

REVISED 8/18/2023

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

August 24, 2023

Public Health Committee – 10:15 a.m. – 12:15 p.m.

*Establishment and Project Review Committee – **convenes at 12:15 p.m.***

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

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

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231049 C	Montefiore Nyack (Rockland County)
2.	231240 C	Lenox Hill Hospital (New York County)
3.	231254 C	Rome Memorial Hospital, Inc (Oneida County)
4.	231273 C	Flushing Hospital Medical Center (Queens County)

Ambulatory Surgery Centers - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231274 C	New Hyde Park Endoscopy (Nassau County)

Diagnostic and Treatment Centers -Construction

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231066 C	Open Door Family Medical Center, Inc (Westchester County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 4

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231161 B	Queens Endovascular Center LLC (Queens County)
2.	231233 E	Buffalo Surgery Center, LLC (Erie County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 5

	<u>Number</u>	<u>Applicant/Facility</u>
1.	221185 E	City Wide Health Facility Inc. (Kings County)
2.	222153 B	CareFullMD Beacon Inc. (Dutchess County)
3.	231113 E	WNY Medical Management (Erie County)
4.	231208 B	Bronx Community Health Network, Inc. (Bronx County)
5.	231218 B	Moses Health Center (Bronx County)
6.	231223 B	JAY Health, Inc. (Queens County)
7.	231265 B	GMZY Health Management (Orange County)

Dialysis Services - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 211108 E	Empress Dialysis, LLC d/b/a Brooklyn Community Dialysis (Kings County)
2. 211109 E	Latsch Dialysis, LLC d/b/a Westchester Home Training (Westchester County)

C. Application for Construction of Health Care Facilities/Agencies

Certified Home Health Agencies - Construction

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 231104 C	Health Quest Home Care, Inc. (Certified) (Dutchess County)

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

Certified Home Health Agencies - Establish/Construct

Exhibit # 8

<u>Number</u>	<u>Applicant/Facility</u>
1. 231234 E	Visiting Nurse Service of Ithaca & Tompkins County Inc (Tompkins County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 9

<u>Number</u>	<u>Applicant/Facility</u>
1. 231044 E	Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing (Sullivan County)

Home Care Service Agency Licensures

Exhibit # 10

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>
1. 222102 E	NAE Edison, LLC d/b/a Edison Home Health Care/Concierge Living (Geographical Service Area: Allegany, Bronx, Cattaraugus, Chautauqua, Dutchess, Erie, Genesee, Kings, Monroe, Nassau, New York, Niagara, Orange, Orleans, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester and Wyoming Counties)

2. 222195 E Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold
(Geographical Service Area: Bronx, Dutchess, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)
3. 222263 E Visiting Nurses Home Care
(Geographical Service Area: Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington Counties)
4. 231028 E Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor Home Care
(Geographical Service Area: Monroe County)

E. Certificates

Exhibit # 11

Certificate of Dissolution

Applicant

Folts Home (Herkimer County)

Certificate of Amendment of the Certificate of Incorporation

Applicant

Faxton-St. Luke's Healthcare (Oneida County)

Long Island FQHC, Inc. (Nassau County)

St. Elizabeth Medical Center (Oneida County)



Project # 231049-C
Montefiore Nyack

Program: Hospital
Purpose: Construction

County: Rockland
Acknowledged: February 22, 2023

Executive Summary

Description

Montefiore Nyack Hospital, a voluntary, not-for-profit 375-bed hospital at 160 North Midland Avenue Nyack, New York, requests approval of a new dual single specialty ambulatory surgery extension clinic for orthopedics and pain management at 3 Centerock Road, West Nyack, New York.

This project is part of an initiative to certify a Musculoskeletal Center in Rockland County to reduce outmigration and address the anticipated growth in joint replacement and ambulatory spine surgeries. The proposed Center will house a state-of-the-art ambulatory surgery and imaging center, operated by Montefiore Nyack Hospital, a physical therapy center operated by Burke Rehabilitation Hospital, and an orthopedics spine and pain practice, operated by Montefiore Einstein Advanced Care.

OPCHSM Recommendation

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

Need Summary

The applicant projects 6,421 procedures in Year One and 8,055 in Year Three, with Medicaid at 8% and Charity Care at 6%.

Program Summary

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

Financial Summary

Total project cost of \$19,293,934 will be met with \$1,929,393 of equity from operations of Montefiore Nyack Hospital, an intercompany loan from Montefiore Medical Center of \$12,858,933 at an interest rate of 4.25% for twelve years, and a tenant improvement allowance of \$4,505,608, financed through a promissory note at an interest rate of 7.63% for a twenty-year term.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows include Revenues, Expenses, Excess Revenues over Expenses.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on February 1, 2023.

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 intercompany loan that is acceptable to the Department of Health. [BFA]
3. Submission of the tenant improvement allowance loan that is acceptable to the Department of Health. [BFA]
4. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.20 LSC Chapter 20 New Ambulatory Healthcare Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **January 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **October 15, 2024**, 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 approved 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

September 7, 2023

Need Analysis

Background and Analysis

The primary service area is Rockland County. The population of Rockland County is projected to increase to 352,953 by 2028 based on Cornell Program on Applied Demographics estimates. Based upon 2021 Census Population estimates from the American Community Survey, the demographics for the primary service are noted below, including a comparison with New York State.

Demographics	Primary Service Area	New York State
Total Population-2021 Estimate	336,485	20,114,745
Hispanic or Latino (of any race)	18.1%	19.2%
White (non-Hispanic)	62.9%	54.7%
Black or African American (non-Hispanic)	10.8%	13.9%
Asian (non-Hispanic)	5.9%	8.6%
Other (non-Hispanic)	2.4%	3.6%

According to Data USA, in 2020, 95.3% of the population of Rockland County had health coverage as follows:

Employer Plans	45.8%
Medicaid	26.7%
Medicare	11.6%
Non-Group Plans	11%
Military or VA	0.226%

This project is part of an initiative to certify a Musculoskeletal Center in Rockland County in an effort to reduce outmigration and in anticipation of growth in joint replacement and spinal ambulatory surgeries. Currently, there are no hospital extension clinics providing ambulatory surgery services operating in Rockland County. There is just one ambulatory surgery center, Advanced Surgery, located 4.5 miles and 7 minutes away which provides multi-specialty surgery services.

The applicant projects 6,421 procedures in the first year and 8,055 in the third, with Medicaid at 8% and Charity Care at 6%. By year three, the applicant projects utilization of 25% orthopedic surgery, 26% pain management surgery, and 49% imaging services. The table below shows the projected payor source utilization for years 1 and 3. The applicant indicated that the payor mix and Medicaid projections are based on the cases that currently migrate to New Jersey.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	321	5.00%	403	5.00%
Commercial MC	1,991	31.00%	2,497	31.00%
Medicare FFS	1,862	29.00%	2,336	29.00%
Medicare MC	963	15.00%	1,208	15.00%
Medicaid FFS	64	1.00%	81	1.01%
Medicaid MC	499	6.99%	564	7.00%
Private Pay	64	1.00%	81	1.01%
Charity Care	193	3.01%	242	3.00%
Other	321	5.00%	403	5.00%
Bad Debt	193	3.01%	240	2.98%

The center will have contracts with the following Medicaid Managed Care plans: Affinity, Empire HealthChoice HMO, Health Insurance Plan of Greater NY, MVP, NY Quality Healthcare Corporation, United Healthcare of NY, Wellcare, Fidelis, HealthFirst, and Health Plus Amerigroup. The center will work collaboratively with local Federally Qualified Health Centers such as Refuah, Sun River Health, and Hudson River Healthcare to provide service to the under-insured in their service area.

Conclusion

Approval of this project will improve access to orthopedic and pain management surgery as well as imaging services in an outpatient setting for the residents of Rockland County.

Program Analysis

Program Proposal

Montefiore Nyack Hospital (Nyack), a not-for-profit hospital with 375-beds located at 160 North Midland Avenue, Nyack (Rockland County), seeks approval to certify a new Ambulatory Surgery extension clinic to be located at 3 Centerock Road, West Nyack (Rockland County), New York 10994. The proposed facility will be certified for Ambulatory Surgery Single Specialty-Orthopedics, Other Medical Specialties for MRI services, and Ambulatory Single Specialty Pain Management.

The goals of the project are to: improve patient access to orthopedics, orthopedic surgery, and imaging for the residents of Rockland County; improve the continuity of care within one health system and region to achieve better outcomes by decreasing the outmigration of orthopedic cases; and facilitate the transformation of the healthcare delivery system, allowing Nyack and MHS to achieve value-based goals in the Hudson Valley region.

The Applicant reports that musculoskeletal diseases, as well as spinal disorders, will see significant growth in the next 10-20 years, and there is a shift to treat these disorders in the outpatient ambulatory care setting. This is driven by the Centers for Medicare and Medicaid Services (CMS) three musculoskeletal codes from the IPO list. Payers are also shifting to the outpatient care setting. Finally, health systems are responding to the mounting competition from physician-owned ASCs. This project addresses physician alignment, as well as current long wait times for elective orthopedic procedures.

The Applicant states that there is a gap in ambulatory surgery services in Rockland County, which leads to more than 46% of outmigration or 7,000 cases annually to other New York surgery centers and an estimated equal number leaving for New Jersey. This represents nearly \$20M in contribution margin to Montefiore Nyack Hospital rates as a proxy. Therefore, an ASC would have a significant first-to-market advantage, serve as a physician recruitment tool, and optimize patient and caregiver experience.

Staffing is expected to increase as a result of this construction/expansion project by 28.5 FTEs at Year One Year and Year Three of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Prevention Agenda

Montefiore Nyack Hospital is seeking approval to certify an extension clinic that provides orthopedic care in Rockland County at 3 Centerock Rd, West Nyack, NY 10994. The extension clinic certification aims to improve the quality of life of patients with musculoskeletal conditions through improving:

- Patient access to high-quality orthopedic, orthopedic surgery, and imaging for residents of Rockland County, including the underserved residents of the service area.
- Continuity of care and outcome by decreasing outmigration of orthopedic cases from the local service area to other areas and counties in New York and New Jersey.

Montefiore Nyack Hospital is implementing multiple interventions to support the priorities of the 2019 - 2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Prevent Communicable Diseases

The certification of the new extension clinic advances the Prevention Agenda priority 'Prevent Chronic Diseases', Focus Area 2. Physical Activity, overarching goal 'Reduce obesity and the risk of chronic diseases', which is indicated in Montefiore Nyack Hospital's application and the Community Service Plan (CSP).

In 2021, Montefiore Nyack Hospital spent \$44,915 on community health improvement services, representing 0.01 % 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 cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$19,293,934, further broken down as follows:

New Construction	\$10,176,551
Design Contingency	468,248
Construction Contingency	338,179
Fixed Equipment	87,117
Architect/Engineering Fees	542,467
Construction Manager Fees	390,206
Other Fees (Consultant)	323,802
Moveable Equipment	6,608,376
Telecommunications	251,463
CON Fees	2,000
Additional Processing Fees	<u>105,525</u>
Total Project Cost	\$19,293,934

The applicant's financing plan appears as follows:

Equity (Operations of Montefiore Nyack)	\$1,929,393
Intercompany Loan (4.25% for twelve years)	\$12,858,933
Tenant improvement allowance loan (7.63% for a 20-year term)	\$4,505,608

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized as follows:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Commercial FFS	\$4,551	\$1,460,778	\$4,557	\$1,836,556
Commercial MC	\$3,623	\$7,213,608	\$3,310	\$8,264,500
Medicare FFS	\$2,114	\$3,936,179	\$1,965	\$4,591,389
Medicare MC	\$1,664	\$1,602,625	\$1,520	\$1,836,556
Medicaid FFS	\$1,230	\$78,724	\$1,134	\$91,828
Medicaid MC	\$1,341	\$602,290	\$1,303	\$734,622
Private Pay	\$2,460	\$157,447	\$2,267	\$183,656
Charity Care	\$82	\$15,745	\$76	\$18,366
Other	\$2,110	<u>\$677,322</u>	\$2,005	<u>\$808,084</u>
Total Revenues		\$15,744,718		\$18,365,557
Expenses:				
Operating	\$1,267.13	\$8,136,237	\$1,388.78	\$11,186,593
Capital	<u>\$402.92</u>	<u>\$2,587,137</u>	<u>\$410.74</u>	<u>\$3,308,534</u>
Total Expenses	\$1,670.05	\$10,723,374	\$1,799.52	\$14,495,127
Excess Revenues		\$5,021,344		\$3,870,430
Utilization: (Proc)		6,421		8,055

The following is noted with respect to the operating budget:

- Expense projections are based on the current experience of Montefiore Nyack Hospital for similar procedures that are currently performed at the hospital as well as input from a consultant that has extensive experience in developing and operating ambulatory surgery centers.
- Utilization projections are based on the current volume of procedures that the orthopedic surgeons are performing, as well as planned growth.
- Revenues were calculated based on Montefiore Nyack Hospital's current reimbursement rates. The charity care projections are based on Montefiore Nyack Hospital's experience with these type of services/procedures.

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

	<u>Year One</u> 2024	<u>Year Three</u> 2026
Commercial Fee for Service	5.00%	5.00%
Commercial Managed Care	31.01%	31.00%
Medicare Fee for Service	29.00%	29.00%
Medicare Managed Care	15.00%	15.00%
Medicaid Fee for Service	1.00%	1.01%
Medicaid Managed Care	6.99%	7.00%
Private Pay	1.00%	1.01%
Charity Care	3.01%	3.00%
Other	5.00%	5.00%
Bad Debt	<u>3.01%</u>	<u>2.98%</u>
Total	100.00%	100.00%

Capability and Feasibility

The total project cost of \$19,292,934 will be met as follows: Equity of \$1,929,393 from operations of Montefiore Nyack Hospital. Presented as BFA Attachment A are the 2021 Certified Financials Statements and 2022 Internal Financial Statements of Montefiore Nyack Hospital, indicating sufficient funds for the equity contribution. There will be a tenant improvement loan of \$4,505,608 at an interest rate of 7.63% for a 20-year term and an intercompany loan of \$12,858,933 at an interest rate of 4.25% for a twelve-year term. BFA Attachments A and B indicate the availability of sufficient funds to provide the intercompany loan.

The submitted budget projects a net income of \$5,021,344 and \$3,870,430 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown in Attachment A, Montefiore Nyack Hospital had an average negative working capital position and an average positive net asset position during the period. Also, the hospital incurred average operating losses of \$5,591,000 during the periods shown. The applicant has indicated that losses were a result of the hospital serving large numbers of low-income patients from within its catchment area.

As shown in Attachment B, Montefiore Health Center had an average positive working capital position and an average positive net asset position during the period. Also, the hospital incurred average losses of \$171,385,500 during the period shown. The reason for the losses was due to COVID-19. The hospital has been working to improve operations with plans to maintain adequate liquidity through revenue-generating and operational cost-containment initiatives. Along with Medicaid rate enhancements received from the New York State Department of Health, the hospital has partnered with a national consulting firm to drive future transformation, aiming to improve financial operations by \$500 million annually.

Conclusion

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

Attachments

BFA Attachment A	2021 Certified Financial Statements and 2022 Internal Financial Statements of Montefiore Nyack Hospital
BFA Attachment B	2021 Certified Financial Statements and 2022 Internal Financial Statements of Montefiore Medical Center.



Project # 231240-C
Lenox Hill Hospital

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: June 14, 2023

Executive Summary

Description

Lenox Hill Hospital, an existing 632-bed hospital at 100 East 77th Street in New York, seeks approval for a new extension clinic at 1345 Third Avenue. The extension clinic will be certified for Radiation Oncology, which includes adding two LINACs, Diagnostic Imaging, and a Pharmacy in leased space at a newly constructed medical office building occupying the following floors:

- Cellar - Radiation Oncology Treatment
1st floor - Blood Draw
3rd floor - Stat Lab
4th floor - Diagnostic Imaging
11th floor - Infusion services and

Northwell Health, Inc. is the sole corporate member of Lenox Hill Hospital.

OPCHSM Recommendation

Contingent Approval.

Need Summary

The applicant projects 33,538 visits in Year One and 55,716 visits in Year Three, with Medicaid utilization at 34.53%.

Program Summary

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

Financial Summary

The total project cost of \$87,417,007 will be met with \$8,741,701 from accumulated funds and a \$78,675,306 DASNY Tax-Exempt Bond at 5% for a 30-year term.

