk Health Services for over six years. He was previously employed as the Project Officer at a health services facility in Tennessee.

**Mr. Mark Cornett** is the Chief Operating Officer a biometrics company for seven years. He has a general management and business background. He was the previous Chief Operating Officer of a platform technology company for 12 years.

**Mr. Real Coupal** is the President and Owner of a Ford and Chevrolet Auto Dealerships for over 37 years. He oversees 75 employees for both corporations. He is the member of multiple boards. He is the real estate manager of 25 rental units.

**Mr. Donald Dangremond** is retired from Clarkson University where he spent over 44 years. He held numerous senior management and administrative roles including Director of Residence Life, Associate Dean of Students, Director of Alumni Relations, Executive Director of Alumni and Parent Relations, Associate Vice President and Vice President of University Relations, and most recently Senior Gift Planning Officer. He is a trustee on the board of Canton-Potsdam Hospital and the St. Lawrence Health System.

**Susanne Daye, M.D.** is a retired Physician. She retired in 2017 with over 12 years as a Radiologist at multiple facilities and a remote Radiologist with coverage at hospitals in multiple states. She graduated with her medical degree from Georgetown University. She completed her transitional internship at the Letterman Army Medical Center in California. She completed her Diagnostic Radiologic Residency at the Brooke Army Medical Center in Texas. She completed a Body Imaging Fellowship at the University of Texas Houston Medical School.

**Ms. Dawn Hewlett** is the Financial Controller of a Data Center for over one year. She is responsible for financial accounting and reporting. She oversees the management of 70 employees. She was previously the Director of Decision Support and Budgeting and the Interim Controller at the University of Vermont for three years. Her responsibilities included being the point of contact for network budget software implementation, providing leadership for the integration, operation, maintenance, and reporting capabilities of the network decision support and cost accounting system, working to improve decision making and organizational performance by collaborating with departments to review cost center reports and department specific performance analysis.

**Mr. David LeClair, Jr.** has been employed for over 20 years in Production at Alcoa, an aluminum manufacturer. He is also trained and qualified on parts of each job in management. He has sat on the Massena School Board. He was the local union President. Each of these various board experiences has given him experience from daily operations to fiscal responsibility.

**Ms. Lenore Levine** is a Registered Nurse with over 37 years of experience. She retired in 2017 with 21 years of service at Massena Memorial Hospital Ambulatory Surgical Services and Medical Imaging Services.

**G. Michael Maresca, M.D.** is a currently practicing Radiologist and CEO and Founder of a private radiology practice. He received his medical degree from the University of Maryland School of Medicine. He completed his Diagnostic Radiology residency from the State University of New York Health Science Center in Syracuse. He is board-certified in Radiology and Physician Special Purpose Exam. He provides professional radiology services to numerous facilities.

**Paul B. Morrow** is the owner of an international multi-medical manufacturing and distributing corporation. He has operated a large corporation for over 19 years. He was previously employed as a supervisor for General Motors. He taught as a substitute teacher in the Business Department at the local high school.

**Mr. Edward Mucenski** is the Officer/Director of the Certified Public Accounting firm he has been employed by for over 35 years. He is a trustee of Canton-Potsdam Hospital and of the St. Lawrence Health System. He was also a trustee of St. Joseph's Rehabilitation Center.

**Ms. Loretta Perez** is the Owner/Manager of a travel agency for over 38 years. She was previously a Teacher for middle and high school English and Math for 26 years. She participated as the Department Chairperson, Student Council, and Class Advisor. She has been a board member of the Massena Memorial Hospital board for six years. She has served as chair of the Medical Affairs, Executive Committee, chair of the Finance Committee, member of the Safety Building and Grounds, and member of the Audit and Compliance Committee. She currently chairs the Board of Managers.

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. Maresca** disclosed that he was named in two open malpractice lawsuits. The first case alleged that a patient who presented with a head injury after a fall failed to properly diagnose hematoma and/or cystic hygromas that resulted in emergency brain surgery. The second case alleges a negligent read of appendicitis by Radiology. The patient received a laparoscopic appendectomy and expired. Both cases are pending.

The **St. Lawrence Health System Board**, comprised of 14 members, was subject to a Character and Competence review. Upon review of the 14-member Board of Directors of St. Lawrence Health System, the following disclosures were made:

**Dr. Florence Bero M.D.** disclosed that being named in three malpractice cases, one that is opened and one that is closed. The closed malpractice case was filed on February 21, 2011 and alleged wrongful death, negligence, and improper care for an obstetrical patient who presented to the emergency department and became an inpatient. Dr. Bero was the covering physician during a portion of the patient's inpatient care. The case was settled and Dr. Bero was dropped from the case prior to the final settlement. On March 13, 2018 there was a stipulation of discontinuation for all the defendants. The second case was filed on behalf of the patient by his parents for prolonged resuscitation of a newborn, postpartum on August 4, 2014, and alleged failure to monitor labor and that the infant was hypoxic and cerebral palsy. The case remains ongoing. The third case was brought against the physician practice in April 2018. It was found that they had never provided care to this patient and they were dropped from the case in May 2018.

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

*The Department issued a Stipulation and Order (S&O) dated November 16, 2018 and fine to MMH \$6,000 based on an investigation into nursing failing to monitor telemetry patient alarms appropriately. The patients were not being monitored by nurses trained in cardiac monitoring and dysrhythmias.*

#### Prevention Agenda

Massena Memorial Hospital submitted a joint planning document (CSP/CHIP) with St Lawrence Health System and the St. Lawrence Department of Health. This combined report identified two priorities

- Preventing chronic disease – Reducing obesity in children and adults with activities focused on increasing physical activity in schools and the community. They identified transportation as a disparity,
- Promoting mental health and preventing substance abuse, focusing on strengthening the drug task forces, and safe disposal of prescription drugs and sharps

The applicant specified the evidence-based interventions selected to address these priorities. The partners have engaged with diverse local organizational partners in Prevention Agenda efforts to plan and/or implement appropriate interventions and will continue to do in the new structure.

No financial data are available for Massena Memorial Hospital and their community benefit spending is not known. Massena Memorial Hospital is currently in a transition phase and in the process of being purchased by St. Lawrence Health System, as indicated in the application.

Conclusion

Approval will preserve hospital services for the Massena community. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant’s character and competence or standing in the community.

<b>Financial Analysis</b>
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Asset Purchase Agreement

The applicant has submitted an executed APA detailing the transfer of the hospital’s assets and liabilities from the Town of Massena and Massena Memorial Hospital to St. Lawrence Health System.

<b>Date:</b>	July 30, 2019
<b>Seller:</b>	Town of Massena and Massena Memorial Hospital
<b>Purchaser:</b>	St. Lawrence health System
<b>Asset/Liabilities Acquired:</b>	Seller’s rights and assets in the Facility and Business; All assets and liabilities are being transferred. Assets include: real property used in the operation of the Hospital (land, buildings, other improvements); tangible personal property (all inventory, supplies, all furniture, fixtures, and equipment); all books and records relating to the Hospital; all rights and interests under contracts, leases, labor agreements and other legal documents; patient medical records subject to the terms of the Patient Medical Records Transfer Agreement; all cash, cash equivalents and securities held in accounts relating to the Hospital; accounts receivable and prepaid expenses; all rights and benefits under all contracts, agreements, leases or instruments between Transferor and any third party; and the name, Medicare and Medicaid provider numbers and all associated PINs related to physician employees and independent contractors, goodwill and intellectual property. At Closing, Purchaser will assume and be responsible for all liabilities and obligations relating to the Hospital prior to Closing.
<b>Excluded Assets:</b>	MMH’s general ledgers, corporate charter, minute and stock record books, Tax ID number, income tax returns and corporate seals; membership interest of the Seller related to the business; all employee benefit plans; the excluded contracts; the asset described on the MMH balance sheet as line item “deferred outflows-pension;” all claims (and benefits arising therefrom) that relate to any liability other than the assumed liabilities; all rights (including tax and other refunds and claims thereto) relating to the excluded liabilities; all records relating to the excluded assets or excluded liabilities; all other records Seller is required under applicable law to maintain in their possession; all of the Seller’s rights under this agreement; all assets, whether real, personal, or mixed, tangible or intangible, owned or leased by the town and not held or used for the operation of the business or facility.
<b>Acquisition Price:</b>	Valued at \$8,000,000. Includes assumption of liabilities and commitment of capital, funding and services of \$8,000,000, which includes providing financial support for workforce liabilities.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of the liability and responsibility. As of October 25, 2019, there are no outstanding Medicaid liabilities or assessments.

Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Revenues</u>			
Commercial - FFS	\$316,815	\$347,862	\$361,818
Commercial - MC	\$239,352	\$262,808	\$273,352
Medicaid - FFS	\$326,389	\$358,374	\$372,752
Medicaid - MC	\$2,353,485	\$2,584,116	\$2,687,793
Medicare - FFS	\$2,353,485	\$2,584,116	\$2,687,793
Medicare - MC	\$3,077,634	\$3,379,228	\$3,514,907
Private Pay	<u>\$384,704</u>	<u>\$422,403</u>	<u>\$439,352</u>
Total Inpt Revenues	\$9,051,864	\$9,938,907	\$10,337,767
<u>Outpatient Revenues</u>			
Commercial - FFS	\$7,685,667	\$7,916,756	\$8,088,234
Commercial - MC	\$3,742,102	\$3,854,618	\$3,938,110
Medicaid - FFS	\$1,044,834	\$1,076,249	\$1,099,561
Medicaid - MC	\$8,044,810	\$8,286,698	\$8,466,189
Medicare - FFS	\$9,625,040	\$9,914,443	\$10,129,190
Medicare - MC	\$3,663,262	\$3,773,407	\$3,855,140
Private Pay	<u>\$2,108,615</u>	<u>\$2,172,018</u>	<u>\$2,219,062</u>
Total Outpt Revenues	\$35,914,330	\$36,994,189	\$37,795,486
Other Oper Revenue	\$6,332,502	\$6,332,502	\$6,332,502
Non-Oper Revenue	<u>\$162,038</u>	<u>\$162,038</u>	<u>\$162,038</u>
Total Revenue	\$51,460,734	\$53,427,636	\$54,627,793
<u>Expenses</u>			
Operating	\$60,858,080	\$52,740,662	\$51,940,662
Capital	<u>\$2,668,146</u>	<u>\$2,668,146</u>	<u>\$2,668,146</u>
Total Expenses	\$63,526,226	\$55,408,808	\$54,608,808
Net Income/(Loss)	(\$12,065,492)	(\$1,981,172)	\$18,985
Total Discharges	1,436	1,295	1,277
Visits	83,245	81,580	82,413

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

<u>Payor</u>	<u>Inpatient %</u>	<u>Outpatient %</u>
Commercial - FFS	3.48%	21.40%
Commercial - MC	2.65%	10.42%
Medicaid - FFS	3.62%	2.91%
Medicaid - MC	25.98%	22.40%
Medicare - FFS	25.98%	26.80%
Medicare - MC	33.98%	10.20%
Private Pay	3.20%	4.17%
Charity Care	<u>1.11%</u>	<u>1.70%</u>
Total	100.00%	100.00%

There will be no changes in the daily operations of the hospital. The recent bed reduction to 25 certified beds will result in the following expense reductions: Salaries and Wages by \$3,000,000; Employee Benefits by \$800,000 in year one and \$1,600,000 in year three; Professional Fees by \$400,000; Medical/Surgical Supplies by \$500,000; and Purchased Services by \$2,917,418. Utilization is projected to decrease in Year One due to the current lack of community trust in the institution. The applicant

expects utilization to improve by Year Three once community starts to gain trust in the hospital under SLHS's leadership. Revenue is based on CAH status achieved by the start of Year One.

#### Capability and Feasibility

There are no project costs or purchase price associated with this transaction. There will be no change in daily operations of the hospital, although the facility is projecting cost benefits from the changes in health insurance, retirement plans and interest expense.