Table with 4 columns: Budget, Current Year, Year One, Year Three. Rows include Revenue, Expenses, Net Income/Loss.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 16, 2023.

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-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **April 1, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 1, 2024**, and construction must be completed by **January 1, 2026**, 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 approved 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]
4. This project is approved to be initially funded with Northwell Health Obligated Group equity with the prospect that the project will be 90% financed as part of a future Northwell Health Obligated Group tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 5% interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure it meets approval standards. [BFA]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area consists of portions of New York, Kings, and Queens Counties. Demographics for the service area are noted below, including a comparison with New York State.

Demographics	New York County	Queens County	Kings County	New York State
Total Population-2021 Estimate	1,669,127	2,393,104	2,712,360	20,114,745
Hispanic or Latino (of any race)	27.9%	27.9%	18.8%	19.2%
White (non-Hispanic)	24.6%	24.6%	36.7%	54.7%
Black or African American (non-Hispanic)	16.8%	16.8%	28.6%	13.9%
Asian (non-Hispanic)	25.6%	25.6%	11.7%	8.6%
Other (non-Hispanic)	5.1%	4.8%	4.1%	3.6%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 94.2% of New York County residents, 89.5% of Queens County residents, and 93.3% of Kings County residents had health coverage as follows:

County	New York	Queens	Kings
Health Coverage	94.2%	89.5%	93.3%
Employer Plans	51.5%	43.2%	41.1%
Medicaid	20.5%	25.9%	32.2%
Medicare	9.7%	9.8%	8.01%
Non-Group Plans	12.2%	10.3%	11.8%
Military or VA	0.315%	0.302%	0.327%

This extension clinic proposes to provide the following services: Radiation Oncology, Medical Oncology Infusion, Diagnostic Imaging, and Pharmacy services. With this project, the hospital is creating an extension clinic to consolidate outpatient services into one location. This will support their patients throughout all phases of illness, from diagnosis to treatment and end-of-life care. Lenox Hill Hospital is seeking two additional LINACs at this extension clinic. The applicant reports that the volume of Article 28 cancer care within the service area has grown by 8.1% in the five-year period of 2017-2021. The New York City region currently has 76 Article 28 Licensed LINACs and a need for 96 as calculated per the methodology in 10 NYCRR 709.16 below:

LINAC Need in NY City Region	Total
# of Cancer Cases/Year	41,441.60
60% will be Candidates for Radiation Therapy	24,864.96
50% of (2) will be Curative Patients	12,432.48
50% of (2) will be Palliative Patients	12,432.48
Course of Treatment for Curative Patients is 35 Treatments	435,136.80
Course of Treatment for Palliative patients is 15 Treatments	186,487.20
The Total Number of Treatments [(5) +(6)]	621,624
Need for LINAC Machines ¹ [(7)/6,500]	95.63
Existing/Approved Resources	76
Remaining Need for LINAC Machines [(8) -(9)]	19.63

¹ Each LINAC Machine has a capacity for 6,500 Treatments

The table below shows the proposed payor utilization for this extension clinic.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	37.26%	37.26%
Medicare	20.85%	20.85%
Medicaid	34.53%	34.53%
Private Pay	7.36%	7.36%
Charity Care	0.00%	0.00%
Total Visits	33,538	55,716

Conclusion

Approval of this project will increase access to Radiation Oncology Services in the New York City region.

Program Analysis

Project Proposal

Lenox Hill Hospital, an existing 632-bed hospital located at 100 East 77th Street, New York (New York County), seeks approval to certify a new extension clinic to be located at 1345 Third Avenue, New York (New York County). The extension clinic will be certified for Medical Services - Other Medical Specialties and Therapeutic Radiology. The extension clinic will provide Radiation Oncology with a Linear Accelerator, Diagnostic Imaging, and a Pharmacy.

The Applicant reports that the volume for Article 28 cancer care within the service area (Manhattan, Brooklyn, and Queens) has grown by 8.1% in the five-year period of 2017-2021. The residents of the Northwell service area made up over half (53.8%) of the cancer burden in the service area. In South Brooklyn, the residents faced higher premature mortality rates. In certain Manhattan neighborhoods such as East and Central Harlem, the residents are nearly 1.5 times more likely to die of cancer before the age of 65. The proposed new extension clinic programs addressing the need for cancer services will not just improve the disruptions to care in the community but also streamline access to cancer treatment by consolidating care into one centralized location.

The Applicant reports that the intent of creating the extension clinic is to consolidate outpatient services into a single location, thereby enabling patients to conveniently access cancer services. As cancer patients' clinical management moves to the outpatient care setting, their care continues to grow in complexity, and in anticipation of this, Lenox Hill Hospital endeavors to minimize interruptions in access to the continuum of care for cancer and other complex conditions. The consolidation of outpatient services will support the patients throughout all phases of their illness, from diagnosis through end-of-life treatment.

The Applicant reports that the growth forecast for modalities for advanced imaging for cancer, such as CT, MRI, and PET, will increase by 6.0%, 6.8%, and 10.8% between 2022 and 2032, and standard imaging services, such as X-ray and Ultrasound, are expected to increase by 3.4% and 6.8% over the same period. The increasing demand for imaging services in the service area highlights the need to relocate these services to outpatient facilities where patients can conveniently receive these imaging needs without having to visit an inpatient facility. This also allows the cancer center to function as a comprehensive healthcare facility, offering patients a full spectrum of outpatient cancer services.

Staffing is expected to grow by 86.1 FTEs in Year One and 19.8 FTEs in Year Three of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Enforcement History

- *The Department issued a Stipulation and Order (S&O) dated November 21, 2016, and fined Northwell Health Long Island Jewish Medical Center \$4,000 based on findings from a survey that was completed on July 11, 2016. The deficient practice was cited in the area of Infection Control.*
- *The Department issued a Stipulation and Order (S&O) dated January 31, 2017, and fined Northwell Health Plainview Hospital \$4,000 based on findings from a survey that was completed on June 13, 2016. The deficient practice was cited in the area of Infection Control. Specifically, the facility staff failed to use standard infection control practices.*

- *The Department issued a Stipulation and Order (S&O) dated September 11, 2017, and fined Northwell Health Lenox Hill Hospital \$10,000 based on findings from a survey that was completed on November 1, 2016. The deficient practice was cited in the area of Surgical Services.*

Prevention Agenda

Lenox Hill Hospital, a member of the Northwell Health system, is requesting approval for the certification of a new extension clinic for cancer care and related services at a modernized outpatient complex in New York County. The extension clinic will provide the following services: radiation oncology, medical oncology Infusion Services, diagnostic imaging, lab, and pharmacy. The new clinic will minimize interruptions in access to the continuum of care for cancer and other complex conditions.

Lenox Hill Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Disease
- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants, and Children

The certification of the new extension clinic will serve patients with cancer and other complex conditions, which will advance the Prevention Agenda priority chosen by Lenox Hill Hospital to Prevent Chronic Disease, and the Focus Area of "Chronic Disease Preventive Care and Management."

In 2021, Lenox Hill Hospital spent \$ 29,826,095 on community health improvement services, representing 1.76% 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 Costs and Financing

Total project costs for new construction and acquisition of moveable equipment are estimated at \$87,417,007, which is detailed as follows:

New Construction	\$28,871,500
Design Contingency	\$2,860,394
Construction Contingency	\$1,430,197
Planning Consultant Fee	\$858,118
Architect/Engineering Fees	\$2,288,315
Construction Manager Fees	\$1,430,197
Other Fees	\$1,430,197
Movable Equipment	\$35,976,618
Telecommunications	\$7,668,000
CON Application Fee	\$2,000
CON Processing Fee	<u>\$478,153</u>
Total Project Cost	\$87,417,007

Funding for the project is as follows:

Equity:	\$8,741,701
DASNY Tax-Exempt bonds 5% for a 30-year term	<u>\$78,675,306</u>
Total	\$87,417,007

As presented in BFA Attachment A, the 2021 and 2022 Certified Financial Statements of Northwell Health Inc. show sufficient resources to meet the equity requirement. Northwell Health, Inc. is the sole corporate member and co-operator of Lenox Hill Hospital.

A bank letter of interest has been submitted by the applicant from Citigroup Global Markets, Inc. to underwrite the bond financing.

Presented on BFA Attachment B is Northwell Health, Inc's organizational chart.

Operating Budget

The applicant submitted the current, first, and third year's operating budget in 2024 dollars, summarized below:

	Current Year (2022)		Year. One (2026)		Year. Three (2028)	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Revenues						
Inpatient:						
Commercial MC	\$42,005	\$539,220,572	\$42,005	\$539,220,572	\$42,005	\$539,220,572
Medicare FFS	\$23,251	\$20,786,764	\$23,251	\$20,786,764	\$23,251	\$20,786,764
Medicare MC	\$19,922	\$90,423,830	\$19,922	\$90,423,830	\$19,922	\$90,423,830
Medicaid FFS	\$25,563	\$171,959,664	\$25,563	\$171,959,664	\$25,563	\$171,959,664
Medicaid MC	\$26,334	\$125,718,262	\$26,334	\$125,718,262	\$26,334	\$125,718,262
Private Pay	\$11,058	\$12,340,308	\$11,058	\$12,340,308	\$11,058	\$12,340,308
Other Revenue		\$4,116,000		\$4,116,000		\$4,116,000
Total Inpatient Revenue		\$964,565,400		\$964,565,400		\$964,565,400
Expenses						
Inpatient:						
Operating	\$21,258	\$656,593,200	\$21,258	\$656,593,200	\$21,258	\$656,593,200
Capital	<u>\$680</u>	<u>\$21,006,200</u>	<u>\$680</u>	<u>\$21,006,200</u>	<u>\$680</u>	<u>\$21,006,200</u>
Total Inpatient Expense	\$21,938	\$677,599,400	\$21,938	\$677,599,400	\$21,938	\$677,599,400
Total Inpatient Income/(Loss)		<u>\$286,966,000</u>		<u>\$286,966,000</u>		<u>\$286,966,000</u>
Utilization: (Discharge)		30,887		30,887		30,887
Cost per Discharge		\$21,938		\$21,938		\$21,938

Revenues	Current Year (2022)		Year. One (2026)		Year. Three (2028)	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Outpatient:						
Commercial MC	\$2,872	\$105,265,173	\$2,721	\$133,737,196	\$2,785	\$159,881,708
Medicare FFS	\$434	\$711,699	\$411	\$904,199	\$421	\$1,080,962
Medicare MC	\$611	\$11,530,060	\$579	\$14,648,700	\$592	\$17,512,399
Medicaid FFS	\$1,230	\$22,074,891	\$1,165	\$28,045,686	\$1,193	\$33,528,386
Medicaid MC	\$1,143	\$18,307,746	\$1,083	\$23,259,608	\$1,108	\$27,806,668
Private Pay	\$279	\$2,015,431	\$264	\$2,560,563	\$270	\$3,061,132
Total Outpatient Revenue		\$159,905,000		\$203,155,952		\$242,871,255
Expenses						
Outpatient:						
Operating	\$4,450	\$437,728,800	\$3,532	\$465,896,700	\$3,178	\$489,656,000
Capital	\$142	\$14,004,061	\$198	\$26,115,661	\$169	\$25,979,361
Total Outpatient Expenses	\$4,592	\$451,732,861	\$3,730	\$492,012,361	\$3,347	\$515,635,361
Total Outpatient Income/(Loss)		<u>(\$291,827,861)</u>		<u>(\$288,856,409)</u>		<u>(\$272,764,106)</u>
Utilization: (Visit)		98,361		131,899		154,077
Cost per Visit		\$4,592		\$3,730		\$3,347
Total Revenues		\$1,124,470,400		\$1,167,721,352		\$1,207,436,655
Total Expenses		<u>\$1,129,332,261</u>		<u>\$1,169,611,761</u>		<u>\$1,193,234,761</u>
Total Income/(Loss)		(\$4,861,861)		(\$1,890,409)		\$14,201,894

Utilization by Payor source for the current year and the first and third years is summarized below:

<u>Inpatient</u>	<u>Current Year and Years One and Three</u>
Medicaid FFS	21.78%
Medicaid MC	15.46%
Medicare FFS	2.89%
Medicare MC	14.70%
Commercial MC	41.56%
Private Pay	<u>3.61%</u>
Total	100%

<u>Outpatient</u>	<u>Current Year and Years One and Three</u>
Medicaid FFS	18.25%
Medicaid MC	16.29%
Medicare FFS	1.67%
Medicare MC	19.19%
Commercial MC	37.26%
Private Pay	<u>7.36%</u>
Total	100%

- Revenue, utilization, and expense assumptions were developed using the Northwell Health Internal Cost Accounting system based on the outpatient infusion services applicable to the program.
- Revenue growth is based on the increase in utilization between years one and three, driven by an increase in the overall volume of Article 28 cancer care within the proposed service area, based on the five-year period from 2017-2021. The need has increased by 8.1% and is projected to continue to

rise going forward. Currently, the service area is running at a deficit for LINAC Services by approximately 20 machines, and this project is requesting to add two LINACs.

- The rates are based on prevailing reimbursement methodologies and experience.

Capability and Feasibility

The total project cost of \$87,417,007 will be met with \$8,741,701 from accumulated funds and a \$78,675,306 DASNY Tax-Exempt Bond at 5% for a 30-year term. BFA Attachment A, the 2021-2022 Certified Financial Summary, indicates the availability of sufficient resources. A bank letter of interest has been submitted by the applicant from Citigroup Global Markets, Inc. to underwrite the bond financing.

The budget projects a net loss of \$1,890,409 in Year One and a net income of \$14,201,894 in Year Three. The CFO of Northwell Health, Inc. has provided a letter stating Northwell Health, Inc. will cover the Year One loss. The budget appears reasonable.

As shown in BFA Attachment A, 2021-2022 Certified Financial Summary of Northwell Health, Inc., the entity maintained both average positive working capital, average net asset positions, and generated an average income from operations of \$147,649,500.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021 and 2022 Certified Financial Summary for Northwell Health, Inc.
BFA Attachment B	Northwell Health, Inc. Organization Chart



Project # 231254-C
Rome Memorial Hospital, Inc

Program: Hospital
Purpose: Construction

County: Oneida
Acknowledged: June 15, 2023

Executive Summary

Description

Rome Memorial Hospital, Inc., a 130-bed not-for-profit hospital at 1500 North James Street, Rome, New York (Oneida County), requests approval for the renovation of four (4) operating rooms and two (2) procedure rooms, with pre-op and post-op support areas and the addition of shell space on the second floor for future use. There will be no change in the certified beds of Rome Memorial Hospital.

This project is needed to meet the increased demand for surgical services, provide a state-of-the-art environment to recruit and retain highly skilled surgeons, and build upon the success the hospital has achieved in collaboration with St. Joseph's Hospital in reducing costs and increasing efficiency to create a financially sustainable system of care.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects roughly 3,650 inpatient visits and 110,250 outpatient visits for both the first and third years, with 27% inpatient utilization and 31% outpatient Medicaid utilization for both years.

Program Summary

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

Financial Summary

The total project cost of \$36,349,278 will be met with equity of \$19,304, fundraising of \$10,050,731, and a Statewide Health Care Facility Transformation Program III Grant (SHCFTP III) of \$26,279,243.

Table with 3 columns: Category, Year One (2027), Year Three (2029). Rows include Revenues, Expenses, Excess of Revenues.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on 5/23/2023.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation Program III executed grant contract, acceptable to the Department of Health. [BFA]
3. Submission of documentation of fundraising proceeds that is acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0, and an acceptable response to open ProjNet review comment #19545. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0, and an acceptable response to open ProjNet review comment #19545. [AER]

Approval conditional upon:

1. This project must be completed by **November 15, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **August 15, 2026**, 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 approved 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]
4. Reimbursable TPC shall be limited to Costs shall be limited to \$32,925,278.00. [CCC]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area includes Oneida and Lewis Counties. The population of Oneida County is expected to increase to 228,293, and Lewis County is expected to slightly decrease to 26,302 by 2028 based on Cornell Program of Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Oneida County	Lewis County	New York State
Total Population – 2021 Estimate	232,034	26,681	20,114,745
Hispanic or Latino (of any race)	6.2%	1.7%	19.2%
White (non-Hispanic)	81.1%	94.6%	54.7%
Black or African American (non-Hispanic)	5.7%	0.9%	13.9%
Asian (non-Hispanic)	4.0%	0.4%	8.6%
Other (non-Hispanic)	2.9%	2.4%	3.6%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, the populations of Oneida and Lewis Counties had health coverage as follows.

	Oneida County	Lewis County
Insured Population	92.6%	95.4%
Employer Plans	46.7%	42.8%
Medicaid	22.4%	19.6%
Medicare	14.1%	15.5%
Non-Group Plans	11.6%	15.5%
Military or VA	1.35%	1.87%

The hospital has and will have four operating rooms and two procedure rooms after completion of the project.

Below are the historical visits to the OR and the Endoscopy and Lithotripsy Procedure Suites.

	2017	2018	2019	2020	2021	2022
Ambulatory Surgery (General OR)	1,598	1,670	1,714	1,648	2,059	1,783
Inpatient Surgery (General OR)	498	388	451	583	761	882
Total General ORs	2,096	2,058	2,165	2,231	2,820	2,665
Endoscopy (Procedure room)	2,232	2,149	1,090	612	737	717
Lithotripsy (Procedure room)		17	51	60	48	62
Total Procedure Rooms	2,232	2,166	1,141	672	785	779

Below explains changes in OR and Procedure Rooms based on information from the applicant:

- **ENDOSCOPY:** The decrease in endoscopy in 2019 was a result of the transition of procedures to the free-standing ambulatory surgery center (Griffiss Surgery Center). The hospital is a partner in the joint venture.
- **LITHOTRIPSY:** The hospital received approval for lithotripsy in 2018.
- **C-SECTIONS:** Historically, one of the four (4) general operating rooms was reserved for emergent C-sections. Beginning July 2023, they will be performed in the newly constructed C-section suite adjacent to the Maternity Department in previously approved CON# 221164.

The table below represents increases in projected visits due to a new orthopedic surgeon who started in May of 2023, a second upper extremity surgeon who starts in the Fall, and a potential third bariatric surgeon who is currently in contract negotiation.

	2022 Actual Visits	Year 1	Year 3
Ambulatory Surgery	1,783	2,105	2,212
Inpatient Surgery	882	1,024	1,071
Total OR Volume	2,665	3,129	3,283

Applicant Payor Mix for Inpatient Services		
Payor	Year One	Year Three
Commercial	30.77%	30.73%
Medicare	39.98%	40.07%
Medicaid	27.21%	27.19%
Private Pay	2.04%	2.01%
Total Visits	3,627	3,674

Applicant Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	31.41%	31.41%
Medicare	35.95%	35.95%
Medicaid	30.67%	30.67%
Private Pay	1.96%	1.96%
Total Visits	110,210	110,310

Conclusion

As a result of this project, the applicant expects to expand their surgical specialties by providing a state-of-the-art environment that will enhance their ability to recruit highly skilled surgeons to the region to enhance access to care.

Program Analysis

Project Proposal

Rome Memorial Hospital, an existing 130-bed hospital located at 1500 North James Street in Rome (Oneida County), seeks approval to perform renovations to update and expand its surgical space. Four (4) new modern ORs will be constructed to replace four (4) existing ORs that were constructed in 1965. The project was awarded \$26M in state funding through the Statewide Health Care Facility Transformation Program to support the project. There will be no changes to services or staffing as a result of this project.

The Applicant reports that the new ORs will be constructed under the most current code requirements, with size and flexibility to accommodate continuous advancements in technology, such as robotics and more complex surgical procedures. The project also includes an efficiently designed surgical waiting area, pre-operative and post-operative support areas to facilitate easy navigation and patient flow.

The Applicant reports that in a survey report, nearly 75% of the participant pool responded that they must leave the community to access care, including general surgery, bariatric surgery, and surgical orthopedic care. The participants also report that providers in the market are retiring and not easily replaced. Due to the aging population, the demand for surgical services is expected to increase significantly. The Applicant reports that stakeholders overwhelmingly confirm that the hospital's outdated surgical infrastructure needs replacing as a strategic priority to preserve local access to care. These replacements are seen as a catalyst for the hospital's overall improvement of services, technological advances, staff retention, and financial health. The Applicant reports that this project will address needs in the community, expand access to care, recruit and retain top physicians, and enhance sustainability.

The Applicant reports that the OR is among the oldest surgical facilities in the region and is in critical need of replacement to bring the physical plant and its infrastructure up to modern code, ventilation and temperature control standards, and energy efficiency standards. The current footprint prohibits modernization without a new addition. The current OR also lacks the basic fire protection of sprinklers because they were constructed in 1965. The proposed renovations and modernizations will bring these up to current codes and standards.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Prevention Agenda

The Rome Memorial Hospital is seeking approval for new construction and renovation of existing space to modernize surgical services. Four (4) new surgical suites will be constructed to replace four (4) existing ORs that were constructed in 1965. The project includes 2 procedure rooms, surgical waiting, pre-op and post-op support areas, as well as shell space for future use.

Rome Memorial Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants, and Children

Establishing the new surgical suite does not directly advance the Prevention Agenda priority. However, the surgical suite will improve accessibility to care. Additionally, the surgical suite's revenue will be invested in expanding primary care and behavioral health capacity.

In 2021, Rome Memorial Hospital spent \$19,666 on community health improvement services, representing 0.02 % 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 cost is estimated at \$36,349,278, which is for new construction and the acquisition of moveable equipment, further broken down as follows:

	<u>Article 28</u>	<u>Shell Space</u>	<u>Total</u>
New Construction	\$21,931,070	\$1,882,329	\$23,813,399
Renovation and Demolition	428,066	0	\$428,066
Site Development	1,656,094	0	\$1,656,094
Asbestos Abatement or Removal	653,785	0	\$653,785
Design Contingency	1,720,570	147,675	\$1,868,245
Construction Contingency	1,930,564	165,699	\$2,096,263
Fixed Equipment	1,336,014	0	\$1,336,014
Architect/Engineering Fees	1,363,440	118,560	\$1,482,000
Construction Manager Fees	1,004,813	86,242	\$1,091,055
Moveable Equipment	1,529,506	0	\$1,529,506
Telecommunications	175,000	0	\$175,000
Interim Interest Expense	19,034	0	\$19,034
CON Fee	2,000	0	\$2,000
Additional Processing Fee	<u>185,614</u>	<u>13,204</u>	<u>\$185,614</u>
Total Project Cost	\$33,935,570	\$2,413,709	\$36,349,278

Since there is shell space involved with this application, the total reimbursable project cost shall be limited to \$33,935,569.

The applicant's financing plan appears as follows:

Equity	\$19,304
Fundraising	10,050,731
SHCFTP III Grants	<u>26,279,243</u>
Total	\$36,349,278

Operating Budget

The applicant has submitted an enterprise operating budget, in 2023 dollars, for the first and third years after project completion, summarized below:

	<u>Current Year (2021)</u>	<u>Year One (2027)</u>	<u>Year Three (2029)</u>
Revenues:			
Inpatient Hospital	\$38,529,586	\$40,460,595	\$41,104,264
Outpatient Hospital	\$48,776,205	50,445,011	\$51,001,280
RHCF	\$4,587,589	\$4,587,589	\$4,587,589
Operating Revenues	\$5,106,498	\$5,106,498	\$5,106,498
Non-Operating Revenues	<u>(\$790,304)</u>	<u>(\$790,304)</u>	<u>(\$790,304)</u>
Total Revenues	\$96,209,574	\$99,809,389	\$101,009,327
Expenses:			
Operating	\$99,851,394	\$102,436,599	\$103,605,487
Capital	<u>\$3,770,261</u>	<u>\$5,547,211</u>	<u>\$5,547,211</u>
Total Expenses	103,621,655	\$107,983,810	\$109,152,698
Excess Revenues	(\$7,412,081)	(\$8,174,421)	(\$8,143,371)
Utilization:			
Inpatient (Discharges)	3,650	3,792	3,839
Outpatient: (Visits)	115,984	116,306	116,413
Nursing Home (Patient Days)	17,967	17,967	17,967

- Expense and utilization assumptions were based upon the 2022 institutional report with increased projections of provider volume in spine surgery, orthopedics, and general surgery.
- Revenues are based on current reimbursement methodologies.

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

Outpatient:	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	27.73%	27.73%	27.73%
Commercial MC	2.03%	2.03%	2.03%
Medicare FFS	18.26%	18.26%	8.26%
Medicare MC	15.81%	15.81%	15.81%
Medicaid FFS	1.89%	1.89%	1.89%
Medicaid MC	27.23%	27.23%	27.23%
Private Pay	1.86%	1.86%	1.86%
All Other	<u>5.19%</u>	<u>5.19%</u>	<u>5.19%</u>
Total	100.00%	100.00%	100.00%

Inpatient:	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	26.55%	26.34%	26.30%
Commercial MC	3.10%	3.09%	3.10%
Medicare FFS	21.53%	21.84%	21.93%
Medicare MC	16.38%	16.40%	16.41%
Medicaid FFS	2.77%	2.77%	2.79%
Medicaid MC	23.32%	23.26%	23.23%
Private Pay	1.97%	1.95%	1.92%
All Other	<u>4.38%</u>	<u>4.35%</u>	<u>4.32%</u>
Total	100.00%	100.00%	100.00%

Nursing Facility:	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	0.35%	0.35%	0.35%
Commercial MC	0.00%	0.00%	0.00%
Medicare FFS	6.96%	6.96%	6.96%
Medicare MC	5.79%	5.79%	5.79%
Medicaid FFS	78.17%	78.17%	78.17%
Medicaid MC	1.44%	1.44%	1.44%
Private Pay	5.97%	5.97%	5.97%
All Other	<u>1.32%</u>	<u>1.32%</u>	<u>1.32%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The total project cost of \$36,349,278 will be met as follows with equity of \$19,304 through hospital operations, fundraising proceeds of \$10,050,731, and Statewide Health Care Facility Transformation Program III Grants of \$26,279,243. Presented as BFA Attachment A are the 2021 Certified Financial Statements and the 2022 Draft Certified Financial Statements of Rome Memorial Hospital, which indicate the availability of sufficient funds for the equity contribution. As a contingency of approval, the applicant must provide documentation of fundraising proceeds.

The submitted enterprise budget projects a loss of \$8,174,421 and \$8,143,371 during the first and third years after project completion, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown in Attachment A, the hospital had an average positive working capital position and an average positive net asset position in 2021 and 2022. The applicant has indicated that the reason for the negative working capital position and the loss in 2022 was the result of a dramatic increase in agency costs, in

addition to inflation in the cost of goods sold. The hospital implemented multiple strategies to reduce agency spending, including utilizing LPNs in acute care, implementing a transition-to-practice program for new graduate nurses, and recruiting nursing students into a residency program in that senior year to retain them as graduate nurses upon graduation.

Conclusion

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

Attachments

BFA Attachment A	2021 Certified Financial Statements and the 2022 Draft Certified Financial Statements of Rome Memorial Hospital.
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**Project # 231273-C
Flushing Hospital Medical Center**

Program: Hospital
Purpose: Construction

County: Queens
Acknowledged: June 14, 2023

Executive Summary

Description

Flushing Hospital Medical Center (FHMC), a 299-bed, voluntary not-for-profit, Article 28 hospital at 45th Avenue & Parsons Blvd in Flushing (Queens County), requests approval to eliminate its existing 18-bed voluntary psychiatric unit, construct a 30-bed involuntary inpatient psychiatric unit, and increase the psychiatric bed complement from 18 to 30, through conversion of two (2) Medical/Surgical (MS) beds, four (4) pediatric beds and six (6) Transitional Care Unit (TCU) beds. Additionally, the project will relocate FHMC's existing MS inpatient (IP) unit from the third floor to the second floor of the main building to make room for the new psychiatric unit and perform cosmetic upgrades of the entire 2nd floor, which will be dedicated to MS IP.

FHMC's existing voluntary inpatient unit is now closed in anticipation of the expansion and conversion to an involuntary inpatient unit. The expansion of the inpatient psychiatric unit will address current design and infrastructure deficiencies at FHMC and will help address the involuntary psychiatric bed capacity shortage in Queens County. In addition to meeting community needs, the proposed behavioral unit is aligned with the New York State Directed Payment program and will positively impact FHMC's operating margin while contributing to FHMC's financial sustainability.

Medisys Health Network, Inc. (Medisys), a New York not-for-profit, is FHMC's sole voting member and the sole voting member of The Jamaica Hospital d/b/a Jamaica Hospital Medical Center, Jamaica Hospital Nursing Home, and other healthcare organizations.

OPCHSM Recommendation

Contingent Approval

Need Summary

For the new involuntary psychiatric unit, the applicant projects 730 discharges and 8,760 psychiatric patient days resulting in 80% occupancy in the first year and 913 discharges and 10,950 psychiatric patient days resulting in 100% occupancy in the third.

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 \$13,919,628 will be met with a Statewide Health Care Facility Transformation Program III (SHCF TP III) grant award of \$13,876,000 and \$43,628 in equity.

<u>Incremental</u>	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2025</u>	<u>2027</u>
Revenues	\$12,310,359	\$15,703,358
Expenses	<u>11,124,167</u>	<u>14,314,925</u>
Net Income/ (Loss)	\$1,186,192	\$1,388,433

<u>Enterprise</u>	<u>Current</u>	<u>Year</u>	<u>Year</u>
<u>Budget:</u>	<u>Year</u>	<u>One</u>	<u>Three</u>
<u>(in 000's)</u>	<u>2022</u>	<u>2025</u>	<u>2027</u>
Revenues	\$301,658	\$313,968	\$317,361
Expenses	<u>334,646</u>	<u>345,770</u>	<u>348,961</u>
Net Income/ (Loss)	(\$32,988)	(\$31,802)	(\$31,599)

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 1, 2023.

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 approval from the Office for Mental Health. [PMU]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. Submission of documentation confirming final approval of the executed Statewide Health Care Facility Transformation Program III grant contract, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **June 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **March 15, 2025**, 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 approved 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]
4. The applicant shall only provide infusion therapy services acceptable to the Department that comply with FDA guidelines and The Departments Clinical Guidelines for Infusion Therapy Services in a Diagnostic and Treatment Center. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

Flushing Hospital Medical Center (FHMC), a 299-bed teaching hospital at 45th Avenue and Parsons Blvd in Flushing (Queens County), seeks approval to convert 12 beds to psychiatric beds in constructing a new 30-bed involuntary psychiatry unit.

Current and Projected Beds at Flushing Hospital			
Bed Type	Current Beds	Bed Change	Beds Upon Completion
Chemical Dependence - Detoxification	30		30
Coronary Care	6		6
Intensive Care	12		12
Maternity	24		24
Medical / Surgical	169	-2	167
Neonatal Continuing Care	3		3
Neonatal Intensive Care	6		6
Neonatal Intermediate Care	5		5
Pediatric	20	-4	16
Psychiatric	18	12	30
Transitional Care	6	-6	0
Total	299	0	299

Source: NYSDOH Health Facility Information System

The table below shows the Average Daily Census and Occupancy rates of services being affected by the bed conversions.

Facility Average Daily Census (ADC) and Occupancy (OCC)								
Services	2019		2020		2021		2022	
	ADC	OCC	ADC	OCC	ADC	OCC	ADC	OCC
Med/Surg	94	59.6%	102	58.6%	104	54.2%	89	51.6%
Pediatric	6	32.1%	4	22.4%	5	23.4%	6	27.9%
Psychiatric	13	68.3%	10	51.6%	0	0.0%	0	0.0%

Source: Applicant

Transitional care and voluntary psychiatric beds were repurposed during the COVID-19 pandemic, and have not had patients since then in preparation for this involuntary psychiatric unit project.

The applicant projects 730 discharges and 8,760 psychiatric patient days resulting in 80% occupancy in the first year, and 913 discharges and 10,950 psychiatric patient days resulting in 100% occupancy in the third. Patients have been transferred to at least nine other facilities. Wait times in the emergency department can be considerable. Below is the occupancy of psychiatric beds at other hospitals in Queens County.

Hospital	Miles from FHMC	Psychiatric Beds	2020	2021	2022
Queens Hospital Center	3.8	53	83.2	81.5	79.3
Jamaica Hospital Medical Center	5.7	56	79.8	86.6	70.6
Elmhurst Hospital Center	5.9	177	42.9	40.9	42.8
Long Island Jewish Medical Center	8.9	226	79.1	80.9	83.9
St John's Episcopal Hospital So Shore	15.8	43	53.5	56.0	63.5

Source: SPARCS

The primary service area for this project is Queens County. The population of Queens County was 2,393,104 in 2021 and is estimated to increase to 2,544,231 by 2028 per projection data from the Cornell Program on Applied Demographics (PAD), an increase of 6.3%. Based on the 2021 US Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with the county and New York State.