BFA Attachment A is the 2016-2017 audited financial statements and the 2018 interim and as of June 30, 2019 internal financial summary of Massena Memorial Hospital (A Component Unit of the Town of Massena, New York). As shown, the facility had an average negative working capital position, an average positive net asset position, and achieved an average net loss of \$6,820,971 for the 2016-2017 period. For the period 2018 through June 30, 2019, the facility achieved an average net loss of \$6,714,919. The negative working capital position and negative net income are due to the overall changing health care market and the facility's overall small size and rural nature. With declining volumes and costs remaining stagnant, the facility has continued to lose money annually despite state support through the Interim Access Assurance Fund Program and Vital Access Provider Assurance Program funding and a \$5.8 million Essential Health Care Provider Program grant to retire debt.

BFA Attachment B is the 2017 and 2018 audited financial summary of St. Lawrence Health System. As shown, the System had a negative working capital position, a positive net asset position and achieved an average net income of \$9,649,537 for the period shown. The negative working capital position is due to a \$4.1 million increase in estimated third party settlements. The System places a significant amount of its cash in its Foundation and not in the current assets account and retains the majority of assets as long-term assets. As of December 31, 2018, the System had approximately \$88 million in total net assets and unrestricted cash and investments amounted to approximately \$60 million comprised of \$6.8 million from cash/cash equivalents, \$36.8 million from assets whose use is limited (Board Designated Only) and \$16.4 million from Canton-Potsdam Hospital Foundation, Inc., which is classified as cash and investments.

BFA Attachment C is the Massena Hospital Pro Forma Balance Sheet, which shows the facility will have an equity position of \$2,017,827 as of the first day of operation.

BFA Attachment D is the pre- and post-closing organization chart of the facility.

#### Conclusion

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

## Attachments

BFA Attachment A	Financial Summary-Massena Memorial Hospital audited periods 2016-2017, and 2018 interim and as of June 30, 2019 internal financial summary.
BFA Attachment B	2017 and 2018 audited financial summary of St. Lawrence Health System
BFA Attachment C	Pro Forma Balance Sheet of Massena Hospital
BFA Attachment D	Pre and Post Closing Organization chart.



**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:

	<u>Year One</u>	<u>Year Three</u>
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](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](mailto: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

**December 12, 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	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 <sup>2</sup>	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 <sup>1</sup>	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center, LLC <sup>3</sup>	1,008	1,208
Multi	South Shore Surgery Center <sup>3</sup>	5,007	8,160
Multi	Suffolk Surgery Center, LLC <sup>2</sup>	6,107	0
	Totals	62,282	54,620

<sup>1</sup> No SPARCS data was found for 2017 or 2018.

<sup>2</sup> No SPARCS data was found for 2018.

<sup>3</sup> 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.

Payor	Year One		Year Three	
	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 (1 <sup>st</sup> / 3 <sup>rd</sup> 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 comes 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
<b>Total Project Cost</b>	<b>\$3,582,708</b>

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)	<u>\$832,708</u>
<b>Total Project Financing</b>	<b>\$3,582,708</b>

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	
	Per Visit	Revenues	Per Visit	Revenues
<u>Revenues</u>				
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 *		<u>-\$256,670</u>		<u>-\$339,862</u>
Total Revenues		\$4,789,409		\$6,477,598
<u>Expenses</u>				
Operating Expense	\$341.36	\$2,560,215	\$302.10	\$3,127,330
Capital Expense	<u>\$106.23</u>	<u>\$796,710</u>	<u>\$77.95</u>	<u>\$806,941</u>
Total Expense	\$447.59	\$3,356,925	\$380.05	\$3,934,271
Net Income		<u>\$1,432,484</u>		<u>\$2,543,327</u>
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	<u>3%</u>	<u>3%</u>
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



Project # 192021-B  
Northeast Endoscopy

**Program:** Diagnostic and Treatment Center    **County:** Suffolk  
**Purpose:** Establishment and Construction    **Acknowledged:** July 15, 2019

Executive Summary

Description

Northeast Endoscopy, LLC (the 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 gastroenterology procedures to be located at 235 N. Belle Mead Road, East Setauket (Suffolk County). The Center will be housed in approximately 12,000 square feet of leased space in the single-story building and will have three procedures rooms, eight preoperative bays, ten recovery areas, and the requisite support spaces. Vinayak Ganapati, LLC is the property owner. There is a relationship between landlord and tenant in that the entities have identical membership.

The proposed ownership of the Center is as follows:

<u>Proposed Operator</u>	
Northeast Endoscopy, LLC	
<u>Member</u>	<u>%</u>
Shri Varhdman Mahavir, LLC	100%
<i>Nilesh Mehta, M.D. (50%)</i>	
<i>Preeti Mehta, M.D. (50%)</i>	

Dr. Nilesh Mehta, who is Board-certified in Gastroenterology, will serve as Medical Director. The applicant intends to enter into a Transfer and Affiliation Agreement with Long Island Community Hospital.

Drs. Nilesh and Preeti Mehta will be practicing physicians at the Center and have provided letters indicating their commitment to perform 1,400 procedures in the first year of project

implementation. The physicians have a combined 90% ownership interest in New Hyde Park Endoscopy, an Article 28 FASC located in Nassau County that opened in January 2018 and is operating at near capacity. The primary purpose of this project is to accommodate the physicians' existing patients who live in Suffolk County and travel to Nassau County to utilize their services. This new Center will be more convenient for their patients who reside in Suffolk County and will also provide needed additional gastroenterological surgical services to all residents of Suffolk County.

**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 1,400 in Year One and 1,486 in Year Three with payor utilization of Medicaid at 13.0% 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

Total project cost is \$5,272,625 and will be met via \$147,403 members' equity, a landlord contribution of \$3,802,754, and a personal loan from Kanak Golia (father of Dr. Preeti Mehta) for \$1,322,468 with no loan terms and no expectation of repayment. The landlord contribution will be funded via \$83,905 equity (landlord) and a personal loan from Kanak Golia to the realty entity for \$3,718,849 with no interest terms and no expectation of repayment.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,063,040	\$2,125,350
Expenses	<u>\$1,870,816</u>	<u>\$1,943,010</u>
Net Income	\$192,224	\$182,340

## 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 lease agreement, acceptable to the Department of Health. (BFA)
6. Submission of an executed personal loan commitment for project costs (applicant), acceptable to the Department of Health. (BFA)
7. Submission of an executed personal loan agreement for project costs (landlord), acceptable to the Department of Health. (BFA)
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
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 an executed lease agreement, acceptable to the Department of Health. [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 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 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](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](mailto: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

**December 12, 2019**

## Need and Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Northeast Endoscopy, LLC
<b>Doing Business As</b>	Northeast Endoscopy
<b>Site Address</b>	235 North Belle Mead Road East Setauket, NY 11733 (Suffolk County)
<b>Surgical Specialties</b>	Single Specialty: Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3
<b>Hours of Operation</b>	Monday through Friday from 7:30 am – 3:30 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	8.0 FTEs / 8.0 FTEs
<b>Medical Director</b>	Nilesh Mehta, M.D.
<b>Emergency, In-Patient &amp; Backup Support Services Agreement and Distance</b>	Expected to be provided by: Long Island Community Hospital 12.9 miles / 27 minute
<b>After-hours access</b>	If the patient requires assistance while during hours when the Center is not in operation, the patient will have the phone number of an on-call service, which will be available 24 hours per day, seven (7) days per week, to immediately refer the patient to the Center's on-call physician, who will be a member of the Center's credentialed medical staff.

### Analysis

The service area is Suffolk County. The population of Suffolk County in 2010 was 1,493,350 with 625,791 individuals (41.9%) who are 45 and over, which are the primary population group utilizing gastroenterology services. Per projection data from the Cornell Program on Applied Demographics, this population group (45 and over) is estimated to grow to 714,044 by 2025 and represent 47.8% of the projected population of 1,494,816.

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	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 <sup>2</sup>	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 <sup>1</sup>	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center, LLC <sup>3</sup>	1,008	1,208
Multi	South Shore Surgery Center <sup>3</sup>	5,007	8,160
Multi	Suffolk Surgery Center, LLC <sup>2</sup>	6,107	0
	Totals	62,282	54,620

<sup>1</sup>No SPARCS data was found for 2017 or 2018.

<sup>2</sup>No SPARCS data was found for 2018.

<sup>3</sup>2018 data is an estimation, based upon partial year information.

The number of projected procedures is 1,400 in Year One and 1,486 in Year Three. The applicant states that all the projected procedures are currently being performed at New Hype Park Endoscopy (a freestanding ambulatory surgery center in Nassau County). The primary purpose of this project is to accommodate the patients of the participating physicians who reside in Suffolk County. The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Commercial	1,092	78.0%	1,159	78.0%
Medicare FFS	84	6.0%	89	6.0%
Medicare MC	14	1.0%	15	1.0%
Medicaid FFS	14	1.0%	15	1.0%
Medicaid MC	168	12.0%	178	12.0%
Charity Care	28	2.0%	30	2.0%
<b>Total</b>	<b>1,400</b>	<b>100.0%</b>	<b>1,486</b>	<b>100.0%</b>

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Health First and Fidelis. The doctors involved in this proposed center also own New Hyde Park Endoscopy in Nassau County. The doctors currently work with the Joseph P. Addabbo Family Health Center to refer patients and will seek a second referral agreement from the health center to serve the under-insured in Suffolk County. The center will reach out to Long Island Select Healthcare (LISH) to serve the under-insured individuals 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.

#### Character and Competence

The following table details the membership interest of Northeast Endoscopy, LLC:

Name	Interest
<b>Shri Vardhman Mahavir LLC</b>	100.00%
<i>Nilesh Mehta M.D. (50%)</i>	
<i>Preeti Mehta M.D. (50%)</i>	
<b>Total</b>	<b>100.0%</b>

**Dr. Nilesh Mehta M.D.** is the proposed Medical Director. He is a Gastroenterologist with over 15 years of experience. He has been the president of a digestive disease practice for approximately 10 years. He received his medical degree from MGM Medical College. He completed his Internal Medicine residency at Harlem Center Hospital and a Gastroenterology residency at State University Hospital Health Science Center. He is board-certified in Gastroenterology.

**Dr. Preeti Mehta M.D.** is a Gastroenterologist with over 17 years of experience. She received her medical degree from the Icahn School of Medicine at Mount Sinai. She completed her Internal Medicine residency at North Shore University Hospital. She completed her Gastroenterology residency at State University of New York Health Science Center. She is board certified in Internal Medicine with a subspecialty in Gastroenterology.

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

Northeast Endoscopy aims to promote access to primary care services by educating their patients regarding the availability of primary care services offered by local providers, including the outpatient primary care services offered by Long Island Community Hospital, the proposed back-up hospital for the Center. The Center plans for outreach to underserved developing a patient referral agreement with Joseph Addabbo Family Health Center, A Federally Qualified Health Center (FQHC) that they have a close working relationship with through their existing FASC in Nassau County. The Center also plans to reach out to other FQHCs that are located near the proposed Center. The Center will accept all Commercial Medicaid plans. The Center has an operating budget that projects that 2% of the cases will be for charity care. The Center is committed to the development of a formal outreach program directed to the members of the local community, particularly those who are underserved. The purpose of the program will be to inform the community members of the benefits derived from, and the latest advances made in, gastroenterology.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinic referral and event notification. The Center does not plan to become part of an Accountable Care Organization or Medical Home.

#### Conclusion

Approval of this project will allow for the improved access to gastroenterology ambulatory surgery services for the communities within Suffolk County. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

## Financial Analysis

#### Lease Rental Agreement

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

Premises:	12,000 square feet located at 235 N. Belle Mead Road, East Setauket
Lessor:	Vinayak Ganapati, LLC
Lessee:	Northeast Endoscopy, LLC
Term:	15 years with one additional five-year term.
Rental	\$480,000 annually (\$40 per sq. ft.)
Provisions	Tenant is responsible for utilities and pro-rata share of real estate taxes.