Demographics	Queens County	New York State
Total Population – 2021 Estimate	2,393,104	20,114,745
Hispanic or Latino (of any race)	27.90%	19.20%
White (non-Hispanic)	24.60%	54.70%
Black or African American (non-Hispanic)	16.80%	13.90%
Asian (non-Hispanic)	25.60%	8.60%
Other (non-Hispanic)	5.10%	3.60%

According to Data USA, in 2018, 89.5% of the population in Queens County had health coverage as follows.

Employer Plans	43.20%
Medicaid	25.90%
Medicare	9.80%
Non-Group Plans	10.30%
Military or VA	0.30%

Projected Payor Mix for Inpatient Services		
Insurance Type	Year One	Year Three
Commercial	9.38%	9.40%
Medicare	35.31%	35.14%
Medicaid	54.55%	54.73%
Private Pay	0.72%	0.70%
Other	0.04%	0.03%
Total Visits	64,678	66,868

Conclusion

The project is expected to have a significant impact on reducing critical unmet behavioral health needs in Queens County.

Program Analysis

Project Proposal

Flushing Hospital Medical Center, a 299-bed teaching hospital at 45th Avenue and Parsons Blvd in Flushing (Queens County), seeks approval to construct and increase the psychiatric bed complement to a 30-bed inpatient psychiatric unit by closing its current 18-bed inpatient psychiatric unit and converting two (2) medical/surgical beds, four (4) pediatric beds, and six (6) Transitional Care unit beds.

The Applicant reports that the annual discharges projected for patients experiencing an acute mental health crisis are 821, patient days at 9,855, with an average LOS at 12 days. Currently, patients are transferred to over nine (9) psychiatric facilities and are often not available. The wait times in EDs are considerable.

Staffing is expected to grow by 47.3 FTEs in Year One and 4.4 additional FTEs in Year Three of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Prevention Agenda

Flushing Hospital Medical Center (FHMC) is seeking approval to construct a 30-bed involuntary inpatient psychiatric unit on the 3rd floor of the main building (1976 building); to eliminate its existing 18-bed voluntary psychiatric unit; and relocate an existing medical/surgical (M/S) inpatient unit from the 3rd floor to the 2nd floor of the main building. This project aims to expand access to essential health and behavioral health services in the Medisys service area in Queens County.

Flushing Hospital Medical Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Disease, Focus Area 3: - Tobacco Prevention, Goal 3.2: Promote Tobacco Use Cessation.
- Promote Healthy Women, Infants, and Children, Focus Area 2: Perinatal and Infant Health; Goal 2.2: Increase Breastfeeding.

In the 2022 FHMC's Community Health Needs Assessment (CHNA) survey, mental health/depression and violence were rated above average in importance but below average in satisfaction relative to other conditions. Although the inpatient project is not directly related to the two selected priorities in the most recent FHMC's Community Service Plan (CSP), it is responsive to the State's Prevention Agenda priorities and local priorities. The inpatient project aligns with the State's goals for meeting critical unmet behavioral health needs exacerbated by the COVID-19 pandemic, and it will address the shortage of involuntary psychiatric bed capacity in Queens County.

In 2021 the applicant spent \$ 3,201,532 on community health improvement services, representing 0.97% 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 cost for new construction and the acquisition of moveable equipment is estimated at \$13,919,628 and is broken down as follows:

Renovation & Demolition	\$8,800,000
Design Contingency	880,000
Construction Contingency	880,000
Architect/Engineering Fees	704,000
Moveable Equipment	2,612,000
CON Application Fee	2,000
CON Processing Fee	<u>41,628</u>
Total Project Cost	\$13,919,628

The applicant's financing plan appears as follows:

Cash/Accumulated Funds	\$43,628
Statewide Health Care Facility Transformation Program III Grant	<u>\$13,876,000</u>
Total	\$13,919,628

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below:

	<u>Current Year</u> <u>2022</u>		<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
	<u>Per</u> <u>Disch.</u>	<u>Total</u>	<u>Per</u> <u>Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Inpatient						
Revenues:						
Commercial MC	\$5,262.99	\$27,325,462	\$4,567.48	\$27,715,458	\$4,423.31	\$27,809,354
Medicare FFS	\$5,244.79	63,273,096	\$4,650.00	64,244,444	\$4,523.54	64,478,609
Medicare MC	\$2,654.47	21,631,236	\$2,455.67	22,162,377	\$2,411.43	22,291,233
Medicaid FFS	\$2,279.82	13,827,119	\$2,053.73	14,973,779	\$2,007.64	15,254,020
Medicaid MC	\$2,444.88	58,579,421	\$2,424.55	67,863,056	\$2,432.04	70,521,993
Private Pay	\$1,344.15	625,032	\$1,323.56	615,456	\$1,318.43	613,069
All Other	\$8,074.39	<u>185,711</u>	\$7,950.70	<u>182,866</u>	\$7,919.87	<u>182,157</u>
Total Inpatient Revenues ²		\$185,447,077		\$197,757,436		\$201,150,435
Expenses:						
(Inpatient)						
Operating	\$4,582.92	\$256,267,987	\$4,098.33	\$265,071,487	\$3,991.06	\$266,874,487
Capital	<u>\$144.89</u>	<u>8,102,105</u>	<u>\$133.05</u>	<u>8,605,638</u>	<u>\$136.23</u>	<u>9,109,172</u>
Total Inpatient Expenses	\$4,727.82	\$264,370,092	\$4,231.38	\$273,677,125	\$4,127.29	\$275,983,659
Inpatient Income/(Loss)		<u>(\$78,923,015)</u>		<u>(\$75,919,689)</u>		<u>(\$74,833,224)</u>
Utilization:						
Discharges		55,918		64,678		68,868
Patient Days ¹		0		8,760		10,950

Outpatient Revenues:						
Commercial MC	\$968.48	\$18,920,143	\$968.48	\$18,920,143	\$968.48	\$18,920,143
Medicare FFS	\$1,050.08	6,334,091	\$1,050.08	6,334,091	\$1,050.08	6,334,091
Medicare MC	\$906.19	11,317,345	\$906.19	11,317,345	\$906.19	11,317,345
Medicaid FFS	\$585.70	5,766,826	\$585.70	5,766,826	\$585.70	5,766,826
Medicaid MC	\$441.06	31,401,515	\$441.06	31,401,515	\$441.06	31,401,515
Private Pay	\$501.34	2,407,940	\$501.34	2,407,940	\$501.34	2,407,940
All Other ²	\$1,799.52	<u>2,010,064</u>	\$1,799.52	<u>2,010,064</u>	\$1,799.52	<u>2,010,064</u>
Total Outpatient Revenues		\$78,157,924		\$78,157,924		\$78,157,924
Expenses: (Outpatient)						
Operating	\$533.71	\$68,121,869	\$547.53	\$69,886,169	\$554.04	\$70,717,561
Capital	<u>16.87</u>	<u>2,153,724</u>	<u>17.29</u>	<u>2,206,557</u>	<u>17.70</u>	<u>2,259,391</u>
Total Outpatient Expenses	\$550.58	\$70,275,593	\$564.82	\$72,092,726	\$571.74	\$72,976,952
Outpatient Income/(Loss)		<u>\$7,882,331</u>		<u>\$6,065,198</u>		<u>\$5,180,972</u>
Utilization: (Visits)		127,639		127,639		127,639
Net Income/(Loss)		<u>(\$71,040,684)</u>		<u>(\$69,845,491)</u>		<u>(\$69,652,252)</u>
Other Op. Rev. ³		\$29,942,308		\$29,942,308		\$29,942,308
Total Op. Loss		(41,098,376)		(39,912,183)		(39,709,944)
Non-Oper. Rev.		<u>8,110,471</u>		<u>8,110,471</u>		<u>8,110,471</u>
Total Income/(Loss) ⁴		<u>(\$32,987,905)</u>		<u>(\$31,801,712)</u>		<u>(\$31,599,473)</u>

¹ The existing voluntary inpatient unit has remained closed in anticipation of the conversion to an involuntary inpatient unit

² All Other revenue includes workers comp and no-fault insurance revenue.

³ Other Operating Revenues are comprised of grant awards, provider relief funds, physician fees, other income, and non-hospital affiliates.

⁴ Total revenues and expenses, as presented, exclude approximately \$716,230,000 in capitation revenues and \$673,217,000 in costs related to capitation revenue.

The following is noted in respect to the submitted budget:

- Current Year revenues and expenses are reflective of FHMC's 2022 Certified Financial Statements.
- Revenues and expenses are based upon historic reimbursement as well as current contracted rates.
- Payor mix is based on historical volume. Projected increase in utilization and revenue in Years One and Year Three across payor sources is based on assumption of occupancy increasing from 80% to 100%.
- The applicant projects occupancy level of 80% resulting in 8,760 psychiatric patient days and 730 corresponding discharges during Year One and 100% occupancy resulting in 10,950 psychiatric patient days and 913 corresponding discharges during Year Three.
- The proposed number and mix of staff are based on current and expected future contract staffing levels and the projected staff needed to accommodate the projected increased patient utilization as a result of the new capacity. Additional staff will be added as needed to ensure quality of care.

Utilization by payor source for inpatient and outpatient services is as follows:

<u>Inpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	9.29%	9.38%	9.40%
Medicare FFS	21.57%	21.36%	21.32%
Medicare MC	14.57%	13.95%	13.82%
Medicaid FFS	10.85%	11.27%	11.36%
Medicaid MC	42.85%	43.28%	43.37%
Private Pay	0.83%	0.72%	0.70%
All Other	<u>0.04%</u>	<u>0.04%</u>	<u>0.03%</u>
Total	100.00%	100.00%	100.00%

<u>Outpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	15.31%	15.31%	15.31%
Medicare FFS	4.73%	4.73%	4.73%
Medicare MC	9.78%	9.78%	9.78%
Medicaid FFS	7.71%	7.71%	7.71%
Medicaid MC	55.78%	55.78%	55.78%
Private Pay	3.76%	3.76%	3.76%
Charity Care	2.05%	2.05%	2.05%
All Other	<u>0.88%</u>	<u>0.88%</u>	<u>0.88%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

Total project costs of \$13,919,628 will be met with a SHCFTP III grant award of \$13,876,000 and \$43,628 from ongoing operations of FHMC. The working capital need, estimated at \$1,854,027, is based on two months of first-year incremental expenses and will be funded by FHMC's ongoing operations. The submitted budget projects incremental net income of \$1,186,192 and \$1,388,433 in Years One and Three, respectively. The projected incremental gains in Years One and Three are driven by an increase in the number of psychiatric patient days and corresponding discharges that will be generated as a result of this project. The applicant projects an 80% occupancy rate resulting in 8,760 psychiatric patient days and 730 corresponding discharges in Year One and a 100% occupancy rate resulting in 10,950 psychiatric patient days and 913 corresponding discharges in Year Three.

As shown in BFA Attachment A FHMC 2022 Certified Financial Statements, the hospital reported \$36,796,000 in negative working capital, a negative net asset amount of \$55,947,000, and an \$11,000 gain from operations, which was increased by \$12,700,000 in insurance proceeds for capital and reduced by \$4,589,000 in other losses, resulting in \$8,122,000 decrease in net deficit without donor restrictions. The negative working capital and net asset positions result from cumulative losses over the years. During the period, FHMC received approximately \$11,555,000 in Value-Based Payment Quality Improvement Program (VBPQIP) funding intended to assist facilities in severe financial distress and enable the continuation of operations while allowing the distressed facility to work on long-term sustainability. During 2022, FHMC also received \$1,152,000 in Provider Relief Funds to reimburse eligible healthcare providers for eligible expenditures attributable to COVID-19 and revenue loss. In 2022, the VBPQIP program transitioned to the Directed Payment Template (DPT) model designed to support qualifying Safety Net Hospitals through enhanced Medicaid Managed Care rates. These enhanced DPT rates are assumed to be applied to the incremental volume for this project.

BFA Attachment B presents FHMC's Internal Financial Statements for the period ending May 31, 2023. During this period, FHMC reported \$21,326,601 in negative working capital, a negative net asset position of \$67,872,441, and an operating loss of \$16,534,136, which was further offset by \$75,748 in other non-operating income, resulting in a net loss of \$16,458,389. The facility's negative financial position is attributable to the financial challenges resulting from the population served, with most patients covered by governmental payors. The closure of six (6) hospitals in Queens County since 2007 and further downsizing in behavioral health resulted in a significant strain on FHMC. In response to the COVID-19 pandemic, several NYC area hospitals reduced or closed behavioral services as part of their surge plans and have yet to bring these beds back online.

Conclusion

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

Attachments

BFA Attachment A	Flushing Hospital Medical Center – 2022 Certified Financial Statements
BFA Attachment B	Flushing Hospital Medical Center – March 31, 2023, Internal Financial Statements



Project # 231274-C
New Hyde Park Endoscopy

Program: Diagnostic and Treatment Center County: Nassau
Purpose: Construction Acknowledged: June 15, 2023

Executive Summary

Description

New Hyde Park Endoscopy, LLC (NHPE), an existing Article 28 Ambulatory Surgery Center (ASC) at 1991 Marcus Avenue, Lake Success, New York, seeks approval to convert from a single-specialty to a multi-specialty ambulatory surgery center and perform requisite renovations, including the addition of two operating rooms. Currently certified for gastroenterology, upon approval of this application, NHPE will add general surgery, pain management, and pediatric urology. Approval of this application will result in a change to the lease but no change in the membership structure or to the existing transfer agreement with the New York Hospital Medical Center of Queens. Upon approval of this application, the ASC will be renamed New Hyde Park Surgery Center.

Four physicians submitted letters of interest stating their intent to perform procedures at NHPE. The physicians estimate they will bring approximately 2,625 additional procedures to the facility in the first year of project implementation.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,691 procedures in Years One and Three, with 16.47% Medicaid and 0.09% Charity Care. The center is current, with SPARCS reporting through June 2023.

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 project cost of \$3,130,560 will be met with equity from existing operations or from Shri Bherav Co, LLC, which is an 89.5% member of the facility.

Table with 3 columns: Budget, Year 1 (2024), Year 3 (2026). Rows: Revenues (\$12,609,108), Expenses (\$7,990,902), Net Income (\$4,618,206).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL as it was received by the Department on May 5, 2022.

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-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
4. Submission of an executed additional building space lease acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **December 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **September 15, 2024**, 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 approved 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

September 7, 2023

Need Analysis

Background and Analysis

The center was approved under CON 142216 and began operations in December 2017, providing gastroenterology surgery services in three procedure rooms. The center was granted permanent life under CON 221253 in October 2022. The center is showing data in SPARCS through June 2023.

The primary service area consists of Nassau County. The population of Nassau County is projected to increase to 1,424,878 by 2028, based on Cornell Program of Applied Demographic estimates. Based on 2021 US Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Primary Service Area	New York State
Total Population-2021 Estimate	1,391,678	20,114,745
Hispanic or Latino (of any race)	17.2%	19.2%
White (non-Hispanic)	58.3%	54.7%
Black or African American (non-Hispanic)	11.0%	13.9%
Asian (non-Hispanic)	10.5%	8.6%
Other (non-Hispanic)	3.1%	3.6%

According to Data USA, in 2020, 95.9% of the population of Nassau County had health coverage as follows:

Employer Plans	59.5%
Medicaid	10.1%
Medicare	13.5%
Non-Group Plans	12.6%
Military or VA	0.238%

The applicant projects a total of 11,691 procedures in Year One and Three. These projections are based on the current practices of participating surgeons. The applicant projects bringing 2,625 new cases from the four physicians joining the center. Currently, these additional procedures are being performed in an office-based setting. The table below shows the actual payor source utilization for the current year and the projected payor source utilization for years one and three.