The applicant has submitted an affidavit indicating that the lease agreement will be a non-arm's length lease arrangement as there is identical ownership in the operations and realty companies. The applicant submitted letters from two New York real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost

The total project cost for the renovation and moveable equipment, is estimated as \$5,272,625, broken down as follows:

Renovation & Demolition	\$2,863,016
Design Contingency	286,302
Construction Contingency	286,302
Architect/Engineering Fees	286,312
Other Fees	80,822
Movable Equipment	1,439,041
Application Fee	2,000
Processing Fee	<u>28,830</u>
Total Project Cost	\$5,272,625

Project costs are based on a six-month construction period.

The applicant's financing plan appears as follows:

Equity (Applicant)	\$147,403
Loan to Applicant from Kanak Golia (father of Preeti Mehta)	\$1,322,468
Landlord Contribution - Equity	\$83,905
Landlord Contribution - Loan from Kanak Golia	<u>\$3,718,849</u>
Total	\$5,272,625

Kanak Golia has provided a letter indicating he is willing to provide a personal loan to the applicant to be used to pay for the project costs. The loan has no interest or other terms and there is no expectation of repayment. A separate letter from Kanak Golia was provided indicating his willingness to provide a personal loan to Vinayak Ganapati, LLC (realty) to fund the landlord's contribution. This loan also has no interest or other terms and there is no expectation of repayment. Mr. Golia has submitted documentation to verify liquid assets are available to fund the loans.

BFA Attachment A is the applicant members' 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:

Revenues	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
Commercial - FFS	\$1,649.73	\$1,801,509	\$1,601.31	\$1,855,919
Medicare - FFS	\$1,116.00	93,744	\$1,085.11	96,575
Medicare - MC	\$1,116.00	15,624	\$1,073.07	16,096
Medicaid - FFS	\$970.43	13,586	\$933.07	13,996
Medicaid - MC	\$824.86	<u>138,577</u>	\$802.04	<u>142,764</u>
Total Revenue		\$2,063,040		\$2,125,350
<u>Expenses</u>				
Operating	\$786.40	\$1,100,953	\$789.47	\$1,173,147
Capital	<u>\$549.90</u>	<u>769,863</u>	<u>\$518.08</u>	<u>769,863</u>
Total	\$1,336.30	\$1,870,816	\$1,307.54	\$1,943,010
Net Income		<u>\$192,224</u>		<u>\$182,340</u>
Total Procedures		1,400		1,486

Utilization by payor during the first and third years is as follow:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	78.0%	78.0%
Medicare - FFS	6.0%	6.0%
Medicare - MC	1.0%	1.0%
Medicaid - FFS	1.0%	1.0%
Medicaid - MC	12.0%	12.0%
Charity	<u>2.0%</u>	<u>2.0%</u>
Total	100.0%	100.0%

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization assumptions are based on the combined historical experience of the proposed members. Historical experience includes their combined 90.005% ownership interest in New Hyde Park Endoscopy, an Article 28 FASC.
- Anticipated procedure volume by CPT code and related revenue by payor (APGs for Medicaid) were provided and appear reasonable.
- The FASC will employ 8 FTEs including 2 FTE Technician/Specialists, 3 FTE RNs and 1 FTE LPN staff.
- The applicant members, both Board-certified Gastroenterologists, have provided letters of interest demonstrating their commitment to perform 1,400 procedures in the first year with an anticipation of 3% growth each year thereafter.

#### Capability and Feasibility

Total project cost is \$5,272,625 and will be met via \$147,403 members' equity, a landlord contribution of \$3,802,754, and a personal loan from Kanak Golia (father of Dr. Preeti Mehta) for \$1,322,468 with no loan terms and no expectation of repayment. The landlord contribution will be funded via \$83,905 equity (landlord) and a personal loan from Kanak Golia to the realty entity for \$3,718,849 with no interest terms and no expectation of repayment. Mr. Golia has provided a letter indicating that he is willing to provide the respective personal loans at the stated terms and has submitted documentation to verify that liquid assets are available. BFA Attachment A is the applicant members' net worth statement, which shows sufficient liquid resources to fund the equity requirement for project costs.

Working capital requirements are estimated at \$323,835 based on two months of third year expenses and will be funded entirely via equity from the proposed members. BFA Attachment A is the applicant members' net worth statement, which shows sufficient liquid resources to fund the equity requirement for working capital. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$471,238.

The submitted budget projects net income of \$192,224 and \$182,340 during the first and third years, respectively. Revenue, expense and utilization assumptions are based on the combined historical experience of the proposed members. 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.

**St. Charles Hospital -- No Response**

200 Belle Terre Road  
Port Jefferson, New York 11777

**Stony Brook University Hospital -- No Response**

Health Sciences Center Suny  
Stony Brook, New York 11794

**John T Mather Memorial Hospital -- No Response**

75 North Country Road  
Port Jefferson, New York 11777

### 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

BFA Attachment A	Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BHFP Attachment	Map



**Project # 192069-B**  
**Crotona Parkway SC, LLC d/b/a Crotona Parkway  
Ambulatory Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Bronx  
**Purpose:** Establishment and Construction    **Acknowledged:** August 16, 2019

**Executive Summary**

**Description**

Crotona Parkway SC, LLC d/b/a Crotona Parkway Ambulatory Surgery Center (Crotona), an existing New York limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) to be located at 1976 Crotona Parkway, Bronx (Bronx County). The proposed center will be housed in approximately 11,000 square feet of leased space. The lease will be non-arm's length as there is relationship between the landlord and tenant. The FASC will include five procedure rooms, two operating rooms, pre-op and recovery rooms, and the requisite support areas.

The proposed members are as follows:

Crotona Parkway SC, LLC	
Members	%
Leonid Reyfman, M.D.	50%
Boleslav Kosharskyy, M.D.	50%

Leonid Reyfman, M.D., who is Board-Certified in Anesthesiology, will serve as Medical Director. The FASC will enter into a Transfer and Affiliation Agreement with St. Barnabas Hospital, located 1.3 miles (10 minutes' travel time), for back-up and emergency care services.

**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 2,800 in Year One and 3,864 in Year Three, with Medicaid at 10.0% and Charity Care at 2.0% each year.

**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 total project cost of \$5,044,633 will be met via \$1,008,927 members' equity, and a bank loan for \$4,035,706 at 5% interest for a ten-year term. Peapack-Gladstone Bank has provided a letter of interest.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,188,328	\$4,399,894
Expenses	<u>3,187,851</u>	<u>3,861,427</u>
Net Income	\$477	\$538,467

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed lease agreement, acceptable to the Department of Health. (BFA)
3. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. (BFA)
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
5. Submission 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)
6. 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)
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]
9. Submission of a photocopy of a property lease, acceptable to the Department. (CSL)
10. Submission of the Articles of Organization of Crotona Parkway SC, LLC, acceptable to the Department. (CSL)
11. Submission of the Operating Agreement of Crotona Parkway SC, LLC, 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 April 1, 2020 and construction must be completed by November 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of 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/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/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](mailto: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.

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Program Description

Crotona Parkway SC, LLC d/b/a/ Crotona Parkway Ambulatory Surgery Center seeks approval for the establishment and construction of a freestanding, multi-specialty ambulatory surgery center, initially providing plastic, orthopedic, urology and pain management services.

<b>Proposed Operator</b>	Crotona Parkway SC, LLC
<b>Doing Business As</b>	Crotona Parkway Ambulatory Surgery Center
<b>Site Address</b>	1976 Crotona Parkway Bronx, New York 10460 (Bronx County)
<b>Surgical Specialties</b>	Multi-Specialty
<b>Operating Rooms</b>	2
<b>Procedure Rooms</b>	5
<b>Hours of Operation</b>	Monday through Friday 8:00 am to 6:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	9.2 FTEs / 13.2 FTEs
<b>Medical Director</b>	Leonid Reyfman M.D.
<b>Emergency, In-Patient &amp; Back-up Support Services Agreement and Distance</b>	St. Barnabas Hospital 1.3 miles / 10 minutes
<b>After-hours access</b>	Instructions will be provided on the patient's discharge instructions for the patient to call their own Medical Doctor or 911 when the surgery center is closed. The message on the answering machine will also provide instructions for the patient to contact their surgeon, primary care physician, or 911.

### Analysis

The service area consists of Bronx County. The table below shows the number of patient visits for ambulatory surgery centers in Bronx County for 2017 and 2018.

Specialties	Facility Name	Total Patient Visits	
		2017	2018
Gastroenterology	Advanced Endoscopy Center	10,901	11,010
Multi	Downtown Bronx ASC <sup>1</sup>	312	2,092
Multi	Ambulatory Surgery Center of Greater New York	8,881	8,054
Multi	Avicenna ASC, Inc <sup>2</sup>	2,984	
Multi	East Tremont Medical Center <sup>2</sup>	2,544	
Multi	Empire State Ambulatory Surgery Center	3,997	3,828
Ophthalmology	Eye Surgery Center of New York	2,407	4,272
Gastroenterology	Mid-Bronx Endoscopy Center (opened 8/11/17)	939	4,524
Gastroenterology	New York GI Center, LLC	11,327	18,555
<b>Total Visits</b>		<b>44,292</b>	<b>52,335</b>

<sup>1</sup> 2018 is an estimation, based upon partial year information

<sup>2</sup> No SPARCS data located for 2018

The number of projected procedures is 2,800 in Year One and 3,864 in Year Three, with 10% Medicaid and 2% charity care each year. These projections are based on the current practices of participating surgeons. The applicant estimates that of the current procedures, 80% are being done in other ASC's, 5% are being done in an office-based setting and the remaining 15% are being done in hospitals.

Character and Competence

The proposed members and managers of Crotona Parkway SC, LLC are:

<u>Member</u>	<u>Interest</u>
<i>Leonid Reyfman, M.D.</i>	50.0%
<i>Boleslav Koshavarskyy, M.D.</i>	50.0%
<b>Total</b>	<b>100.0%</b>

A Character and Competence Review was conducted on the members of Crotona Parkway SC, LLC.

**Dr. Leonid Reyfman, M.D.** is a board-certified Anesthesiologist. He is the proposed Medical Director and board member. He is the Director of Pain Physicians NY for over 10 years. He is also the Site Director of Pain Medicine at SUNY Downstate Medical Center for over 12 years. He was the previous Medical Director of Island Ambulatory Surgery Center. He completed his medical degree at Ross University School of Medicine in Dominica. He received his pharmacy degree from the Arnold & Marie Schwarz College of Pharmacy in Brooklyn. He completed his residency in Internal Medicine at Maimonides Medical Center. He completed his fellowship in Anesthesiology at State University of New York Downstate in Brooklyn.

**Dr. Boleslav Kosharskyy, M.D.** is self-employed for 14 years in the Bronx. He is board certified in Anesthesiology with sub-certifications in Pain Medicine and Hospice and Palliative Medicine. He is the current President and founder of a pain medicine practice. He has established three main offices. He received his medical degree from Freie University Berlin in Germany. He completed his residency in Pain Medicine at State University Hospital Upstate in Syracuse. He completed his residency in Anesthesiology at Boston University Medical Center in Boston. He is an Associate Medical Director of Pain Medicine and Director of Anesthesia for Joint Replacement at Montefiore Medical Center. He established the regional anesthesia service at the Joint Replacement Center. He has written policies and procedures for perioperative patients. He has supervised four attending physicians, fellows, and residents. He co-managed the operating theater and the recovery room. As the associate Director he participated in the establishment of the outpatient treatment center for patients with chronic pain. He lead quality assurance and improvement and co-managed a group of five attending physicians, fellows, and residents.