Payor	Current		Year 1		Year 3	
	Volume	%	Volume	%	Volume	%
Commercial FFS	6,327	69.79%	8,152	69.73%	8,152	69.73%
Medicare FFS	767	8.46%	988	8.45%	988	8.45%
Medicare MC	477	5.26%	615	5.26%	615	5.26%
Medicaid FFS	14	0.15%	18	0.15%	18	0.15%
Medicaid MC	1,476	16.28%	1,908	16.32%	1,908	16.32%
Charity Care	5	0.06%	10	0.09%	10	0.09%

The table below shows the number of patient visits for relevant ASCs in Nassau County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Pain Management	Ainsworth ASC (opened 8/2/22)	N/A	N/A	0
Multi	Day OP of North Nassau Inc	619	718	0
Multi	East Hills Surgery Center ²	3,964	4,886	5,280
Gastroenterology	Endoscopy Center of Long Island, LLC	6,874	8,696	9,742
Multi	Garden City Surgi Center	5,628	7,066	7,127

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Gastroenterology	Long Island Center for Digestive Health	4,267	5,605	5,497
Multi	Lynbrook Surgery Center	5,647	6,207	5,689
Gastroenterology	Meadowbrook Endoscopy Center	7,850	9,553	8,595
Gastroenterology	New Hyde Park Endoscopy	4,859	6,921	7,676
Multi	Pro Health Ambulatory Surgery Center ¹	11,031	0	0
Multi	ProHealth Day Op ASC ¹	2,380	0	0
Gastroenterology	Star Surgical Suites (opened 10/20/20)	N/A	1,317	2,325
Multi	Syosset SurgiCenter	3,886	4,993	4,916
Total Visits		57,005	55,962	56,847

¹ No data located for 2021 or 2022

² 2022 is an estimate based on partial-year data

The center has Medicaid Managed Care contracts with the following: Affinity, Blue Cross Blue Shield, Healthfirst, HealthPlus, HIP, United Healthcare Community Plan, and Fidelis Care. Also, the center will work collaboratively with local Federally Qualified Health Centers to provide service to the under-insured in their service area.

Conclusion

Approval of this project will increase access to pain management, pediatric urology, and general surgery services for the residents of Nassau County.

Program Analysis

Program Description

NHPE, LLC d/b/a New Hyde Park Endoscopy, an existing freestanding Ambulatory Surgery Center located at 1991 Marcus Avenue in Lake Success (Nassau County), seeks approval to convert from single specialty gastroenterology ASC and certify multi-specialty ASC specializing in gastroenterology, general surgery, pain management, and pediatric urology and perform construction to add two (2) new operating rooms. At the completion of the project, NHPE will have two (2) operating rooms and three (3) procedure rooms. The creation of the operating rooms will be accommodated through the expansion of NHPE by 4,307 square feet.

The Applicant reports that the NHPE expects 2,625 additional procedures annually to come from four (4) non-member physicians who will be migrating their cases to the Center in Year One and 3,998 procedures in Year Three. The Center currently experienced 4,125 procedures for the period of January 1, 2023, through April 30, 2023.

Staffing is expected to grow by 10.0 FTEs in Year One of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

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 Costs and Financing

Total project costs for the renovations and acquisition of moveable equipment are \$3,130,560, detailed as follows:

Renovation & Demolition	\$1,823,352
Design Contingency	\$182,335
Construction Contingency	\$182,335
Architect/Engineering Fees	\$7,280
Other Fees	\$5,974
Moveable Equipment	\$910,634
Application Fee	\$2,000
Processing Fee	\$16,650
Total Project Costs	\$3,130,560

The total project cost will be met with equity from the applicant or from Shri Bherav Co, LLC, which is an 89.5% member of the facility. The 2021-2022 Certified Financial Statements, March 31, 2023 Internal Financial Statements, and the investment statements from Shri Bherav Co, LLC., show the facility has sufficient equity to fund this project. The statements are shown on BFA Attachments A & B, respectively.

Operating Budget

The applicant has submitted the 2021 current year budget and first and third years operating projected budget, in 2023 dollars, as summarized below:

	<u>Current Year</u> <u>2021</u>		<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
<u>Revenues:</u>	<u>Discharge</u>	<u>Total</u>	<u>Discharge</u>	<u>Total</u>	<u>Discharge</u>	<u>Total</u>
Commercial- FFS	\$1,051.36	\$6,651,981	\$1,341.62	\$10,936,890	\$1,341.62	\$10,936,890
Medicare- FFS	\$440.15	\$337,596	\$440.26	\$434,972	\$440.26	\$434,972
Medicare-MC	\$434.09	\$207,062	\$433.80	\$266,787	\$433.80	\$266,787
Medicaid- FFS	\$245.86	\$3,442	\$246.39	\$4,435	\$246.39	\$4,435
Medicaid-MC	\$506.37	\$747,404	\$506.30	\$966,024	\$506.30	\$966,024
Total Revenues		\$7,947,485		\$12,609,108		\$12,609,108
 <u>Expenses:</u>						
Operating	\$538.29	\$4,880,161	\$555.54	\$6,494,866	\$564.33	\$6,957,534
Capital	<u>\$107.41</u>	<u>\$973,748</u>	<u>\$127.96</u>	<u>\$1,496,036</u>	<u>\$127.96</u>	<u>\$1,496,036</u>
Total Expenses	\$645.70	\$5,853,909	\$683.51	\$7,990,902	\$692.29	\$8,093,570
 Net Income		<u>\$2,093,576</u>		<u>\$4,618,206</u>		<u>\$4,515,538</u>
 Utilization: (Patient Discharges)		9,066		11,691		11,691
Cost Per Patient Discharge		\$645.70		\$683.51		\$692.29

The following is noted with respect to the submitted budget:

- Revenue, expense, and utilization assumptions are based on the combined historical experience of four non-member physicians and current facility operations.
- Revenues for the three specialties (general surgery, pain management, and pediatric urology) were based on the average payer rates being experienced by the four non-member physicians.
- Utilization and associated revenues are projected to increase because of new physicians performing procedures at the Center. Four board-certified physicians specializing in general surgery, colon and

rectal surgery, pain management, and pediatric urology expressed an interest in performing approximately 2,625 procedures during year one of the projections. The applicant submitted physician referral letters in support of the utilization projections.

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

	<u>Current</u> <u>2021</u>	<u>Years One</u> <u>and Three</u> <u>(2024 & 2026)</u>
Commercial FFS	69.79%	69.73%
Medicare FFS	8.46%	8.45%
Medicare MC	5.26%	5.26%
Medicaid FFS	0.15%	0.15%
Medicaid MC	16.28%	16.32%
Charity Care	<u>0.06%</u>	<u>0.09%</u>
Total	100%	100%

Additional Building Space Lease Rental Agreement

The facility is currently leasing space from Lalezarian Properties, LLC, for the operations of the single specialty facility. Additional space is needed to add two additional operating rooms and requisite support space for the operations of the new multi-specialty operation. The facility has provided a draft additional building space lease to the Department summarized below:

Premises:	6,100-6,200 sq ft of the mezzanine floor of the building located at 1991 Marcus Avenue, Lake Success (Nassau County)
Lessor:	Lalezarian Properties, LLC
Lessee:	New Hyde Park Endoscopy, LLC
Term:	11 years with one (5) year extension or 15 years with one (5) year extension (This is still being negotiated)
Rental:	\$37 per sq. ft. totaling \$229,400 annually
Provisions:	The lessee shall be responsible for utilities, maintenance, and real estate taxes.

The applicant submitted an affidavit attesting that the lease will be an arm's length agreement as there is no relationship between the tenant and the Landlord. The applicant has submitted two letters from two New York State real estate brokers attesting to the reasonableness.

Capability and Feasibility

Project costs of \$3,130,560 will be met with equity. The total project cost will be met with equity from the applicant or from Shri Bherav Co, LLC, which is an 89.5% member of the facility. The 2021-2022 Certified Financial Statements, March 31, 2023 Internal Financial Statements, and the Investment Statements from Shri Bherav Co, LLC., show the facility has sufficient equity to fund this project. The statements are shown on BFA Attachments A & B, respectively.

The working capital requirements for this project are estimated at \$975,652, representing two months of the first year's expenses, which will be met through operations. The Center's 2021-2022 Certified Financial Statements show an average positive working capital position and an average positive members' equity position of \$1,653,792 and \$4,045,676, respectively. The facility achieved an average net income of \$4,711,937 for the period 2021-2022. The March 31, 2023 Internal Financial Statement show a positive working capital position, positive net asset position, and a net income of \$2,797,658. The budget indicates a net income of \$4,618,206 and \$4,515,538 for the first and third years, which appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	2021-2022 Certified Financial Statements and March 31, 2023 Internal Financial Statement of New Hyde Endoscopy, LLC
BFA Attachment B	Shri Bherav Co, LLC Current Bank Statements as of 4/28/2023



Project # 231066-C
Open Door Family Medical Center, Inc

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Westchester
Acknowledged: February 22, 2023

Executive Summary

Description

Open Door Family Medical Center, Inc. (Open Door), a voluntary not-for-profit, Article 28 Diagnostic and Treatment Center (D&TC), Federally Qualified Health Center (FQHC), requests approval to renovate existing space at 165 Main Street, Ossining (Westchester County), and certify an extension clinic to be located at 2 Church Street, Ossining (Westchester County).

Open Door provides primary care and medical specialties, such as behavioral health and dental services. The extension clinic will focus mainly on women's health, podiatry, and optometry. There will be no change in services as a result of this project.

The new extension clinic will be part of Open-Door Family Medical Center – Ossining Primary Care. Daren Wu, M.D., will continue to serve as the Medical Director. Open Door has an existing Transfer Agreement with Phelps Hospital, located 4.2 miles away, which will be extended to cover the extension clinic as well.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 35,371 visits in Year One and 48,871 in Year Three, with Medicaid at 56.59% and 53.12% and Charity Care at 2% for the same years.

Program Summary

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

Financial Summary

The total project cost of \$16,646,745 will be met with equity from Open Door Family Medical Center, Inc.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows include Revenues, Expenses, and Net Income (Loss).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on February 9, 2023.

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 forty-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 NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **December 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **September 15, 2025**, 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 approved 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

September 7, 2023

Need Analysis

Background and Analysis

The primary service area is Ossining and Croton-on-Hudson in Westchester County, covering zip codes 10562 and 10520, which are within a Medically Underserved Area. The Cornell Program on Applied Demographics projects the population of Westchester County to increase to 1,029,448 by 2028.

Demographics for the primary service area are noted below, including comparisons with the county and New York State:

Demographics	Primary Service Area	Westchester County	New York State
Total Population-2021 Estimate	46,921	997,895	20,114,745
Hispanic or Latino (of any race)	30.3%	25.9%	19.20%
White (non-Hispanic)	53.8%	50.5%	54.70%
Black or African American (non-Hispanic)	8.1%	13.0%	13.90%
Asian(non-Hispanic)	4.8%	5.9%	8.60%
Other (non-Hispanic)	3.0%	4.7%	3.60%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 94.5% of the population in Westchester County had health coverage as follows.

Employer Plans	55.9%
Medicaid	14.2%
Medicare	12.8%
Non-Group Plans	11.3%
Military or VA	0.318%

The table below shows the projected payor mix for Year One and Year Three.

Applicant Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	11.22%	12.97%
Medicare	3.61%	5.97%
Medicaid	56.59%	53.12%
Private Pay	19.19%	18.89%
Charity Care	2.00%	2.00%
Other	7.39%	7.05%

Open Door is constrained by conditions at its current D&TC site. This project will expand clinical program spaces to bring the building up to current standards and codes. This, coupled with CON project 221257, to create a new DTC within 148 feet, will create a medical campus in Ossining.

This location will provide specialty medical services, outpatient dental services, and integrated behavioral health to support patients being seen in specialty medicine programs. Hours of operation will be Monday-Thursday, 8:30 AM-7:00 PM; Friday, 8:30 AM-5:00 PM; Saturday, 9:00 AM-3:00 PM. There will be no changes to the Operating Certificate as a result of this project.

The total number of projected visits is 35,371 in Year One and 48,871 in Year Three. Currently, Open Door reports 14,499 dental visits per year or 1,812 visits per chair. The applicant states they are operating at 134% against the industry standard of 1,350 visits per chair, according to the National Maternal and Child Oral Health Research Center for Safety Net Facilities. The addition of four (4) dental chairs will improve their dental visits.

Conclusion

Approval of this project will help Open Door Family Medical Center address its space constraints and allow them to expand services within the community.

Program Analysis

Project Proposal

Open Door Family Medical Center, an Article 28 Diagnostic and Treatment Center located at 165 Main Street in Ossining (Westchester County), seeks approval to perform renovations to the main site to expand the outpatient services the facility provides.

The renovation of the clinic to allow for expansion of the clinical program space will ensure access and continuity of care in the community. The main D&TC averages 14,499 dental visits in eight (8) chairs. This is operating at 134% of the expected utilization.

The Applicant will expand the number of dental chairs by four (4) to a total of 12 chairs. They will renovate the entire three-floor building to expand the clinical program space and bring all the spaces in the building up to current code.

Staffing is expected to increase from 63.74 FTEs to 81.82 FTEs by the end of Year One and to 96.41 by Year Three of the completed project.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

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 cost for renovations and movable equipment in 2023 dollars, is estimated at \$16,646,745 and is distributed as follows:

Renovation & Demolition	\$12,357,505
Design Contingency	1,235,750
Construction Contingency	1,235,750
Architect/Engineering Fees	807,043
Other Fees	134,347
Movable Equipment	800,531
Application Fee	1,250
Additional Processing Fee	<u>74,569</u>
Total Project Cost	\$16,646,745

Project costs of \$16,646,745 will be met with equity from Open Door Family Medical Center, Inc.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for years one and three, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2021)</u>		<u>(2025)</u>		<u>(2027)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$60.49	\$176,207	\$60.50	\$240,105	\$60.50	\$383,475
Medicare FFS	\$123.89	105,554	\$125.14	159,674	\$126.36	368,971
Medicaid FFS	\$213.41	320,969	\$217.26	456,021	\$219.45	655,934
Medicaid MC	\$213.41	3,089,750	\$217.26	3,892,599	\$219.47	5,040,958
Private Pay	\$32.30	172,311	\$32.29	219,156	\$32.33	298,527
* All Other	\$213.41	485,508	\$217.24	568,087	\$219.47	\$756,063
Total Op. Rev		\$4,350,299		\$5,535,642		\$7,503,928
** Other Revenue		\$2,205,650		\$2,257,200		\$2,382,200
Total Revenue		\$6,555,949		\$7,792,842		\$9,886,128
Expenses:						
Operating	\$229.33	\$6,401,690	\$209.69	\$7,417,109	\$188.93	\$9,233,662
*** Capital	<u>3.55</u>	<u>99,207</u>	<u>10.60</u>	<u>375,182</u>	<u>13.33</u>	<u>651,364</u>
Total	\$232.88	\$6,500,897	\$220.29	\$7,792,291	\$202.26	\$9,885,026
Net Income / (Loss)		<u>\$55,052</u>		<u>\$551</u>		<u>\$1,102</u>
Total Visits		27,915		35,371		48,871
Cost per Visit		\$232.88		\$220.29		\$202.26

* All Other is Child Health Plus reimbursement.

** Other Revenue comprises Federal Grants, NYS Grants, WIC, Phelps Hospital Contributions, and Home Health Funds.

*** Capital cost increase in year three due to full-year depreciation, which is currently \$99,207, and as a non-cash expense. Depreciation increases to \$651,364 in the third year due to the total project cost and fees increasing.

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

<u>Payor:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	10.44%	11.22%	12.97%
Medicare FFS	3.05%	3.61%	5.97%
Medicaid FFS	5.39%	5.93%	6.12%
Medicaid M/C	51.86%	50.65%	47.00%
Private Pay	19.11%	19.19%	18.89%
Charity	2.00%	2.00%	2.00%
Child Health Plus	<u>8.15%</u>	<u>7.39%</u>	<u>7.05%</u>
Total	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Commercial rates are based on the organization’s current average reimbursement rates.
- Private pay visits for the proposed site are based on actual visit payer mix data and services currently offered at the 165 Main Street location.
- NYS Safety Net and Federal 330 grants funds are allocated toward uninsured visits. Year One and Year Three projections are based on Open Door’s current year uninsured visits rate with an underlying assumption that the rate of uninsurance among the population remains steady.
- Patient-Centered Medical Home incentive revenues are based on the current Medicaid Fee-For-Service rate add-on and capitation per member, the per-month rate for Medicaid Managed Care.
- Staffing is based on the expected utilization and experience of Open Doors providing current outpatient services and increases as projected services are increased.
- Expenses are based predominantly on the current labor and benefit costs for staffing, which appear to be increasing based on increased outpatient services needed in the community it serves.
- Utilization is based on average visits per FTE by discipline, based on the organization’s historical and current experience.