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. Kosharskyy disclosed one settled malpractice case. The claim alleged that on February 2, 2010, resuscitative efforts were rendered to a newborn with low intrauterine APGAR scores. The plaintiff alleged that the newborn suffered severe brain injury due to failure to assure a safe vaginal delivery. There were multiple co-defendants in the case. The case was settled on May 4, 2016. A total payout was assessed for \$8 million dollars. Dr. Kosharskyy's insurer paid \$1 million dollars.*

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 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 patients will be made aware of the sliding scale discount policy through prominent displays in the common area and on the site's websites. 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 including Fidelis, Health First, MetroPlus and United Healthcare Community Plan. The Center plans to contact staff at St Barnabas Hospital to discuss a collaborative relationship to meet the needs of the under-served population. The Center also intends to contact Urban Health Plan (FQHC) to develop collaborate relationships to provide service to the under-insured in their service area. The Applicant will participate in community health events and with local religious institutions to ensure that the local organizations are aware of the services available and of the ASC's relationship with St. Barnabas. 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

Approval of this project will provide increased access to multi-specialty ambulatory surgery services in an outpatient setting for the residents of Bronx 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

The total project cost for renovations and movable equipment is \$5,044,633, broken down as follows:

Renovation & Demolition	\$3,044,577
Design Contingency	152,229
Construction Contingency	152,229
Architect/Engineering Fees	213,120
Other Fees	231,750
Movable Equipment	999,833
Financing Costs	94,848
Interim Interest Expense	126,464
Application Fee	2,000
Processing Fee	<u>27,583</u>
Total Project Cost	\$5,044,633

Project costs are based on a construction start date of April 1, 2020, with an eight-month construction period.

The financing for this project will be as follows:

Members' Equity	\$1,008,927
Bank loan (5% interest, 10-yr. term)	<u>4,035,706</u>
Total	\$5,044,633

Peapack-Gladstone Bank has provided a letter of interest for the bank loan. BFA Attachment A shows sufficient resources to meet the equity requirement.

Lease Agreement

The applicant has submitted a draft lease for the site to be occupied, summarized below:

Premises:	Approx. 7,700 sq. ft. (2 <sup>nd</sup> floor) plus 3,000 sq. ft. (3 <sup>rd</sup> floor) of the building located at 1976 Crotona Parkway, Bronx, NY or
Landlord:	1976 Crotona LLC
Tenant:	Crotona Parkway ASC, LLC
Term:	10 years with the right to renew for 2 additional 5-year terms
Rental:	\$269,500 base rent for the 1st year, with 3% per annum increases years 2 - 10
Provisions:	Tenant is responsible for utilities and any tenant work

The applicant has submitted an affidavit stating that there is a relationship between the landlord and tenant in that Dr. Reyfman has 24% ownership and Dr. Kosharsky has 4% ownership in 1976 Crotona LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, for Years One and Three:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$1,631.61	\$1,050,758	\$1,631.10	\$1,450,046
Commercial - MC	\$1,182.58	1,158,924	\$1,182.93	1,599,315
Medicare - FFS	\$806.58	587,188	\$806.29	810,320
Medicaid - FFS	\$1,103.74	154,523	\$1,104.88	213,242
Medicaid - MC	\$1,103.74	154,523	\$1,104.88	213,242
Private Pay	\$735.82	<u>82,412</u>	\$733.74	<u>113,729</u>
Total Revenue		\$3,188,328		\$4,399,894
 <u>Expenses</u>				
Operating	\$678.54	\$1,899,899	\$667.59	\$2,579,585
Capital	<u>\$459.98</u>	<u>1,287,952</u>	<u>\$331.74</u>	<u>1,281,842</u>
Total	\$1,138.52	\$3,187,851	\$999.33	\$3,861,427
 Net Income (Loss)		\$477		\$538,467
 Total Patient Visits		2,800		3,864

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	23.0%	23.0%
Commercial - MC	35.0%	35.0%
Medicare - FFS	26.0%	26.0%
Medicaid - FFS	5.0%	5.0%
Medicaid - MC	5.0%	5.0%
Private Pay	4.0%	4.0%
Charity	<u>2.0%</u>	<u>2.0%</u>
Total	100.0%	100.0%

The following is noted with respect to the submitted budget:

- Rates are based on the 2019 Medicare rate schedule for the services by CPT-4 Code to be provided. Commercial Fee-for-Service is approximately twice the Medicare fee schedule, Commercial Managed Care is one and a half times the Medicare fee schedule.
- Expenses are based upon historical data from previous cost reports of similar ambulatory surgery centers and experience of the applicant who participates in other ambulatory surgery centers.
- The numbers and mix of staffing were determined by the historical experience of the proposed operators.
- Utilization is based upon physicians submitting letters of intent to perform the estimated number of procedures at the FASC.

#### Capability and Feasibility

The total project cost of \$5,044,633 will be met via \$1,008,926 members' equity, and a bank loan for \$4,035,706 at 5% interest with a ten-year term. Peapack-Gladstone Bank has provided a letter of interest.

Working capital requirements are estimated at \$643,572 based on two months of third year expenses. The working capital will be funded via members' equity of \$321,786 and a bank loan for \$321,786 for a three-year term at 5% interest. Peapack-Gladstone Bank has provided a letter of interest. BFA Attachment A is the proposed members' personal net worth statements, which indicate sufficient resources to fund the equity requirements.

The submitted budget projects a net income of \$477 (breakeven) and \$538,467 during Years One and Three of operations, respectively. Revenue assumptions are driven by physicians submitting letters of intent to perform procedures, and the rates are projected based on CMS published rates for FASCs. Expenses are based upon historical data from previous cost reports of similar ambulatory surgery centers and experience of the applicant who participates in other ambulatory surgery centers. The budget appears reasonable.

BFA Attachment B is the Pro-Forma balance sheet, which shows the operation will start with \$321,786 in members' equity.

#### Conclusion

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

## Supplemental

#### 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.

#### SBH Health System -- **No Response**

4422 Third Avenue  
Bronx, New York 10457

#### BronxCare Hospital Center -- **No Response**

1650 Grand Concourse  
Bronx, New York 10457

#### BronxCare Hospital Center -- **No Response**

1276 Fulton Avenue  
Bronx, New York 10456

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.

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## Attachments

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BFA Attachment A	Net Worth Statement of Proposed Members
BFA Attachment B	Pro-Forma Balance Sheet
BHFP Attachment	Map



**Project # 191286-B  
Perfect Health Medical, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** May 31, 2019

**Executive Summary**

**Description**

Perfect Health Medical LLC, an existing New York limited liability company whose sole member is Joel Deutsch, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 4424-4426 18<sup>th</sup> Avenue, Brooklyn (Kings County). The D&TC will be housed in approximately 5,450 sq. ft. of lease space on the first-floors (3,700 sq. ft.) and basement levels (1,750 sq. ft.) shared between two contiguous two-story buildings. The space is currently being utilized by an existing private medical practice, QHC Upstate Medical, P.C. (QHC), which is 100% owned by Seth Kurtz, M.D. Upon Public Health and Health Planning Council (PHHPC) approval of this application, the private practice will cease operations and the space will be converted to the D&TC with only minor construction needed to implement the conversion. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties to provide primary medical care, behavioral health, cardiovascular, gastrointestinal and podiatry services.

**Mr. Joel Deutsch** is the sole member/manager of Perfect Health Medical LLC. Perfect Health Boro Park LLC, a management services organization (MSO) 100% owned by Joel Deutsch, currently provides administrative services to QHC, holds the building leases, and owns certain assets and liabilities associated with the operation of QHC (leasehold improvements, equipment, etc.). Through this project the depreciated assets of Perfect Health Boro Park LLC will be acquired by Perfect Health Medical, LLC. On May 20, 2019, Perfect

Health Boro Park LLC and Perfect Health Medical LLC executed a sale purchase agreement detailing the assets being transferred for a purchase price of \$908,885. The agreement will be effectuated upon PHHPC approval. Perfect Health Boro Park LLC will sub-lease the space to Perfect Health Medical LLC with all costs being passed down from the Master Lease.

Dr. Kurtz, who is Board-Certified in Pediatrics and Emergency Medicine, will serve as Medical Director and will be a practicing physician at the Center. The conversion from a private practice to an Article 28 facility is expected to enhance access to care to all residents in an area that has a high Medicaid and uninsured population.

The Center will have a Transfer Agreement for backup and emergency services with Maimonides Medical Center, located 1.4 miles or approximately 11 minutes' travel time from the proposed Center.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
The number of projected visits is 28,359 in Year One and 30,668 in Year Three with Medicaid at 56% 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

The total project cost of \$249,064 will be funded with \$24,906 member's equity and a \$224,158 promissory note for a 15-year term with interest estimated at 3.5%. The sale purchase agreement for the assets will be financed via a \$908,885 promissory note for a 15-year term at 3.5% interest. David Janklowicz, an independent third party and personal friend to the applicant, has submitted a letter of interest for the promissory notes at the stated terms, as well as his personal net worth statement indicating sufficient resources to fund the

transactions. Mr. Janklowicz will also fund the applicant's working capital financing needs via a promissory note for a 3-year term at 3.5% interest. Mr. Janklowicz will have no other financial interest in the project.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,709,002	\$2,929,606
Expenses	<u>\$2,569,514</u>	<u>\$2,619,362</u>
Net Income	\$139,488	\$310,244

## 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 promissory note for the asset purchase agreement (Bill of Sale and Obligations Undertaking), acceptable to the Department of Health. (BFA)
3. Submission of an executed promissory note for the capital loan commitment, acceptable to the Department of Health. (BFA)
4. Submission of an executed promissory note for working capital, acceptable to the Department of Health. (BFA)
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0, including satisfaction of currently open ProjNet Questions during the State Hospital drawing review. [AER]
6. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of the Articles of Organization of Perfect Health, 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 and an expiration of the approval. [PMU]
2. Construction must start on or before February 1, 2020 and construction must be completed by March 1, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The 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](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](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Project Proposal

Perfect Health Medical LLC, an existing New York State limited liability company (LLC), seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 4424-4426 18<sup>th</sup> Avenue in Brooklyn (Kings County). The proposed center, which is currently operating as a private medical practice, will provide primary medical care services, behavioral health, specialty medical services (cardiovascular and gastrointestinal), and podiatric services.

<b>Proposed Operator</b>	Perfect Health Medical LLC
<b>To Be Know As</b>	Perfect Health Medical LLC
<b>Site Address</b>	4424-4426 18 <sup>th</sup> Avenue Brooklyn, New York 11204 (Kings County)
<b>Specialties</b>	Medical Services – Primary Care Medical Services-Other Medical Specialties
<b>Hours of Operation</b>	Sunday-Thursday 9 AM-6 PM Friday 9 AM-1 PM Same day appointments for urgent and non-urgent patients.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	16.35 FTEs / 16.95 FTEs
<b>Medical Director(s)</b>	Seth D. Kurtz, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Maimonides Medical Center 1.4 miles / 11 minutes away

### Background and Analysis

The primary service area is comprised the neighborhoods of Borough Park, Bensonhurst, Flatbush and Midwood which includes the following zip codes: 11204, 11218, 11219, 11228, 11214, 11223 and 11230 in Kings County. The primary service area of Kings County and Borough Park have higher rates of hospitalization due to Ambulatory Care Sensitive Conditions (ACSCs) including: uncontrolled diabetes, lower-extremity amputation among patients with uncontrolled diabetes, hypertension and urinary tract infections. The Center will implement a number of initiatives that align with the New York State Prevention Agenda to help combat the high rates of these ACSCs in the primary service area.

The center is in Borough Park which is home to one of the largest Hasidic Jewish communities inside the United States. The center will contain seven exam rooms, an x-ray room and a special-purpose cardiology exam room, as well as appropriate support space. The center will provide primary care, behavioral health, cardiovascular, gastrointestinal and podiatric services. The center is projecting 56% Medicaid utilization. .

Per HRSA, Borough Park is a designated Health Professional Shortage Area for Primary Care services and a Medical Underserved Area/Population. The number of projected visits is 28,359 in Year One and 30,668 in Year Three.

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

### Character and Competence

**Mr. Joel Deutsch** is the sole member/manager of Perfect Health Medical LLC. He has spent two years serving as the Director of a primary care practice which overall responsibilities included planning, organizing, and managing the day to day operations. He also oversees the financial feasibility, strategic planning, patient satisfaction, and quality care efforts of the practice. In this role, he assists with staff recruitment and retention. Prior to this employment, Mr. Deutsch has experience in healthcare as an employee of the Mount Sinai Health System as a patient care representative. He advocated for patients to ensure they received quality care. He educated patients to make sure they understood their procedures and ensured compliance with their plan of care.

**Dr. Seth D. Kurtz** earned his medical degree from the SUNY Downstate College of Medicine in Brooklyn and completed an emergency medicine fellowship at Lincoln Medical Mental Health Center and a pediatrics fellowship at Maimonides Medical Center. He is board-certified in pediatrics and emergency medicine and has 12 years of experience operating primary care practices. Dr. Kurtz will serve as the center's medical director.

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

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 for a variety of medical services for the residents of Borough Park, Bensonhurst, Flatbush and Midwood as well as the surrounding communities within Kings 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 Costs and Financing

Total project costs for renovation is estimated at \$249,064 broken down as follows:

Renovation & Demolition	\$133,250
Design Contingency	\$13,325
Construction Contingency	\$13,325
Architect/Engineering Fees	\$15,990
Other Fees (Consultant)	\$65,480
Financing Costs	\$3,362
Interim Interest	\$981
Application Fee	\$2,000
Additional Processing Fee	<u>\$1,351</u>
Total Project Cost	\$249,064

Project costs are based on a construction start date of February 1, 2020, with a one-month construction period.

The applicant's financing plan is as follows:

Member's Equity	\$24,906
Promissory note (15-year term, 3.5% interest)	<u>\$224,158</u>
Total	\$249,064

BFA Attachment A is a summary of the sole member's personal net worth, which indicates sufficient liquid resources to fund the equity requirement for project costs. David Janklowicz, an independent third party and personal friend to the applicant, has submitted a letter of interest for the promissory note at the stated terms, as well as his personal net worth statement verifying the available liquid resources to fund the transaction.

## Bill of Sale and Obligations Undertaking Agreement

The applicant has submitted an executed asset purchase agreement to acquire the assets of Perfect Health Boro Park LLC. The terms are summarized below:

Date:	May 20, 2019
Seller:	Perfect Health Boro Park LLC
Buyer:	Perfect Health Medical LLC
Clinic Address:	4424-4426 18 <sup>th</sup> Avenue, Brooklyn (Kings County)
Asset Acquired:	All leasehold improvements including security system, furniture, computers and software/programs, medical equipment inventory, medical supplies, copyrights of seller, names, title, trademarks, goodwill, causes of actions related to trademarks, books, records, promotional materials, business market surveys, sales correspondence, tax records, accounting and legal matters related to the business, mailing lists, all causes of action related to the business or recovery of assets, intellectual property, vendor information, and web-site.
Excluded Assets:	Accounts payable, expenses incurred by seller based on claims, obligations or liabilities against seller on or after closing date, obligations for capitalized leases, borrowed money, claims, debts, liabilities to include bonuses, salaries, wages, commissions, incentives, wage continuation, 401K plans, cafeteria plans, childcare, retirement, profit-sharing or similar arrangement, any indemnification obligations to pay expenses out of the arrangement including accountings, lawyers, or advisors, legal suites liabilities, storage, transportation. All cash, bank accounts and short-term investments as of the closing date. All income tax refunds and tax deposits of the seller and the minute books and tax returns of the Seller.
Assumption of Liabilities:	Liabilities arising because of events after the closing date that are subject to the ordinary course of business. Buyer assumes no debt, liability or obligations of seller as stated in the agreement.
Purchase Price:	\$908,885 to be paid after approval of this project.
Payment of Purchase Price:	\$908,885 due at closing

The purchase price will be financed via a promissory note for a 15-year term at 3.5% interest. David Jankowicz, an independent third party and personal friend to the applicant, has submitted a letter of interest for the promissory note at the stated terms, as well as his personal net worth statement verifying the available liquid resources to fund the transaction.

### Lease Structure

The proposed D&TC will be on the first floor and basement levels shared between two buildings located at 4424 and 4426 18th Avenue in Brooklyn. The two buildings are owned by two separate trusts, each of which has a master lease agreement with Perfect Health Boro Park LLC.

### Master Lease Rental Agreement (Master Lease Agreement #1)

The applicant has submitted an executed lease for the space located in the building at 4424 18<sup>th</sup> Avenue. The terms are summarized below:

Date:	July 1, 2016
Premises:	3,450 sq. ft. including basement located at 4424-18 <sup>th</sup> Avenue, Brooklyn, NY 11204
Lessor:	Yosef Isaacs, Trustee of the BI Family Trust
Lessee:	Perfect Health Boro Park LLC
Term:	10 Years (One 5-year renewal option)
Rent:	\$120,000 annually (\$34.78 per sq. ft.) Base rent will increase 5% bi-annually
Provisions:	Tenant will pay 75% pro rata share of taxes to landlord.

The lease is an arm's length arrangement. The applicant has submitted an affidavit attesting that there is no relationship between the landlord and tenant. The sublease provides that this building's first-floor space of approximately 2,250 sq. ft. will be apportioned for patient care services. The residual 1,200 sq. ft. located in the basement will to be utilized for D&TC storage, staff lounge, electrical rooms and closets.

Master Lease Rental Agreement (Master Lease Agreement #2)

The applicant has submitted an executed master lease for the space located in the building at 4426 18<sup>th</sup> Avenue. The terms are summarized below:

Date:	July 24, 2016 as amended September 3, 2019
Premises:	2,000 sq. ft. including basement located at 4426 18 <sup>th</sup> Avenue, Brooklyn, NY 11204
Lessor:	Connie Pittas, Trustee of Kostas and Connie Pittas Irrevocable Trust UAD
Lessee:	Perfect Health Boro Park LLC
Term:	10 Years (One 5-year renewal option).
Rent:	\$72,000 annually (\$44.66 per sq. ft.) Base rent will increase 5% bi-annually.
Provisions:	Pro-rata share at 40% for taxes/assessments will be paid by tenant. Tenant responsible for insurance and utilities. The tenant is permitted to sublet with notice to the landlord.

The lease is an arm's length arrangement. The applicant has submitted an affidavit attesting that there is no relationship between the landlord and tenant. The sublease provides that the building's first-floor space of approximately 1,450 square feet will be apportioned for patient care services. The residual 550 sq. ft. located in the basement will be used for D&TC storage, staff lounge, electrical rooms and closets. The September 3, 2019 amendment added the 550 additional sq. ft. of basement space with no change in term or rent expense.

Sublease Agreement

The applicant submitted an executed sublease agreement for the proposed D&TC space that encompasses both buildings. The terms are summarized below:

Date:	May 20, 2019
Premises:	Approx. 5,450 sq. ft. including basement located at 4424 and 4426 18 <sup>th</sup> Avenue, Brooklyn, NY 11204 (3,700 sq. ft. first floor & 1,750 sq. ft. basement)
Sublessor:	Perfect Health Boro Park LLC
Sublessee:	Perfect Health Medical LLC
Term:	5/20/2019 to 7/24/2031 (12 years, 2 months)
Rent:	\$176,747 annually (\$54.00 per sq. ft.) Base rent will increase 5% bi-annually.
Provisions:	Utilities are the responsibility of the Sublessee. Basement space will be use by the D&TC for storage, staff lounge, electrical rooms and closets.

The sublease agreement is non-arm's length as there is identical membership between the sublessor and sublessee entities. The applicant has submitted letters from two New York licensed realtors attesting to the rental rate being of fair market value and that the leased space reflects current rates for property similar to this location and size.

Operating Budget

The applicant submitted their first-and third-year operating budgets, in 2019 dollars, summarized below:

Revenues	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Commercial FFS	\$108.56	\$61,554	\$108.56	\$66,547
Commercial MC	\$92.28	\$209,374	\$92.28	\$226,445
Medicare FFS	\$97.97	\$694,607	\$97.97	\$751,136
Medicare MC	\$83.27	\$118,083	\$83.27	\$127,660
Medicaid MC	\$101.63	\$1,614,044	\$101.63	\$1,745,558
Private Pay *	\$20.00	\$11,340	\$20.00	\$12,260
Total Revenue		\$2,709,002		\$2,929,606

<u>Expenses</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating	\$78.24	\$2,218,707	\$76.07	\$2,332,979
Capital	\$12.37	\$350,807	\$9.34	\$286,383
Total Expenses	\$90.61	\$2,569,514	\$84.41	\$2,619,362
Net Income		<u>\$139,488</u>		<u>\$310,244</u>
Total Visits		28,359		30,668

\*Private pay is a discounted charge for people who cannot afford care.

Utilization by payor source is projected for the first and third year as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	2%	2%
Commercial MC	8%	8%
Medicare FFS	25%	25%
Medicare MC	5%	5%
Medicaid MC	56%	56%
Private Pay	2%	2%
Charity Care	2%	2%

Revenue and expense assumptions are based on the historical experience of the existing private practice calculated with QHC volumes. The Medicare FFS and MC rates are based upon the Medicare fee schedule, along with an expected collection rate adjustment based on the experience of the private practice. The Medicaid APG reimbursement methodology for an Article 28 D&TC operation is the basis of the Medicaid MC rate (all Medicaid visits are expected to be MC). Utilization is projected based on historical and current visits of QHC and the projected need for ambulatory primary healthcare in this medically underserved area.

#### Capability and Feasibility

The total project cost of \$249,064 will be met with member's equity of \$24,906 and a \$224,158 promissory note for a 15-year term at 3.5% interest (estimated). The sale purchase agreement for the assets will be financed via a \$908,885 promissory note for a 15-year term at 3.5% interest. David Janklowicz, an independent third party and personal friend to the applicant, has submitted a letter of interest for the promissory notes at the stated terms, as well as his personal net worth statement indicating sufficient resources to fund the transactions. BFA Attachment A is the personal net worth statement of the applicant member, which indicates sufficient funds for his equity contribution.

Working capital requirements are estimated at \$436,560 based on two months of third year expenses and will be provided via \$218,280 equity from the applicant member and a \$218,280 promissory note from Mr. Janklowicz for a 3-year term at 3.5% interest rate. BFA Attachment A indicates the applicant member has sufficient liquid resources. Mr. Janklowicz has submitted his personal net-worth statement documenting sufficient equity for all transactions. BFA Attachment B is the pro forma balance sheet of Perfect Health Medical, LLC as of the first day of operations, which indicates a positive member equity position of \$243,186.

The submitted budget indicates a net income of \$139,488 and \$310,244 in Years One and Three, respectively. Revenues are based on the historical experience of QHC and current APG rates and Medicare fee schedule rates for ambulatory primary care services. Year One utilization is slightly lower due to the start-up operations of the newly established facility. The submitted budget appears reasonable.

#### Conclusion

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

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## Attachments

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BFA Attachment A	Member Net-Worth
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Organizational Chart
RNR Attachment A	Map



**Project # 192118-B  
NY Med of Brooklyn, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** September 16, 2019

**Executive Summary**

**Description**

NY Med of Brooklyn, LLC, 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 765 Nostrand Avenue, Brooklyn (Kings County). The D&TC will be housed in approximately 2,805 square feet of leased space. The lease will be an arm’s length agreement as there is no relationship between landlord and tenant. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties to provide primary health care, other medical specialties care and physical medicine/rehabilitation services including physical therapy. The facility will include four exam rooms, six private therapy cubicles open to a small rehabilitation gym, and the requisite support spaces. Upon Public Health and Health Planning Council (PHHPC) approval of this application, the D&TC will be known as NY Med of Brooklyn.