Capability and Feasibility

Project costs of \$16,646,745 will be met with equity from Open Door. The applicant has investments of \$121,551,400 and \$95,865,899, listed on the 2021 Certified Financial Statement and the 2022 Internal Balance Sheet shown in Attachment A. Working capital requirements are estimated at \$1,647,504, based on two months of third-year expenses, and will be funded through the ongoing operations of Open Door Family Medical Center, Inc. The submitted budget projects a net income of \$551 and \$1,102 during Years One and Three, respectively. The budget appears reasonable based on current reimbursement and experience.

BFA Attachment A presents the 2021 Certified Financial Statements and the 2022 Internal Financial Statement of Open Door Family Medical Center, Inc., and affiliates. The statements show a positive average working capital position, average positive net asset position, and a net income of \$2,253,838 and \$2,629,287 in 2021 and 2022, respectively.

Attachment B presents Open Door Family Medical Center, Inc.’s Internal Financial Statements for the period ended April 30, 2023, showing the facility reported positive working capital and net asset position. During the same period, Open Door reported a net operating gain of \$2,673,133 after depreciation.

The proposed extension clinic is expected to increase the availability of needed primary medical care and behavioral health services for the low-income service area population, improve the timeliness of care delivery, and overall efficiency in providing care suited to meet the needs of the targeted population.

Conclusion

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

Attachments

BFA Attachment A	Open Door Family Medical Center, Inc., and Affiliates 2021 Certified Financial Statements and 2022 Internal Financial Statement
BFA Attachment B	Open Door Family Medical Center, Inc. April 30, 2023 (Internal Financial Statement)



Project # 231161-B
Queens Endovascular Center LLC

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: April 10, 2023

Executive Summary

Description

Queens Endovascular Center, LLC (Queens Endo), a Delaware limited liability company authorized to do business in New York State, requests approval to establish and construct a single-specialty Article 28 Ambulatory Surgery Diagnostic and Treatment Center (ASC) in leased space on the 5th floor of 30-30 Northern Boulevard, Long Island City (Queens County). The space will be renovated to include two Class 2 Procedure Rooms. The Center will specialize in providing endovascular procedures to patients with End Stage Renal Disease (ESRD).

The sole manager/member of Queens Endo is Raymond Figueroa. Mr. Figueroa is also the sole manager/member of NY Endovascular Center, LLC. David Mobley, M.D., who is Board-Certified in Interventional and Diagnostic Radiology, will serve as Medical Director. Queens Endo will enter into a Transfer and Affiliation Agreement with Mount Sinai Queens, located 1.5 miles / 10 minutes away, for emergency services and backup care. Six physicians, including Dr. David Mobley, will perform the proposed ESRD endovascular procedures.

OPCHSM Recommendation. Contingent approval with an expiration of the operating certificate five years from the date of issuance.

Need Summary

The applicant projects 2,071 procedures in Year One and 2,550 in Year Three, with Medicaid at 10.04% and Charity Care at 3.96% in the third 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 is \$3,257,226 and will be funded with \$2,235,688 in equity and a lease tenant improvement allowance of \$1,021,578.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows: Revenues (\$5,235,896 vs \$6,452,528), Expenses (4,575,284 vs 5,450,980), Net Income (\$660,612 vs \$1,001,548).

Health Equity Impact Assessment.

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on April 3, 2023.

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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures.
 - b. Data displaying the breakdown of visits by payor source.
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery.
 - d. Data displaying the number of emergency transfers to a hospital.
 - e. Data displaying the percentage of charity care provided.
 - f. The number of nosocomial infections recorded during the year reported.
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed building lease acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed Lease Agreement acceptable to the Department. [CSL]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **December 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **September 15, 2024**, 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 approved 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]
4. 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]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/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. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The service area consists of Queens County. The percentage of residents aged 65 and over was 17.4%, slightly lower than the New York State percentage of 17.5%. The non-white population percentage was 52.7%, which is significantly higher than the New York State percentage of 30.9%. These are two population groups in which end-stage renal disease is most prevalent. Currently, there are 869 existing dialysis stations, with 175 stations under construction within the county.

The Cornell Program on Applied Demographics projects the population of Queens County to increase to 2,544,231 by 2028. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Primary Service Area	New York State
Total Population-2021 Estimate	2,393,104	20,114,745
Hispanic or Latino (of any race)	27.9%	19.2%
White (non-Hispanic)	24.6%	54.7%
Black or African American (non-Hispanic)	16.8%	13.9%
Asian (non-Hispanic)	25.6%	8.6%
Other (non-Hispanic)	5.1%	3.6%

Source: 2021 Census population estimates from the American Community Survey /

According to Data USA, in 2020, 91.1% of the population of Queens County had health coverage as follows:

Employer Plans	43.3%
Medicaid	25.7%
Medicare	10.4%
Non-Group Plans	11.4%
Military or VA	0.294%

The applicant projects 2,071 procedures in the first year and 2,550 in the third, with Medicaid at 10.04% and Charity Care at 3.96% based on the current practices of participating surgeons. The applicant states that all the procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	155	7.48%	191	7.49%
Commercial MC	155	7.48%	191	7.49%
Medicare FFS	1,035	49.98%	1,275	50.00%
Medicare MC	414	19.99%	510	20.00%
Medicaid FFS	104	5.03%	128	5.02%
Medicaid MC	104	5.03%	128	5.02%
Private Pay	21	1.01%	26	1.02%
Charity Care	83	4.00%	101	3.96%

The Center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Health First, United Health Care, Affinity Health, Emblem Health, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Community Healthcare Network, Joseph P Addabbo Family Health Center, and Damian Family Care Centers to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Queens County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Multi	Choices Women's Medical Center ¹	0	0	0
Multi	CitiMed Surgery Center (opened 11/20/20)	N/A	2,023	4,744
Multi	EMU Health	2,947	2,459	2,909
Multi	Gramercy Surgery Center, Inc-Queens	1,578	2,290	3,055
Multi	New York Surgery Center Queens	1,676	2,216	2,235
Multi	North Queens Surgical Center	7,440	9,865	8,774
Multi	Physicians Choice Surgicenter	537	680	517
Multi	Queens Surgical Center (opened 10/21/20)	N/A	545	1,264
Multi	Rockaways ASC Development	3,122	7,484	10,435
Total Visits		17,300	27,562	33,933

¹ No data located for 2020, 2021 & 2022

Conclusion

Approval of this project will provide increased access to vascular access surgery services in an outpatient setting for the residents of Queens County.

Program Analysis

Project Proposal

Queens Endovascular Center, LLC d/b/a Queens Endovascular Center seeks approval to establish and construct a Single Specialty Ambulatory Surgery Center for the provision of endovascular procedures to be located at 30-30 Northern Blvd, 5th Floor, Long Island City (Queens County).

Proposed Operator	Queens Endovascular Center, LLC
To Be Known As	Queens Endovascular Center
Site Address	30-30 Northern Blvd. 5 th Floor Long Island City, NY 11101 (Queens County)
Surgical Specialties	Ambulatory Surgery-Single Specialty Endovascular
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8 am to 6 pm, if needs dictate, hours will be expanded
Staffing (1st Year / 3rd Year)	11.7 FTEs / 13.4 FTEs
Medical Director(s)	David Mobley, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: Mount Sinai Queens 1.5 miles / 10 minutes away
After-hours access	The facility will have an answering machine that has a recorded message that instructs the patient to call their Medical Doctor or 911. This information will also be given on the written discharge instructions.

Character and Competence

The manager/member of Queens Endovascular Center, LLC is:

<u>Name</u>	<u>Membership Interest</u>
Raymond Figueroa	100%
Total	100%

Mr. Raymond Figueroa has currently been employed as the Chief Executive Officer at an Ambulatory Surgery Center with a focus on Outpatient Vascular Care for four (4) years. He was the CEO of National Spine and Pain Centers for two (2) years. He was the Vice President of Advanced Microvasive Alternative for one (1) year. He was the Radiologist. He was the previous CEO and Chairman of Blue Cloud ASC, which focused on pediatric dental patients that require general anesthesia, and a company that is focused on providing vascular services to patients requiring vascular procedures for five (5) years. He was the previous Owner, Founder, and Chief Executive Officer of American Access Care, LLC, which focused on the vascular treatment of patients for 11 years. They operated 30 vascular access centers in 12 states, with vascular access services provided in Office-Based Surgery Centers, State Licensed Clinics, and Ambulatory Surgery Centers. Mr. Figueroa has extensive management and financial background in medical practices.

David Mobley, M.D., is the Proposed Medical Director and an Assistant Professor of Radiology at Columbia Presbyterian Medical Center for nine (9) years. He is the Medical Director of American Endovascular and Amputation Prevention for one (1) year. He was an X-ray technologist at Columbia Presbyterian for eight (8) years. He was an Attending Vascular and Interventional Radiologist for one (1) year at Maimonides Medical Center. He has been the Vascular and Interventional Radiology Associate Director of Interventional Radiology and Residency for seven (7) years. He was the Vascular and Interventional Radiology Medical Student Education Director for seven (7) years. He was the Attending of Vascular and Interventional Radiology for one (1) year. He received his Medical Degree from Manhattan College. He completed his Radiology Residency at SUNY Downstate and Mount Sinai Medical Center.

He completed his Interventional Radiology Fellowship at Mount Sinai Medical Center. He is Board Certified in Diagnostic Radiology.

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.

Integration with Community Resources

The Applicant will serve all patients needing care, regardless of their ability to pay or the source of payment. The patients of the Center will be suffering from end-stage renal disease and will be referred by their nephrologist. The nephrologist, for the most part, acts as their primary care physician. The Center will work with the transferring hospital to ensure there is backup primary care coverage for any patient that is in need.

It is not the intent of the Applicant to become part of an Accountable Care Organization. If the need arises, the Applicant will address this in the future.

The facility will utilize an electronic medical record system and will coordinate with existing RHIO and HIO and participate in their programs.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost in 2023 dollars for renovations and the acquisition of moveable equipment is estimated at \$3,257,226, further broken down as follows:

Renovation & Demolition	\$2,150,000
Design Contingency	\$105,000
Construction Contingency	\$215,000
Architect/Engineering Fees	\$175,000
Construction Manager Fees	\$125,000
Other Fees (Consultant)	\$75,000
Moveable Equipment	\$377,420
CON Fee	2,000
Additional Processing Fee	<u>\$17,806</u>
Total Project Cost	\$3,257,226

The proposed project will be funded with \$2,235,688 in equity and a lease tenant improvement allowance of \$1,021,578.

Operating Budget

The applicant submitted an operating budget, in 2023 dollars, during the first and third years of operations, summarized as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Commercial FFS	\$3,816	\$591,448	\$3,815	\$728,665
Commercial MC	\$3,180	\$492,874	\$3,179	\$607,220
Medicare FFS	\$2,540	\$2,628,660	\$2,540	\$3,238,509
Medicare MC	\$2,540	\$1,051,464	\$2,543	\$1,296,958
Medicaid FFS	\$2,528	<u>\$262,866</u>	\$2,533	<u>\$324,240</u>
Medicaid MC	\$2,528	<u>\$262,866</u>	\$2,530	<u>\$323,851</u>
Private Pay	\$2,528	<u>\$52,573</u>	\$2,491	<u>\$64,770</u>
Bad Debt		<u>(\$106,855)</u>		<u>(\$131,685)</u>
Total		\$5,235,896		\$6,452,528
 Expenses:				
Operating	\$1,904	\$3,943,104	\$1,883	\$4,802,578
Capital	<u>\$305</u>	<u>\$632,180</u>	<u>\$255</u>	<u>\$648,402</u>
Total Expenses	\$2,209	\$4,575,284	\$2,138	\$5,450,980
 Net Income				
		<u>\$660,612</u>		<u>\$1,001,548</u>
Procedures		2,071		2,550
Cost Per Procedure		\$2,209		\$2,138

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

- The budget is based on the applicant's 20-plus years of health care experience, including management of vascular access services provided in office-based settings, clinics, and ASCs in 12 states, including locations in New York City.
- Revenue assumptions are based on the Medicare Physician Fee Schedule for vascular access and vascular disease procedures. The rates were averaged by procedure type based on the applicant's experience with providing the procedures, as well as collections.
- Most of the payer sources have contracted rates based on the Medicare Physician Fee Schedule. The applicant's agreements are based on the Medicare Physician Fee Schedule, which ranges between 83 – 100% of Medicare. Reimbursements will be consistent with the guidelines for Medicare, Medicaid, and Commercial Insurance payers, which are all-inclusive. It is anticipated that payments will be an all-inclusive/global fee based on the specific payer protocol.

- Expense assumptions are based on experience, local agreements, and a staffing model that includes 1.50 FTE physicians in year one and 2.2 in year three, 3.0 FTE RNs in year one, and 4.0 FTE RNs in year three with 1.0 FTE Technician Specialist in years one and three.
- Utilization is based on the applicant’s experience with patients receiving these services in private physician offices as office-based surgery or in a hospital operating room as outpatient surgery.
- Charity care is estimated to be at 4% and 3.96% in the first and third years of operations, respectively, and Medicaid is estimated to be at 10%.

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

<u>Payor Source</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	155	7.48%	191	7.49%
Commercial MC	155	7.48%	191	7.49%
Medicare FFS	1,035	49.98%	1,275	50.00%
Medicare MC	414	19.99%	510	20.00%
Medicaid FFS	104	5.03%	128	5.02%
Medicaid MC	104	5.03%	128	5.02%
Private Pay	21	1.01%	26	1.02%
Charity Care	83	<u>4.00%</u>	101	<u>3.96%</u>
Total	2,071	100.00%	2,550	100.00%

Lease Rental Agreement

The applicant submitted a draft lease agreement summarized below:

Premises:	30-30 Northern Boulevard, Long Island City (6,131 total sq. ft. on the 5 th floor))
Lessor:	3030 Equities, LLC
Lessee:	Queens Endovascular Center, LLC
Term:	10 years with 2 (5) year extensions
Rental:	\$36 per sq. ft. totaling \$220,716 annually during the first year and increasing 2.75% the base rent by every year from years 2-5, a 7.7 % increase for year 6, and a 2.75% annual increase for years 7-10.
Provisions:	The lessee shall be responsible for utilities, maintenance, and real estate taxes.

The applicant submitted an affidavit attesting that the lease will be an arm’s length agreement as there is no relationship between the tenant and the Landlord. The applicant has submitted two letters from two New York State real estate brokers attesting to the reasonableness.

Capability and Feasibility

The total cost for this project is \$3,257,226, which will be funded with members’ equity of \$2,235,688 and a lease tenant improvement allowance of \$1,021,578.

Working capital requirements are estimated at \$908,497, equivalent to two months of third-year expenses. The working capital will be provided entirely by members’ equity contributions. BFA Attachment A presents the Personal Net Worth Statement of the proposed member, indicating sufficient funds to meet the equity contribution for both the project cost and the working capital requirement. BFA Attachment B is the Pro Forma Balance Sheet showing a \$3,144,144 positive equity balance as of the first day of operation.

Revenues are based on current reimbursement methodologies for vascular access and vascular disease procedures. Expenses are based on experience, local agreements, and staffing model. The submitted budget projects a net income of \$660,612 and \$1,001,548 during the first and third years, respectively.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements of Proposed Member of Queens Endovascular Center, LLC
BFA Attachment B	Organizational Chart (after PHHPC approval)
BFA Attachment C	Pro Forma Balance Sheet



**Project # 231233-E
Buffalo Surgery Center, LLC**

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Erie
Acknowledged: June 16, 2023

Executive Summary

Description

Buffalo Surgery Center, LLC, an existing Article 28 Ambulatory Surgery Center (ASC) located at 3921 Sheridan Avenue, Amherst (Erie County), New York, requests approval to transfer 24% ownership interest from existing members to six new members. This CON is being submitted for full review as more than 25% ownership interest will have been transferred in the past five (5) years. Upon approval, 25 members will each own 4% of Buffalo Surgery Center, LLC. Before and after membership of Buffalo Surgery Center, LLC is included in the following Program Review.

The operator was approved in April to add two (2) operating rooms and two (2) minor procedure rooms and convert them to multispecialty ambulatory surgery services in CON 212177.

OPCHSM Recommendation

Conditional approval with an expiration of the operating certificate three years from the date of its issuance.

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

The purchase price for the 4% ownership interest for each member will be \$205,000. The new members will provide equity from their personal resources. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no changes in services or location.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 12, 2023.

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 three years from the date of its issuance, conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/Director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Program Analysis

Program Proposal

Buffalo Surgery Center, LLC, an existing Article 28 Ambulatory Surgery Center, seeks approval to transfer 24% ownership interest from existing members and one (1) withdrawing member to six (6) new members. The existing ASC is located at 3921 Sheridan Drive in Amherst (Erie County). There will be no change in services as a result of this application. Staffing is projected to increase by 16.5 FTEs in Year One and 29 FTEs in Year Three.

Character and Competence

The proposed membership for Buffalo Surgery Center, LLC is provided in the chart below.

<u>Member Name/Title</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>
Lisa Daye, MD	5.00%	4.00%
Andrew Stoeckl, MD	5.00%	4.00%
John Callahan, MD	5.00%	4.00%
James Kelly, DO	5.00%	4.00%
Bryan Butler, MD	5.00%	4.00%
Matthew Cywinski, MD	5.00%	4.00%
Mohammed Fayyaz, MD	5.00%	4.00%
Alok Gupta, MD	5.00%	4.00%
Joseph Lebere, MD	5.00%	4.00%
Jehad Miqdadi, MD	5.00%	4.00%
James Piscatelli, MD	5.00%	4.00%
Jeffrey Visco, MD	5.00%	4.00%
Timothy McGrath, MD	5.00%	4.00%
Kory Reed, MD	5.00%	4.00%
Nicholas Violante, DO	5.00%	4.00%
David Pula, MD	5.00%	4.00%
Ryan Wilkins, MD	5.00%	4.00%
Daniel Lefeber, MD	5.00%	4.00%
Mark Falvo, MD	5.00%	4.00%
James Slough, MD	5.00%	0.00%
Adam Burzynski, MD ***	0.00%	4.00%
Peter Gambacorta, DO ***	0.00%	4.00%
Matthew Mann, MD ***	0.00%	4.00%
David Miller, MD ***	0.00%	4.00%
Michael Ostempowski, MD	0.00%	4.00%
Matthew Zinno, DO	0.00%	4.00%

*** Members Subject to Character and Competence

Adam Burzynski, M.D., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for six (6) years. He received his medical degree from SUNY Upstate Medical University. He completed his Orthopedics Surgical Residency at the University of Cincinnati Medical Center. He completed his Sports Medicine Fellowship at SUNY Buffalo School of Medicine.

Peter Gambacorta, D.O., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for four (4) years. He was an Orthopedic Surgeon and Partner at Northtown Orthopedics for nine (9) years. He received his medical degree from the New York College of Osteopathic Medicine. He completed his Orthopedic Surgery Residency at the Cleveland Clinic Health System. He completed his Orthopedic

Surgery Sports Medicine Fellowship at Harvard Medical School. Dr. Gambacorta discloses ownership interest in the following healthcare facilities:

Millard Fillmore ASC, Inc.

05/2015-06/2017

Matthew Mann, M.D., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for eight (8) years. He received his medical degree from McGill University. He received his Fellowship of the Royal College of Surgeons from McGill University. He completed his Hip and Knee Reconstruction Fellowship at the University of British Columbia. He completed his Foot and Ankle Surgery Fellowship at the University of Toronto. He is Board Certified in Orthopedic Surgery.

David Miller, M.D., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for four (4) years. He was an Orthopedic Surgeon and Partner at Northtown Orthopedics for 18 years. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Surgical Residency at SUNY Buffalo. He is Board Certified in Orthopedic Surgery. Dr. Miller discloses ownership interest in the following healthcare facility:

Millard Fillmore ASC, Inc.

11/2007-04/2007

Michael Ostempowski, M.D., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for four (4) years. He was an Orthopedic Surgeon and Partner at Buffalo Orthopaedics Group for 13 years. He received his medical degree from SUNY Buffalo. He completed his Orthopaedic Surgery Residency at the University of Cincinnati. He completed his Joint Replacement and Cartilage Reconstruction Fellowship at the University of California at San Diego. He is Board Certified in Orthopedic Surgery.

Matthew Zinno, D.O., is an Orthopedic Surgeon and Partner at Excelsior Orthopaedics for four (4) years. He was an Orthopedic Surgeon and Partner at Northtown Orthopedics for four (4) years. He was an Orthopedic Surgeon at Frank Schlehr, MD, PC for two (2) years. He received his medical degree from Des Moines University College of Osteopathic Medicine. He completed his Orthopedic Surgery Residency at Garden City Hospital Michigan State University Statewide Campus System. He completed his Orthopedic Surgery Sports Medicine Fellowship at SUNY Buffalo. He is Board Certified in Orthopedic Surgery with a sub-specialty in Sports Medicine.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database. 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 individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Purchase, Sale, and Joiner Agreements

The applicant has submitted an executed Purchase, Sale, and Joiner agreements, summarized below:

Date	May 12, 2023
Purpose	To purchase 100 units each of the Company, equivalent to 4% ownership interest for each member.
Purchaser	Adam Burzynski, MD., Peter Gambacorta, DO, Matthew Mann, MD., David Miller, MD, Michael Ostempowski, MD., and Matthew Zino, MD.

Capability and Feasibility

The purchase price for each new member's interest is \$205,000. The new members will provide equity from their personal resources. Presented as BFA Attachment A are the personal net worth statements of proposed new members of Buffalo Surgery Center, LLC, which indicates the availability of sufficient funds for the equity contribution.

Presented as BFA Attachment C are the 2021 and 2022 Certified Financial Statements of Buffalo Surgery Center, LLC. As shown, the entity had an average positive working capital position and an average positive net asset position during the period. The entity achieved an average net income of \$5,961,884 from 2021 through 2022.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Ownership of Buffalo Surgery Center, LLC
BFA Attachment C	Buffalo Surgery Center, LLC Certified Financial Statements for 2021 and 2022



**Project # 221185-E
City Wide Health Facility Inc.**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** June 16, 2022

Executive Summary

Description

City Wide Health Facility, Inc., an existing New York corporation, requests approval to transfer 100% of shareholders' interest (200 shares) in an Article 28 Diagnostic and Treatment Center (D&TC) from four (4) withdrawing members to two (2) new members. City Wide provides radiology services at the main site, 105 Kings Highway, Brooklyn (Kings County), and their extension clinic at 6817 Bay Parkway, Brooklyn (Kings County). They are not proposing to add or change any services. The Center's existing lease agreements will remain in place unchanged upon approval of this application.

On February 15, 2022, Edward Atbashyan, Alex Zharov, Simon Korenblit, and Alex Korenblit entered into a stock purchase agreement to sell 100% (200 shares) of the issued and outstanding shares of stock in City Wide Health Facility, Inc., to Yakov Khodzhayev, Alexander Sachakov, and Dimitri Cohen for \$3,100,000, plus an estimated \$515,000 for 50% of certain accounts receivables (no-fault and other). On June 29, 2023, Yakov Khodzhayev assigned his rights to Dimitri Cohn.

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

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Edward Atbashyan	30.00%	0.00%
Alex Zharov	30.00%	0.00%
Simon Korenblit	30.00%	0.00%
Alex Korenblit	10.00%	0.00%
Alexander Sachakov	0.00%	33.33%
Dimitri Cohen	0.00%	66.67%
Total	100%	100%

Harvey Stern, M.D., Board Certified in Radiology, will continue to serve as the Center's Medical Director. The existing Linkage Agreement that provides transfer services will continue with Maimonides Medical Center, located 2.8 miles (20 minutes travel time) from the Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

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)(b).

Financial Summary

The total purchase price is estimated at \$3,615,000 and will be funded through \$992,156 shareholders' equity (\$500,000 already paid) and a \$2,622,844 self-amortizing ten-year loan, at prime plus 2.25% or 10.5% as of 7/19/2023. There are no project costs associated with this application.

<u>Budget</u>	<u>Year One (2023)</u>	<u>Year Three (2025)</u>
Revenues	\$4,463,811	\$4,463,811
Expenses	<u>4,364,223</u>	<u>4,392,689</u>
Net Income	\$99,588	\$71,122

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 5, 2022.

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 loan commitment acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov.
[Hosp]

Council Action Date

September 7, 2023

Program Analysis

Program Proposal

City Wide Health Facility, Inc., an existing Article 28 Diagnostic and Treatment Center, seeks approval to transfer 100% ownership interest from four (4) withdrawing members to two (2) new members. The existing Diagnostic and Treatment Center, currently operated by City Wide Health Facility, Inc., is located at 105 Kings Highway in Brooklyn (Kings County), with an extension clinic located at 6817 Bay Parkway in Brooklyn (Kings County). There will be no change in services or staffing as a result of this application.

Character and Competence

The proposed membership for City Wide Health Facility, Inc. is provided in the chart below.

Member Name	Current	Proposed
Alex Zharov	30.00%	0%
Simon Korenblit	30.00%	0%
Alex Korenblit	10.00%	0%
Edward Atbashshyan	30.00%	0%
Alexander Sachakov ***	0%	33.33%
Dmitri Cohen ***	0%	66.67%
Total	100%	100%

*** Subject to Character and Competence

Dmitri Cohen is the Executive Director of IT Infrastructure Services at the Fashion Institute of Technology for five (5) years. He designed and implemented multiple IT-related infrastructure projects; provided guidance on the standard operating procedures; managed and directed a team of 20 people responsible for IT Operations, Systems, Networks, and Telecoms; managed all IT-related budgets; and appraised and reviewed the staff on a triannual basis. He was a Consultant at HBO via Sofia Technology for over five (5) years. He was responsible for representing the Engineering, Solution Integration, and Design teams with the various other teams and departments. He developed multiple programs and systems to upgrade and enhance system performance. He worked closely in collaboration with other departments and teams to support projects and applications. He was previously employed as an IT Specialist at Avon Products, Inc. for over one (1) year. He was responsible for building and deploying different IT applications, installing and configuring IT applications, and tracking and following up on problems and incidents. He was previously employed as a Senior UNIX System Engineer at Barnes and Noble for over nine (9) years. He performed all IT duties and tasks. He was previously employed as the UNIX System Administrator/Programmer Analyst and Consultant for two (2) years. He performed all System Administrator tasks on UNIX.

Alexander Sachakov is the President of Apex Records and Filing LLC for approximately one (1) year. He is responsible for assisting medical professionals in running a healthcare facility, developing and implementing practice cost management, and assisting in strategic planning and expansion, innovation development, and research. He implements advertising and marketing and provides management, consulting, and marketing services. He was the Manager of Jamaica Urgent Care for approximately five (5) years. He led a staff of 14 employees, oversaw all financial operations, supervised, trained, and evaluated all administrative staff, hired and onboarded new staff, and was a point of contact for all new administrative staff. He was a Medical Assistant and Phlebotomy Technician at Advanced Medical Associates for approximately four (4) years. He took medical histories, assisted medical staff, took blood samples from patients, labeled specimens, prepared specimens for transport, and adhered to all relevant health and safety standards. He was a Manager at AllWirelessUSA for approximately five (5) years. He supervised daily functions, including sales, repairs, and other duties. He maintained a complete overview of accounts receivable and accounts payable, coordinated hiring and training new employees, and received and maintained an inventory of accessories.

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

Financial Analysis

Operating Budget

The applicant has submitted the current year (2021) and first and third-year projected operating budgets in 2023 dollars, as summarized as follows:

	Current Year <u>2021</u>		Year One <u>2023</u>		Year Three <u>2025</u>	
	<u>Proc.</u>	<u>Total</u>	<u>Proc.</u>	<u>Total</u>	<u>Proc.</u>	<u>Total</u>
Revenues:						
Medicaid-FFS	\$240.81	\$50,088	\$241.01	\$57,601	\$241.01	\$57,601
Medicaid - MC	\$228.77	1,318,386	\$228.75	1,516,144	\$228.75	1,516,144
Medicare - FFS	\$268.57	324,707	\$268.64	373,413	\$268.64	373,413
Commercial-FFS	\$297.41	297,108	\$297.37	341,674	\$297.39	341,674
All Other	\$461.51	1,891,286	\$461.49	2,174,979	\$461.49	2,174,979
PPP Loan Forgiven		<u>281,348</u>		<u>0</u>		<u>0</u>
Total Revenue		\$4,162,923		\$4,463,811		\$4,463,811
Expenses:						
Operating	\$284.84	\$3,496,932	\$246.34	\$3,478,078	\$248.36	\$3,506,545
Capital	<u>\$47.80</u>	<u>586,895</u>	<u>\$62.76</u>	<u>886,145</u>	<u>\$62.76</u>	<u>886,144</u>
Total Expenses:	\$332.64	\$4,083,827	\$309.10	\$4,364,223	\$311.12	\$4,392,689
Net Income (Loss)		\$79,096		\$99,588		\$71,122
Procedures		12,277		14,119		14,119
Cost/Procedure		\$332.64		\$309.10		\$311.12

The following is noted concerning the submitted budget:

- The current year reflects the facility's 2021 revenue and expenses.
- Utilization and revenues are based on historical performance plus projections.
- Expenses are based on 2021 operating expenses plus mortgage costs.

Utilization by payor for the current, first, and third years is summarized below:

Payor:	Current Year <u>2021</u>		Year One <u>2023</u>		Year Three <u>2025</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Description						
Medicaid-FFS	208	1.69%	239	1.69%	239	1.69%
Medicaid -MC	5,763	46.94%	6,628	46.94%	6,628	46.94%
Medicare – FFS	1,209	9.85%	1,390	9.85%	1,390	9.85%
Commercial-FFS	999	8.14%	1,149	8.14%	1,149	8.14%
All Other	4,098	33.38%	4,713	33.38%	4,713	33.38%
Charity	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>
Total	12,277	100%	14,119	100%	14,119	100%

- Breakeven is projected at 97.77% of projected first-year utilization.

Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement which will be effectuated after approval by the Public Health and Health Planning Council (PHHCP). The terms of the agreement are summarized as follows:

Date:	February 15, 2022
Seller:	Edward Atbashyan, (30%); Alex Zharov (30%); Simon Korenblit (30%); and Alex Korenblit (10%)
Buyer:	Yakov Khodzhayev , (61.67%); Alexander Sachakov, (33.33%) and Dimitri Cohen, (5.00%)
Acquired:	Purchase 100% or 200 shares of all the issued and outstanding stock in City Wide Health Facility, Inc., duly licensed to operate a D&TC for \$3,100,000 plus an estimated \$515,000 for the accounts receivables and other receivables.
Payment:	\$3,615,000 - \$500,000 deposited into escrow at signing - \$155,000 deposited into escrow at closing - \$2,960,000 at closing

The purchase price for the stock is to be satisfied as follows:

Equity - proposed stockholders of City Wide Health Facility, Inc	\$992,156
Loan (10-year, prime + 2.25% or 10.50% as of 7/19/23	2,622,844
Total	\$3,615,000

BFA Attachment A1 presents the net worth summary for the stockholders of City Wide Health Facility, Inc., revealing sufficient resources to cover equity. Alexander Sachakov has provided an affidavit stating his willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall.

Assignment and Amendment to the Stock Purchase Agreement

The applicant has submitted an executed assignment and amendment to the stock purchase agreement, which will be effectuated after approval by the Public Health and Health Planning Council (PHHCP). Agreement terms are summarized as follows:

Date:	June 29, 2023
Assignor:	Yakov Khodzhayev , (61.67%)
Assignee:	Dimitri Cohen, (61.67%)
Action:	Yakov Khodzhayev (Assignor) wishes to assign all his rights and obligation under February 14, 2022, Stock Purchase Agreement to Dimitri Cohen (Assignee) and parties to said agreement Edward Atbashyan; Alex Zharov; Simon Korenblit; and Alex Korenblit and City Wide Health Facility, Inc (the Company) desire to approve the Assignment.

Lease Extension and Modification Agreement

The applicant has an existing previously approved lease agreement for the site, the terms of which are summarized as follows:

Date:	November 17, 2015
Premises:	3,664 rentable square feet at 105 Kings Highway, Brooklyn, NY 11223
Landlord:	Tibor 105, LLC.
Lessee:	City Wide Health Facility, Inc.
Term:	It ends December 31, 2035
Rental:	\$98,435 1st year (\$27 per sq. ft.); 3% annual increase
Provisions:	The tenant is responsible for taxes, insurance, utilities, and maintenance.