The ownership of the Center is as follows:

<u>Proposed Operator</u>	
NY Med of Brooklyn, LLC	
<u>Members</u>	
Russell Greenseid, D.C.	28.333%
Matthew B. Weiss, D.C.	28.333%
Steven Soifer, D.C.	28.334%
Sebastian Lattuga, M.D.	7.500%
Steven Touliopoulos, M.D.	7.500%

Ari Bernstein, M.D., who is Board-Certified in Internal Medicine, will serve as Medical Director. The applicant will seek a Transfer and Affiliation Agreement with Interfaith Medical Center.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

NY Med of Brooklyn LLC proposes to certify a diagnostic and treatment center in Kings County to provide the following certified services: Medical Services - Primary Care and Medical Services – Other Medical Specialties. The number of projected visits is 5,386 in Year One and 10,659 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 \$1,089,504 will be met via accumulated funds of the proposed members. NY Med of Brooklyn, LLC has submitted an affidavit that they will provide funding, if necessary, to cover any net operating losses.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$770,912	\$1,525,763
Expenses	<u>\$810,382</u>	<u>\$1,240,098</u>
Net Income	(\$39,470)	\$285,665

## 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 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]
5. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2020 and construction must be completed by June 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](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](mailto: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.

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Background

The primary service area is Bedford – Stuyvesant in northern Kings County. The population of Kings County was 2,504,700 in 2010 and is projected to grow to 2,810,876 by 2025, an increase of 12.2%.

The proposed center will provide Primary Medical Care Services, Orthopedics, Gastroenterology, Pain Management, Pulmonology, Oncology, Endocrinology, Cardiology, Urology, and Physical Medicine and Rehabilitation and will be certified for Primary Care and Other Medical Specialties. The number of projected visits is 5,386 in Year One and 10,659 in Year Three. The center is projecting Medicaid utilization of 35% for the first and third year.

<b>Proposed Operator</b>	NY Med of Brooklyn, LLC
<b>To Be Known As</b>	NY Med of Brooklyn
<b>Site Address</b>	765 Nostrand Avenue Brooklyn, NY 11216 (Kings County)
<b>Specialties</b>	Medical Services – Primary Care Medical Services-Other Medical Specialties
<b>Hours of Operation</b>	Monday through Friday 8:00 AM to 6:00 PM As volume or need indicates the applicant will add Saturday 8:30 AM to 6:00 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	9.44 FTEs / 14.65 FTEs
<b>Medical Director(s)</b>	Ari Bernstein, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Interfaith Medical Center-One Brooklyn Health System 1.5 miles / 6 minutes away

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is higher than the New York State rate.

<b>Hospital Admissions per 100,000 Adults for Overall PQIs</b>		
2016 PQI Rates	Service Area	New York State
All PQI's	1,576	1,363

Source: DOH, 2019

Per HRSA, areas of Kings County are designated as a Health professional Shortage Area and a Medically Underserved Area/population as follows:

- Crown Heights- Bedford-Stuyvesant: Health Professional Shortage Area for Primary Care services
- Bedford-Stuyvesant Service Area: Medically Underserved area

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 NY Med of Brooklyn, LLC are:

<b>Name</b>	<b>Interest</b>
Russell Greenseid, <i>Manager/Member</i>	28.333%
Sebastian Lattuga, <i>Manager/Member</i>	7.500%
Steven Soifer, <i>Manager/Member</i>	28.334%
Steven Touiopoulos, <i>Manager/Member</i>	7.500%
Matthew Weiss, <i>Manager/Member</i>	28.333%

**Mr. Russell Greenseid** is a practicing Chiropractor and Manager of a practice for 20 years. His responsibilities include managing day to day responsibilities such as hiring, fiscal duties, enacted office protocol, and developing an office manual. He has trained new chiropractors and taught employees to work in a multidisciplinary setting. He is responsible for business development, growth, and advertising campaigns.

**Dr. Sebastian Lattuga, M.D.** is the Medical Director of his primary care facility. His responsibilities include managing and promoting patient care; recruits, trains, and supervises physicians and assistants with medical knowledge, professionalism, and continuing education; liaisons with other medical and non-medical departments to develop and improved policy, protocols, and procedures; evaluates budget; and investigates and maintains compliance with all federal and state regulation and codes.

**Mr. Steven Soifer** is an Owner and Operator of a Diagnostic and Treatment facility. He previously was employed as a Healthcare Manager of a managed care organization for over 11 years. He is a licensed Chiropractor.

**Dr. Steven Toulipoulos, M.D.** is a practicing Orthopedic Physician at a group practice. He received his medical degree from State University of New York Downstate Medical Center in Brooklyn. He completed his orthopedic residency at Kings County Hospital Center and his orthopedic surgery residency at Lenox Hill Hospital. He is board certified in Orthopaedic Surgery.

**Mr. Matthew Weiss** is an Owner and Operator of a Diagnostic and Treatment Center for over six years. He is the Chief Operating Officer on an Article 28 Diagnostic and Treatment Center. He is a licensed Chiropractor. He is responsible for the day to day operations of the facility, the financial management, human resources, customer relations, and quality assurance and improvement. He previously oversaw the business operations and day to day management of a managed care organization for over 11 years.

**Dr. Ari Bernstein, M.D.** 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 case 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.

**Dr. Lattuga** disclosed being named in three pending malpractice cases. The three pending malpractice cases are in the discovery phase. On June 18, 2013, the patient alleged that the failure to properly treat an impending cerebral vascular accident. On September 12, 2017, the patient alleged a negligent cervical spinal fusion. On December 20, 2018, the patient alleged a negligent spinal surgery. Dr. Lattuga also disclosed being named in three closed malpractice cases. On November 1, 2011 a patient alleged negligent cervical spine surgery. The case was settled in 2018 with no finding of malpractice and an indemnity of \$240,000 paid. On October 11, 2013, a patient alleged negligent spinal surgery. The case was closed in 2016 with no findings of malpractice and no indemnity paid. On June 25, 2015, a patient alleged negligent spinal fusion and laminectomy. The case was closed in 2018 with no finding of malpractice and no indemnity paid.

**Dr. Touliopoulos** disclosed being named in two pending malpractice suits (August 2017 and September 2018). One patient alleged that she required a revision knee replacement due to complications arising from initial total knee replacement. The second patient alleges a cerebrovascular accident occurred postoperatively.

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

#### Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community. Approval for this project will provide for the additional access to a variety of medical services for residents with the Bedford-Stuyvesant area as well as the surrounding communities in Kings County.

## Financial Analysis

#### Total Project Cost and Financing

Total project cost for renovations and moveable equipment is \$1,089,504, broken down as follows:

Renovation & Demolition	\$695,250
Design Contingency	69,525
Construction Contingency	69,525
Architect /Engineering Fees	54,000
Other Fees	55,000
Moveable Equipment	123,255
Telecommunications	15,000
CON Fee	2,000
Additional Processing Fee	<u>5,949</u>
Total Project Cost	\$1,089,504

Project costs are based on a construction start date of March 1, 2020, and a three-month construction period.

Total project cost will be met via accumulated funds of the proposed members. BFA Attachment A provides the net worth statement of the proposed members of NY Med of Brooklyn, LLC, which shows sufficient liquid assets overall to meet the equity requirements of this application.

## Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date:	July 1, 2019
Premises:	2,805 square feet of space at 765 Nostrand Avenue, Brooklyn NY 11216
Landlord:	Hazel Blue Nostrand, LLC
Tenant:	NY Med of Brooklyn, LLC
Rental:	Fixed rent \$90,000 annually (\$7,500 per month) with a 3% increase at the end of the first lease year and each successive lease year thereafter.
Term:	10 years with three five-year renewal options at a 5% fixed rent escalation.
Provisions:	Tenant shall be responsible for maintenance, taxes, insurance and utilities.

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.

## Operating Budget

The applicant has submitted their first-year and third-year operating budget, in 2019 dollars:

	<b>Year One</b>		<b>Year Three</b>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$165.00	\$248,815	\$164.97	\$492,446
Medicare FFS	\$135.14	36,353	\$134.99	71,948
Medicare MC	\$108.01	116,329	\$107.99	230,234
Medicaid FFS	\$168.88	91,027	\$169.00	180,158
Medicaid MC	\$126.80	170,676	\$126.75	337,797
Private Pay	\$199.84	<u>107,712</u>	\$199.98	<u>213,180</u>
Total Revenue		\$770,912		\$1,525,763
 <u>Expenses</u>				
Operating	\$124.79	\$672,099	\$102.86	\$1,096,415
Capital	<u>25.67</u>	<u>138,283</u>	<u>13.48</u>	<u>143,683</u>
Total Expenses	\$150.46	\$810,382	\$116.34	\$1,240,098
 Net Income/loss				
		<u>(\$39,470)</u>		<u>\$285,665</u>
 Visits				
		5,386		10,659
Cost/Visit		\$150.46		\$116.34

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

<b>Payor</b>	<b>Year One</b>		<b>Year Three</b>	
	<b>Visits</b>	<b>%</b>	<b>Visits</b>	<b>%</b>
Commercial FFS	1,508	28%	2,985	28%
Medicare FFS	269	5%	533	5%
Medicare MC	1,077	20%	2,132	20%
Medicaid FFS	539	10%	1,066	10%
Medicaid MC	1,346	25%	2,665	25%
Private Pay	539	10%	1,066	10%
Charity Care	<u>108</u>	<u>2.%</u>	<u>212</u>	<u>2.%</u>
Total	5,386	100%	10,659	100%

The following is noted with respect to the submitted budget:

- The Medicaid Fee-for-Service rate is based on the Medicaid APG payment methodology's base rate plus the cost of capital, as obtained from the Bureau of D&TC Reimbursement. The applicant used the clinic base rate of \$169.02 for a conservative estimate of the FFS per visit rate.
- Medicaid Managed Care is assumed to be 75% of the Medicaid APG Fee for Service rate. The Center intends to reach out to United Health Care, Fidelis, Healthfirst and Affinity for Medicaid Managed Care contracting.
- Commercial Insurance and Medicare Fee for Service is based on the Medicare Part B fee schedule. Medicare Managed Care is based on 80% of the Medicare FFS rate.

#### Capability and Feasibility

The total project cost is \$1,089,504 and will be met via accumulated funds of the proposed members.

Working capital requirements are estimated at \$206,683 based on two months of third-year expenses and will be satisfied via equity from the proposed members of NY Med of Brooklyn, 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 \$1,296,187

The submitted budget projects a net loss of \$39,470 for the first year and a net income of \$285,665 for the third year. Revenues are based on prevailing reimbursement methodologies for D&TCs. NY Med of Brooklyn, LLC has submitted an affidavit that they will provide funding, if necessary, to cover any net operating losses. The budget appears reasonable.

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

## Attachments

BFA Attachment A	Net Worth Statement of NY Med of Brooklyn, LLC
BFA Attachment B	Pro Forma Balance Sheet, NY Med of Brooklyn, LLC
BHFP Attachment	Map



**Project # 192120-B**  
**Kerestir Health, LLD d/b/a Kerestir Health Center**

**Program:** Diagnostic and Treatment Center    **County:** Orange  
**Purpose:** Establishment and Construction    **Acknowledged:** September 17, 2019

**Executive Summary**

**Description**

Kerestir Health LLC d/b/a Kerestir Health Center, a New York limited liability company, requests approval to establish and construct of an Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 501 Route 208, Monroe (Orange County). The D&TC will be housed in an existing two-story vacant office building that is being renovated for fit-out of the D&TC. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties to provide primary care and other medical specialty care services to both pediatric and adult patients. The proposed service area will be Orange County, with a specific emphasis on the communities surrounding the D&TC including the area known as Kiryas Joel, as well as the town of Monroe.

The proposed ownership of the Center is as follows:

Kerestir Health LLC	
Members	%
Eliezer Lebowitz	33.3334%
David Perlmutter	33.3333%
Yoel Shtosel	33.3333%

Yechiel Zagelbaum, M. D., who is Board-certified in Pediatrics, will serve as Medical

Director. The applicant intends to enter into a Transfer and Affiliation Agreement with Orange Regional Medical Center.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
The number of projected visits is 10,787 in Year One and 21,348 in Year Three, with Medicaid at 65% 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 \$2,441,250 will be met via members' equity.

Budget	Year One	Year Three
Revenues	\$1,310,783	\$2,594,258
Expenses	<u>1,339,261</u>	<u>2,289,394</u>
Gain/Loss	(\$28,478)	\$304,864

## 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 rental agreement, acceptable to the Department of Health. (BFA)
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Lease Agreement, 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 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 construction 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.
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](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](mailto:hospinfo@health.ny.gov) [HSP]
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]

Council Action Date

**December 12, 2019**

## Need and Program Analysis

### Project Proposal

The proposed center will provide primary medical care services and other medical specialties, Orthopedics, Gastroenterology, Podiatry, Pain Management, Pulmonology, Oncology, Endocrinology, Cardiology, Urology, and Psychiatry, Gynecology, Dermatology, Infectious Disease, Radiology, Ophthalmology, Internal Medicine, specifically Pediatrics and other non- primary care clinical services.

<b>Proposed Operator</b>	Kerestir Health, LLC
<b>To Be Known As</b>	Kerestir Health Center
<b>Site Address</b>	501 Route 208 Monroe, NY 10950 (Orange County)
<b>Specialties</b>	Medical Services – Primary Care Medical Services-Other Medical Specialties
<b>Hours of Operation</b>	Monday through Friday 8 AM to 6 PM If needed will add Sunday 8:30 AM to 6 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	16.30 FTEs / 30.30 FTEs
<b>Medical Director(s)</b>	Yechiel Zagelbaum, D.O.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Orange Regional Medical Center 14.2 miles /13 minutes away

### Background and Analysis

The proposed service area will be Orange County, with a specific emphasis on the communities surrounding the D&TC including the area known as Kiryas Joel. The area known as Kiryas Joel is made up predominantly of Orthodox Jewish families. The population of Orange County was 372,813 in 2010 and is projected to grow to 391,144 by 2025, an increase of 4.9%.

### Prevention Quality Indicators-PQIs

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 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	1,508	1,363

Source: DOH, 2019

The Village of Kiryas Joel is a Medically Underserved Area per HRSA.

The number of projected visits is 10,787 in Year One and 21,348 in Year Three. The center is projecting Medicaid utilization of 65% for the first and 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 Kerestir Health, LLC are:

<u>Name</u>	<u>Interest</u>
Eliezer Lebowitz, Manager/Member	33.3334%
Yoel Shtosel, Member	33.3333%
David Perlmutter, Member	33.3333%

**Mr. Eliezer Lebowitz** has approximately three years of experience as a Consultant to Article 28 facilities, his responsibilities included recruiting and hiring of medical and other staff, arranging the schedules of physicians, providing oversight of financial management, and the management of the facilities. Mr. Lebowitz previously was a Manager of a Home Care business.

**Mr. Yoel Shtosel** has approximately 5 years' experience as the President of a marketing services business. He was the previous President/Owner of a grocery store. As the Owner/Manager of the two businesses, he has been responsible for operations including the hiring and firing of employees, setting of schedules, purchasing of materials, establishing budgets, and complying with applicable State and Federal laws.

**Mr. David Perlmutter** is President/Manager of a computer supply company for approximately 8 years. He is currently in charge of all facets of the computer supply business, including hiring, scheduling of staff, purchasing, financial planning. He was previously employed at a computer supply business for approximately 7 years. He was President/Manager and oversaw all aspect of business including staffing, purchasing, and finances. Mr. Perlmutter reports for the past 15 years he ran his own businesses and has been responsible for managing all aspects of a successful organization. My experience which is applicable to a health facility, including hiring and managing employees, purchasing, and compliance with all applicable State and Federal regulations. He has had hands-on, day to day oversight of running his business.

**Dr. Yechiel Zagelbaum** is the proposed Medical Director. He is a practicing Pediatrician with approximately 20 years of experience. He is board-certified in Pediatrics. He received his medical degree from the New York College of Osteopathic Medicine in Old Westbury. He completed his pediatric residency at Maimonides Medical Center. He has owned a pediatric private practice called Williamsburg Pediatrics, PC. for 17 years.

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

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

#### Conclusion

The addition of primary care and other medical specialties will enhance access to the population in the service area. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

## Financial Analysis

### Lease Agreement

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

Premises:	5,400 total sq. ft. located at 501 Route 208, Monroe, New York 10950, consisting of two floors: Floor 1 consists of 2,500 sq. ft. and Floor 2 consists of 2,900 sq. ft.
Landlord:	17M Goldstar, LLC
Tenant:	Kerestir Health LLC
Rental:	Floor 1: Base rent of \$87,500 per year (\$35.00 per sq. ft.) for the first year with a 1.5% increase thereafter. Floor 2: \$108,000 annualized (\$37.24 sq. ft.)
Term:	10 years
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant as the respective entities have members in common. Letters from two New York real estate brokers were submitted attesting to the reasonableness of the rent.

### Total Project Costs and Financing

Total project costs are estimated at \$2,441,250 broken down as follows:

Renovation & Demolition	\$1,620,232
Design Contingency	162,023
Construction Contingency	162,023
Planning Consultant Fees	31,461
Architect/Engineering Fees	125,843
Other Fees	100,000
Movable Equipment	199,326
Telecommunications	25,000
CON Application Fee	2,000
Additional CON Processing Fee	13,342
Total Project Cost	\$2,441,250

Project costs are based on a construction start date of July 1, 2020, with a six-month construction period. The applicant will fund the total project cost via equity (landlord contribution and members' equity). The landlord has provided a \$1,250,000 contribution. The remaining \$1,191,250 will be funded by the applicant members.

BFA Attachment A is a summary of the personal Net Worth Statements of the applicant members, which indicates sufficient liquid resources exist to fund the equity requirement for project costs.

## Operating Budget

The applicant has submitted their first and third-year operating budget, in 2019 dollars, as shown below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial-FFS	\$164.95	\$177,978	\$164.99	\$352,249
Medicare-FFS	\$150.00	242,698	\$150.01	480,339
Medicare-MC	\$120.07	64,719	\$120.05	128,090
Medicaid-FFS	\$141.73	76,390	\$141.70	151,189
Medicaid-MC	\$106.23	687,515	\$106.22	1,360,705
Private Pay	\$189.76	<u>61,483</u>	\$190.13	<u>121,686</u>
Total Revenue		\$1,310,783		\$2,594,258
 <u>Expenses</u>				
Operating	\$102.07	\$1,100,985	\$96.08	\$2,051,118
Capital	<u>\$22.09</u>	<u>\$238,276</u>	<u>\$11.16</u>	<u>238,276</u>
Total Expenses	\$124.16	\$1,339,261	\$107.24	\$2,289,394
Net Income		<u>(\$28,478)</u>		<u>\$304,864</u>
Visits		10,787		21,348
Cost/Visit		\$124.16		\$107.24

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

<u>Payor</u>	<u>%</u>
Commercial - FFS	10%
Medicare - FFS	15%
Medicare - MC	5%
Medicaid - FFS	5%
Medicaid - MC	60%
Private Pay	3%
Charity	<u>2%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service is based on the base Medicaid APG rate plus cost of capital as obtained from the Bureau of D&TC Reimbursement.
- Medicare Managed Care is assumed to 75% of Medicaid APG Fee for Service rate.
- Commercial Insurance and Medicare Fee for Service is based on Medicare Part B Fee Schedule. Medicare Managed Care is based on 80% of the Medicare Part B Fee Schedule.
- Expenses are based predominantly of labor costs for practitioners with a staffing pattern that includes 3.85 FTE physicians in year one and 7.62 physicians in year three as the facility ramps up utilization. Expenses appear reasonable

## Capability and Feasibility

The project costs of \$2,441,250 will met with from David Perlmutter (landlord contribution, construction in progress) of \$1,250,000 and the remaining equity of \$1,191,250 provided by the members.

Working capital requirements are estimated at \$381,566 based on two months of third year expenses and will be satisfied via members' equity. BFA Attachment A is the net worth of the proposed members, which indicates the availability of sufficient funds for the level of equity. The applicant has submitted an affidavit indicating that the equity will be provided disproportionate to ownership interests. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$2,822,816.

The submitted budget indicates the facility will generate a loss of \$28,478 and income of \$304,864 in the first and third years, respectively. The first-year loss will be offset from working capital. Revenues are based on prevailing reimbursement methodologies for D&TC services. The submitted budget appears reasonable.

#### Conclusion

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

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## Attachments

BFA Attachment A	Net Worth of Proposed Members-
BFA Attachment B	Pro Forma Balance Sheet, Kerestir Health Center
RNR Attachment A	Map



Project # 192013-E  
Fairview Nursing Care Center, Inc.

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** August 2, 2019

**Executive Summary**

**Description**

Fairview Nursing Care Center, Inc., a proprietary business corporation that operates a 200-bed, Article 28 residential health care facility (RHCF) located at 69-70 Grand Central Parkway, Forest Hills (Queens County), requests approval to transfer 99% ownership interest to one new shareholder from one withdrawing shareholder and one remaining shareholder. Current shareholder Abraham N. Klein died in 2012 bequeathing all his ownership interest in the Center to his wife, Sarah Dinah Klein, the Executrix of his estate. Due to Ms. Klein's advanced age and her wish to transfer economic interest in the corporation to their son, Yaakov Klein, all of Abraham Klein's 100 shares (50% stock interest) in Fairview Nursing Care Center, Inc. and 98 shares (49% stock interest) of Ms. Klein's ownership interest will be transferred to Yaakov Klein. There will be no change in beds or services provided.

Ownership of the Fairview Nursing Care Center, Inc. before and after the requested change is as follows:

<u>Stockholders</u>	<u>Current</u>	<u>Proposed</u>
Sara Dina Klein	50%	1%
Abraham Klein (Estate)	50%	0%
Yaakov Klein	---	99%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Yaakov Klein currently has 40% ownership interest in KFG Operating Two, LLC, a New York limited liability company that operates Bensonhurst Center for Rehabilitation and Healthcare, a 200-bed, Article 28 RHCF located at 1740 84<sup>th</sup> Street, Brooklyn (Kings County).

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

There is no need review 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**

There are no project costs associated with this application. The aggregate purchase price for the 198 shares is \$24,750,000 and will be funded via two promissory notes—one at \$12,500,000 for Abraham Klein's shares and one at \$12,250,000 for Sara Klein's shares. There is no down payment. The promissory notes are interest only at 2% for 10 years, after which they will either be refinanced, or the terms will be extended. Upon Ms. Klein death, her two shares (1% ownership interest) will be gifted to Yaakov Klein and the outstanding balance of the promissory notes will be forgiven.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$34,913,000	\$34,516,000
Expenses	<u>30,667,032</u>	<u>30,920,032</u>
Gain	\$4,245,968	\$3,595,968

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the amended bylaws, acceptable to the Department. (CSL)
2. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)

**Approval conditional upon:**

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

Council Action Date

**December 12, 2019**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Fairview Nursing Care, Inc.	Same
Address	69-70 Grand Central Parkway Forest Hills, NY 11375	Same
RHCF Capacity	200	Same
ADHCP Capacity	100 (offsite)	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Sara Dina Klein 50% Abraham Noach Klein (Estate) 50%	Yaakov Klein 99% Sara Dina Klein 1.0%

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

### Character and Competence - Assessment

Yaakov Klein has a bachelor's degree from Yeshiva Machzikei Hadas. He has been employed as the Director of Operations at Fairview Nursing Care Center, Inc. since 2013. Prior to this he was employed as a teacher in Israel. Mr. Klein discloses the following health facility interests:

Bensonhurst Center for Rehabilitation and Healthcare (50%)	02/2012 to present
Fairview Adult Day Care Program (offsite) (50%)	06/2013 to present

A review of the above facilities indicates there were no enforcements or Civil Money Penalties for the period of ownership.

### Quality Review

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measure</b>	<b>Staffing</b>
Fairview Nursing Care Center <i>(subject facility)</i>	Current	****	***	*****	**
Bensonhurst Center for Rehabilitation and Healthcare	Current 02/2012	***** ***	***** ***	***** ****	** ***

**Data date:** 10/2019

### Conclusion

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

## Financial Analysis

### Stock Purchase Agreements

The applicant has submitted executed Stock Purchase Agreements (SPA) to acquire the stock interests of the RHCF. The agreements will become effectuated upon Public Health and Health Planning Council (PHHPC) approval of this CON. The terms are summarized below:

Date:	October 3, 2019
Seller:	The Estate of Abraham N. Klein
Purchaser:	Yaakov Klein
Terms:	100 shares of common stock for \$12,500,000 at 2% per year (interest only) on the outstanding sum for a period of 10 years. After 10 years, the loan will be reviewed and either refinanced or the term will be extended. There is no down payment.
Purchase Amount:	\$12,500,000 via promissory note

Date:	October 3, 2019
Seller:	Sara Dina Klein
Purchaser:	Yaakov Klein
Terms:	98 shares of common stock for \$12,250,000 at 2% per year (interest only) on the outstanding sum for a period of 10 years. After 10 years the loan will be reviewed and either refinanced or the term will be extended. There is no down payment.
Purchase Amount:	\$12,250,000 via promissory note

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 October 29, 2019, the facility had no outstanding Medicaid overpayment liabilities.

### Promissory Notes

The applicant has submitted executed Promissory Notes to purchase the stock interests of the RHCF. The Promissory Notes will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	October 3, 2019
Obligor:	Yaakov Klein
Obligee:	Estate of Abraham Klein
Terms:	A loan to be financed by the obligee at 2% interest (interest only) on the outstanding sum for a period of 10 years. After the 10 years the loan will be reviewed and either refinanced or the term will be extended. There will be no down payment.
Amount:	\$12,500,000

Date:	October 3, 2019
Obligor:	Yaakov Klein
Obligee:	Sara Dina Klein
Terms:	A loan to be financed by the obligee at 2% interest (interest only) on the outstanding sum for a period of 10 years. After the 10 years the loan will be reviewed and either refinanced or the term will be extended. There will be no down payment.
Amount:	\$12,250,000

## Operating Budget

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

	Current Year (2018)		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
<u>Inpatient Revenue</u>						
Commercial-MC	\$418.60	\$2,479,816	\$418.52	\$2,499,000	\$418.56	\$1,912,000
Medicare	\$671.12	11,613,785	\$671.08	11,703,000	\$671.23	11,235,000
Medicaid	\$342.41	15,298,597	\$342.40	15,417,000	\$342.65	16,389,000
Private Pay	\$449.48	733,095	\$449.18	738,000	\$449.63	424,000
Total Inpt Revenue		\$30,125,293		\$30,357,000		\$29,960,000
<u>Outpatient Revenue</u>	<u>Per Vst.</u>	<u>Total</u>	<u>Per Vst.</u>	<u>Total</u>	<u>Per Vst.</u>	<u>Total</u>
Commercial-FFS	\$146.73	\$3,227,525	\$146.73	\$3,286,000	\$146.73	\$3,286,000
Medicaid-FFS	\$126.35	1,247,719	\$126.34	1,270,000	\$126.34	1,270,000
Total Outpt Revenue		\$4,475,244		\$4,556,000		\$4,556,000
Other Opr Revenue		15,154		0		0
Total Revenue		\$34,615,691		\$34,913,000		\$34,516,000
<u>Inpatient Expense</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Operating	\$328.08	\$22,814,631	\$329.60	\$23,098,000	\$332.65	\$23,312,000
Capital	36.22	2,518,738	36.25	2,540,032	36.30	2,544,032
Total Inpt Expense	\$364.30	\$25,333,369	\$365.84	\$25,638,032	\$368.96	\$25,856,032
<u>Outpatient Expense</u>	<u>Per Vst.</u>	<u>Total</u>	<u>Per Vst.</u>	<u>Total</u>	<u>Per Vst.</u>	<u>Total</u>
Operating	\$126.03	\$4,016,816	\$126.24	\$4,096,000	\$126.73	\$4,112,000
Capital	28.47	907,324	28.75	933,000	29.34	952,000
Total Outpt Expense	\$154.50	\$4,924,140	\$154.99	\$5,029,000	\$156.07	\$5,064,000
Total Expense		\$30,257,509		\$30,667,032		\$30,920,032
Net Income		\$4,343,028		\$4,245,968		\$3,595,968
<u>Utilization</u>						
Patient Days		69,539		70,079		70,079
Outpatient Visits		31,872		32,447		32,447
Occupancy %		95.26%		96.00%		96.00%
Break-even		81.53%		82.57%		84.48%

The following is noted with respect to the submitted budget:

- Private pay is comprised of revenue from cash or a subsidiary policy.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate.
- Medicare revenues include fee-for-service, managed care, and Medicare Part B
- The Medicare, Medicaid, and private pay/other rates are based on the facility's actual 2018 rates.
- The current year reflects the facility's 2018 revenues and expenses based on 2018 certified financials.
- Breakeven utilization is projected at 82.57% or 59,514 patient days for Year One, and 84.48% or 61,668 patient days for Year Three.
- The facility's Medicaid rate effective July 1, 2019, which was approved on October 9, 2019, is now revised downward to \$303.87 (reflects updated case mix). The current lower rate will therefore, impact year one and year three projections reducing first and third year revenues by \$1,734,949 and \$1,854,898, respectively.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial	8.52%	8.52%	6.52%
Medicare	24.89%	24.88%	23.88%
Medicaid	64.25%	64.25%	68.25%
Private Pay	2.35%	2.34%	1.35%
Total	100.00%	100.00%	100.00%

- The facility's Medicaid admissions of 9.0% in 2017 and 11.9% in 2018 did not exceed Queens County's 75% threshold rates of 23.8% for 2017 and 24.6% in 2018. Fairview Nursing Care Center, Inc. is located in a neighborhood with a median household income that is higher than the average threshold. In an effort to reach lower than average household income families, the applicant has implemented a marketing program and an outreach effort to the broader community that it serves. These efforts will include meeting with local community organizations as well as all of the referring healthcare provider organizations to the Center.

### Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net income of \$4,245,968 and \$3,595,968 for the first and third years, respectively, subsequent to the change in membership interest. BFA Attachment E is the revised first-year and third-year budgets based on the July 2019 current Medicaid rate for the facility promulgated October 9, 2019. As shown, budgeted revenues would decrease by \$1,734,949 in Year One and \$1,854,898 in Year Three, resulting in a net operating income of \$2,511,019 and \$1,741,07, respectively. The budget appears reasonable.

Working capital requirements are estimated at \$5,111,172, which is equivalent to two months of first year expenses and will be met through operations. BFA Attachment B is Fairview Nursing Care Center, Inc.'s financial summary. As of June 30, 2019, current assets (\$24,101,111) less current liabilities (\$6,786,562) equals \$17,314,549, which is sufficient to fund working capital needs.

As shown on BFA Attachment B, the facility maintained a positive working capital position, a positive net asset position, and an average net operating income of \$5,302,824 for the years 2017 and 2018. As of June 30, 2019, the facility maintained a positive working capital position, a positive net asset position, and had a net operating income of \$6,936,204.

BFA Attachment C is the financial summary of Bensonhurst Center for Rehabilitation and Healthcare, Yaakov Klein's affiliated home. The facility maintained a positive working capital position, a net asset position, and a net operating income of \$7,850,065 in 2018.

### Conclusion

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

## Attachments

- BFA Attachment A Net Worth Statement of Proposed Members
- BFA Attachment B Financial Summary - Fairview Nursing Care Center, Inc.
- BFA Attachment C Affiliated Nursing Home - Bensonhurst Center for Rehabilitation and Healthcare
- BFA Attachment D Revised First and Third Year budgets based on 2019 Medicaid Rate



Project # 191101-E

Underwood Gardens Homecare, LLC  
d/b/a Underwood Manor LHCSA

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Cattaraugus  
**Acknowledged:** March 7, 2019

## Executive Summary

### Proposal

Underwood Gardens Homecare, LLC d/b/a Underwood Manor LHCSA, a limited liability company, requests approval for a change in ownership of Ronald R. Johnson d/b/a Underwood Manor, a sole proprietorship LHCSA. This LHCSA is associated with the Assisted Living Program known as Underwood Manor. The LHCSA and the ALP will have identical ownership. The applicant will be restricted to serving the residents of Chautauqua County from an office located at 4460 Union Hill Road, RD#1, Hinsdale, New York 14743.

The applicant will provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care

## Recommendations

Office of Primary Care and Health Systems Management

**Approval, contingent upon:**

1. The submission of documentation to verify the approval of ACF Application 3133OFD2. [CHA]
2. The submission of an executed copy of the purchase and sale agreement, acceptable to the Department. [CSL]

**Approval, conditional upon:**

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

Council Action Date  
December 12, 2019

## Review

### Character and Competence

The membership of Underwood Gardens Homecare, LLC d/b/a Underwood Manor LHCSA comprises the following individuals:

**Ronald R. Johnson** – 51%

President/Chief Executive Officer, Human Services Management Inc.

Affiliations

Ronald R. Johnson d/b/a Underwood Manor (LHCSA)

Johnson Adult Homes - Forestville (Adult Home, 1962-2014)

Underwood Manor (Adult Home, 1990-present)

**Eili Kaganoff**, PhD, LNHA, LCSW - 49%

Managing Member, Underwood Gardens Management, LLC

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The Bureau of Professional Credentialing has indicated that Eili Kaganoff, NHA license 05520, holds an NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

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

A seven-year review of the operations of the affiliated facilities/agencies was performed as a part of this review.

**Underwood Manor (Adult Home)** was fined \$1,300 pursuant to a Stipulation and Order, dated March 22, 2016, for surveillance findings on November 28, 2014 and June 22, 2015. Deficiencies were found under 18 NYCRR 487 Social Services.

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.



Project # 192006-E

Marchand Home Care at Sharon Springs

**Program:** LHCSA

**County:** Schoharie

**Purpose:** Establishment

**Acknowledged:** August 1, 2019

## Executive Summary

### Proposal

Marchand Home Care at Sharon Springs LLC d/b/a Marchand Home Care at Sharon Springs, a limited liability company, requests approval for a change in ownership of Marchand Manor, LLC d/b/a Marchand Manor, a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be known as Marchand Manor. The LHCSA and the ALP will have identical ownership. The applicant will be restricted to serving the residents of Marchand Manor (ALP) in Schoharie County from an office located at 121 Main Street, Route 10, Sharon Springs, New York 13459.

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care

## Recommendations

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval of ACF Application 190003, acceptable to the Department. [CHA]

**Approval conditional upon:**

1. The agency will be restricted to serving the residents of the Assisted Living Program known as Marchand Manor. [CHA]

Council Action Date

**December 12, 2019**

## Review

### Character and Competence

The membership of Marchand Home Care at Sharon Springs LLC includes the following individuals:

**Michael Zyskind**, LNHA (NJ & NY) - 50%  
Administrator, Fishkill Center for Rehabilitation and Nursing

**Eili Kaganoff**, PhD, LNHA (NY & OH), LCSW - 50%  
Managing Member, Underwood Gardens Management, LLC  
Regional Administrator, Embassy Healthcare

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The Bureau of Professional Credentialing has indicated that Eili Kaganoff, NHA license #05520, holds an NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Ohio Department of Aging has indicated that Eili Kaganoff, LNHA license #7259, holds an LNHA license in good standing and the Board of Executives of Long-Term Services & Supports has never taken disciplinary action against this individual or his license.

The Bureau of Professional Credentialing has indicated that Michael Zyskind, NHA license #05800, holds an NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The New Jersey Department of Health has indicated that Michael Zyskind holds LNHA license #3237 and is in good standing.

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

A seven-year review of the operations of Marchand Manor (LHCSA) indicates no enforcements for the review period.

### 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.