Consent to Assignment and Second Amendment to Retail Lease

Date:	February 1, 2018
Premises:	3,600 square feet at 6817 Bay Parkway Road, Brooklyn, NY 11204
Landlord:	6817 Bay Parkway, LLC.
Lessee:	City Wide Health Facility, Inc.
Term:	It ends September 30, 2026, with a one (1) 5-year term renewal.
Rental:	\$180,000 1st year (\$50 per sq. ft.); 3% annual increase; renewal 3% yearly rent increase except in the last year increase is 5%
Provisions:	The tenant is responsible for taxes, insurance, utilities, and maintenance.

The lease arrangement is an arms-length agreement. The applicant has submitted an affidavit attesting to the no common members between the landlord and the operator. Letters from two New York State licensed realtors have been provided attesting to the rental rate being fair market value.

Capability and Feasibility

The proposed shareholders will acquire 100% of City Wide Health Facility, Inc. stock (200 shares) for \$3,100,000, plus an estimated \$515,000 for 50% of certain accounts receivables (no-fault and other). The total purchase price is estimated at \$3,615,000 and will be funded through \$992,156 shareholders' equity (\$500,000 already paid) and a \$2,622,844 self-amortizing ten-year loan at prime plus 2.25% or 10.5% as of 7/19/23. Hanover Community Bank has provided a letter of interest at the stated terms. There are no project costs associated with this application.

Working capital requirements are estimated at \$727,371, based on two months of first-year expenses, and will be funded with \$577,871 in shareholders' equity and a \$149,500 loan at prime plus 2.25% or 10.50% as of July 19, 2023. Hanover Community Bank has provided a letter of interest. Review of BFA Attachment A reveals sufficient resources to meet the equity requirements. Alexander Sachakov has provided an affidavit stating his willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall, if necessary.

City Wide Health Facility projects a net income of \$99,588 and \$71,122 in Year One and Year Three. BFA Attachment B City Wide Health Facility Health Facility, Inc.'s Pro Forma Balance Sheet shows operations will start with \$1,570,027 in equity. The applicant's budgets appear to be reasonable.

BFA Attachment C, City Wide Health Facility, Inc.'s 2021 Certified Financials Statements and July 25, 2022 Internal Financial Statements show positive working capital, positive net assets, and a positive net income of \$79,096 for 2021, and \$264,336 as of July 25, 2022.

Conclusion

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

Attachments

BFA Attachment A	City Wide Health Facility, Inc., Stockholders' Net Worth Statement
BFA Attachment B	City Wide Health Facility, Inc., Pro Forma Balance Sheet
BFA Attachment C	City Wide Health Facility, Inc. December 31, 2021, Certified Financial Statement and July 25, 2022, Internal Financial Statement



Project # 222153-B
CareFullMD Beacon Inc.

Program: DTC County: Dutchess
Purpose: Establishment and Construction Acknowledged: November 30, 2022

Executive Summary

Description

CareFullMD Beacon, Inc. (Center), an existing proprietary corporation, requests approval for the establishment and construction of a new Article 28 Diagnostic and Treatment Center (D&TC) at 268 Main Street, Beacon (Dutchess County). The Center will provide primary care, X-ray imaging services, and infusion therapy for the residents of Beacon and the surrounding communities.

The proposed Center will be in a newly renovated building with six (6) exam rooms, one (1) treatment room, four (4) infusion bays, and an X-ray room. The Center has entered into a transfer agreement for backup Medical Services with Vassar Brothers Hospital, located 15.1 miles and 26 minutes travel time away.

Yitzchok Rottenberg will be the sole shareholder of the Center, and Dr. Daniel J. Purcell, MD, will serve as the Medical Director. Dr. Purcell is Board Certified in Emergency Medicine and is currently the Medical Director at Chai Urgent Care Center, located at 3808 14th Avenue, Brooklyn, NY 11220.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,600 visits in Year One and 14,700 in Year Three, with 41% Medicaid and 4% Charity Care.

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 \$2,169,816 will be met with \$216,982 in equity from the proposed member's personal resources and a bank loan of \$1,952,834 at an interest rate of prime +2.50% (10% as of 1/30/2023) for a ten-year term.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$1,692,568 vs \$2,144,893), Expenses (1,541,745 vs 1,814,438), Net Income (\$150,823 vs \$330,455).

Health Equity Impact Assessment Summary

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on November 30, 2022.

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-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **October 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **July 15, 2024**, 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 approved 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]
4. The applicant shall only provide infusion therapy services acceptable to the Department that comply with FDA guidelines and The Departments Clinical Guidelines for Infusion Therapy Services in a Diagnostic and Treatment Center. [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]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area is Beacon and surrounding Dutchess County. The Cornell Program on Applied Demographics projects the population of Dutchess County to decrease by 1.7% to 290,918 by 2028. Demographics for the primary service area are noted below, including a comparison with the county and New York State.

Demographics	Totals for Primary Service Area	Dutchess County	New York State
Total Population – 2021 Estimate	19,697	296,012	20,114,745
Hispanic or Latino (of any race)	17.1%	12.9%	19.2%
White (non-Hispanic)	61.5%	69.9%	54.7%
Black or African American (non-Hispanic)	15.1%	9.9%	13.9%
Asian(non-Hispanic)	2.7%	3.4%	8.6%
Other (non-Hispanic)	3.6%	3.7%	3.6%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 95.5% of the population of Dutchess County had health coverage as follows:

Employer Plans	55.5%
Medicaid	13.6%
Medicare	13.5%
Non-Group Plans	12.1%
Military or VA	0.8%

The applicant projects the following payor mix:

Projected Payor Mix		
Payor	Year One	Year Three
Commercial	39%	39%
Medicare	15%	15%
Medicaid	41%	41%
Private Pay	1%	1%
Charity Care	4%	4%

The proposed location is in a Medically Underserved Area. The applicant projects 11,600 visits in Year One and 14,700 in Year Three of operations.

CareFullMD Beacon Inc. has entered into a transfer agreement for backup medical services with Vassar Brothers Medical Center, located 15.1 miles and 26 minutes travel time away. The proposed center will operate seven days a week, from 9:00 am to 9:00 pm.

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.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2020	Zip Code: 12508	Dutchess County	New York State
All PQI's	1,008	875	994

Conclusion

Approval of this project will allow for expanded access to Medical Services – Primary Care and Medical Services - Other Medical Specialties services for residents in Dutchess County.

Program Analysis

Project Proposal

CareFullMD Beacon Inc., an existing New York State Corporation, seeks approval to establish and construct an Article 28 Diagnostic and Treatment Center at 268 Main Street, Beacon (Dutchess County). The proposed center will provide Medical Services-Primary Care including Urgent Care Services and Medical Services - Other Medical Specialties, including Radiology Services and Infusion Therapy.

Proposed Operator	CareFullMD Beacon Inc.
To Be Known As	CareFullMD Beacon
Site Address	268 Main Street Beacon, New York 12508 (Dutchess County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Radiology Infusion Therapy Urgent Care
Hours of Operation	Monday – Sunday, 9:00 am to 9:00 pm
Staffing (1st Year / 3rd Year)	9.10 FTEs / 11.80 FTEs
Medical Director(s)	Dr. Daniel Purcell, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Vassar Brothers Medical Center 15.1 miles / 26 minutes away

Character and Competence

The sole member of CareFullMD Beacon Inc.:

<u>Name</u>	<u>Ownership Interest</u>
Yitzchok Rottenburg	100.00%
Total	100.00%

Dr. Daniel Purcell is the proposed Medical Director. He is an Attending Physician in Emergency Medicine at White Plains Hospital for three (3) years. He is the Medical Director at Chai Urgent Care Center for over six (6) years. He is an Emergency Room Attending Physician at NYU Brooklyn Lutheran Medical Center for over seven (7) years. He was an Emergency Room Attending Physician at Mount Sinai Queens for Four (4) years. He was an Emergency Room Attending Physician for over two (2) years. He received his medical degree from Albany Medical College. He completed his Emergency Medicine residency at the University of Massachusetts Medical School. He is board certified in Emergency Medicine.

Yitzchok Rottenburg is a Real Estate Developer at YKY Group LLC for over six (6) years. He manages a team of 19 people to generate and execute real estate investment opportunities. He developed and managed processes for construction and leasing activities for eleven properties in Poughkeepsie, financed bridge and permanent debt for each holding, oversaw leasing and asset management of the properties, and executed value add programs within his portfolio. He ensured regulatory compliance for construction and leasing activities, interfaces with government agencies, and created \$2M in value through real estate development. He is also Salesperson for Postage Plus for over four (4) years. He makes sales for a printing and direct mailing service.

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$2,169,816 and distributed as follows:

Renovation and Demolition	\$1,364,445
Design Contingency	136,445
Construction Contingency	136,445
Architect/Engineering Fees	46,125
Other Fees (Consultant)	51,250
Moveable Equipment	293,290
Financing Costs	70,000
Interim Interest Expense	57,958
CON Fees	2,000
Additional Processing Fees	<u>11,858</u>
Total Project Cost	\$2,169,816

Project costs are based on a June 1, 2023 construction start date and for a four-month construction period.

The applicant's financing plan appears as follows:

Equity (Member)	\$ 216,982
Bank Loan (prime + 2.50% (approximately 10% as of 1/30/2023) for a ten-year term)	\$1,952,834

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, during the first and third years, summarized below:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$150.00	\$156,600	\$150.00	\$198,450
Commercial MC	\$150.00	\$522,000	\$150.00	\$661,500
Medicare FFS	\$120.00	\$69,600	\$120.00	\$88,200
Medicare MC	\$120.00	\$139,200	\$120.00	\$176,400
Medicaid FFS	\$170.71	\$19,802	\$170.71	\$25,094
Medicaid MC	\$165.51	\$767,966	\$165.51	\$973,199
Private Pay	\$150.00	<u>\$17,400</u>	\$150.00	<u>\$22,050</u>
Total Revenues		\$1,692,568		\$2,144,893
Expenses:				
Operating	\$93.56	\$1,085,350	\$93.82	\$1,379,170
Capital	<u>\$39.34</u>	<u>\$456,395</u>	<u>\$29.61</u>	<u>\$435,268</u>
Total Expenses	\$132.91	\$1,541,745	\$123.43	\$1,814,438
Net Income		\$150,823		\$330,455
Utilization: (Visits)		11,600		14,700

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

- Expense assumptions are based on other facilities in the geographical area.
- Utilization is based on the capacity of the physical spaces, the amount of service hours available, and the need of the community.
- Revenue assumptions are based on current reimbursement rates.

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	9.00%	9.00%
Commercial MC	30.00%	30.00%
Medicare FFS	5.00%	5.00%
Medicare MC	10.00%	10.00%
Medicaid FFS	1.00%	1.00%
Medicaid MC	40.00%	40.00%
Private Pay	1.00%	1.00%
Charity Care	<u>4.00%</u>	<u>4.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

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

Premises	4,923 square feet located at 252-260 Main Street, Beacon, New York.
Lessor	Beacon Center Associates, LLC
Lessee	CareFullMD Beacon, Inc.
Term	15 years
Rental	Year One - \$123,075 (\$25.00 per sq.ft.) with a 2% annual increase thereafter.
Provisions	The lessee shall be responsible for maintenance, utilities, and real estate taxes.

The applicant has submitted an affidavit indicating that there is no relationship between the landlord and the tenant.

Capability and Feasibility

The total project cost of \$2,169,816 will be met with \$216,982 in equity from the proposed member's resources and a bank loan of \$1,952,834 at an interest rate of prime +2.50% (10% as of 1/30/2023) for a ten-year term. In addition, the applicant submitted a letter of interest regarding the financing.

Working capital requirements are estimated at \$302,466, equivalent to two months of third-year expenses that will be covered with equity from the proposed member's resources. Presented as BFA Attachment A is the Net Worth Statement of the sole member of CareFullMD Beacon, Inc., indicating the availability of sufficient funds for the equity contribution. Presented as BFA Attachment B is the Pro Forma Balance Sheet of CareFullMD Beacon, Inc., as of the first day of operation, which indicates a positive net asset position of \$519,448.

The submitted budget indicates a net income of \$150,823 and \$330,455 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet



**Project # 231113-E
WNY Medical Management**

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment **Acknowledged:** April 11, 2023

Executive Summary

Description

WNY Medical Management, LLC, an existing proprietary, Article 28 freestanding ambulatory surgery-multi specialty surgery center, requests approval to transfer 16.67% membership interest from the one existing member to a proposed new member. WNY Medical Management, LLC's primary site is located at 700 Michigan Avenue, Buffalo, New York (Erie County). WNY Medical Management, LLC also has an extension clinic located at 3112 Sheridan Drive, Amherst, New York (Erie County), primarily treating pain management. There will be no change in services or staffing and no project costs due to this application.

OPCHSM Recommendation

Conditional approval with an expiration of the operating certificate three years from the date of its issuance.

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

The purchase price for the membership interest is \$100,000 for 16.67% ownership interest, which will be covered with member equity. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no changes in services or location.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on March 10, 2023.

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 three years from the date of its issuance, conditional upon:

1. This project must be completed by **October 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

September 7, 2023

Program Analysis

Character and Competence

The proposed membership of WNY Medical Management, LLC., is provided in the chart below.

<u>Member Name/Title</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>
Pratiba Bansal, M.D.	100%	83.33%
Nitin Bansal, M.D. ***	0%	16.67%
Total	100%	100%

*** Member Subject to Character and Competence

Nitin Bansal, M.D., is the Medical Director of Nitin Bansal MD PLLC for two (2) years. Nitin Bansal MD PLLC is a community-based interventional pain management practice with two physicians and five employees. Dr. Bansal manages the entire operation of the practice, including billing, human resources, payroll, and administration, in addition to practicing as a physician, evaluating and treating patients with chronic pain. He received his medical degree from Northwestern University and completed his Anesthesiology Residency and Pain Management Fellowship at Weill Cornell.

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

Financial Analysis

Purchase Agreement

The purchase price for the membership interest is \$100,000, and the applicant has submitted an executed purchase sale agreement, summarized below.

Date	January 1, 2023
*Seller:	Pratibha Bansal, M.D.
Purchaser:	Nitin Bansal, M.D.
Price:	\$100,000 (Deposit is being held by Seller in an escrow account.)
Closing:	Upon PHHPC approval, closing will take place at Hurwitz Fine P.C., 1300 Liberty Building, Buffalo, New York 14202.

**Seller has stated she is selling 100% of her membership as she is preparing for retirement.*

Capability and Feasibility

The purchase price for the new member interest is \$100,000. The new member will provide equity from personal resources. Attachment A is the Personal Net Worth Statement of Nitin Bansal, M.D., which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the ownership of WNY Medical Management, LLC, before and after the change in ownership interest.

Attachment C is the 2021 and 2022 Certified Financial Statements of WNY Medical Management, LLC. As shown, the entity had an average positive working capital position and an average positive net asset position during the period shown. The entity achieved an average net income of \$614,402 and \$196,345 in 2021 and 2022, respectively.

Attachment D is WNY Medical Management, LLC's Internal Financial Statement ending June 30, 2023. As shown, the entity had a positive working capital and equity position. The entity achieved a net income of \$123,059 for the period shown.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Ownership of WNY Medical Management, LLC
BFA Attachment C	WNY Medical Management, LLC Certified Financial Statements 2021 and 2022
BFA Attachment D	Internal Financial Statement thru June 30, 2023



Project # 231208-B
Bronx Community Health Network, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Bronx
Acknowledged: June 6, 2023

Executive Summary

Description

Bronx Community Health Network, Inc. (BCHN), an existing not-for-profit, community-based organization and Federally Qualified Health Center (FQHC), requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC or Center). The proposed Center will have two (2) sites; the main site will be in leased space at 3763 White Plains Road, Bronx (Bronx County), providing primary medical, dental, and behavioral health services. The volume of mental health services offered will be below the threshold requiring Article 31 certification. The second site will be a mobile van extension clinic parked overnight in a secured parking area at 3676 White Plains Road in the Bronx. The mobile van extension clinic will provide primary medical and dental services.

This CON submission is an amendment to a previously approved CON project, 212219, precipitated by a change in BCHN's Chief Executive Officer, a change in the membership of the Board of Directors, as well as changes to the main site's architectural plans, and total project cost. Changes to the architectural plans include an increase in the number of exam rooms from eight to twelve and an increase in the number of dental operatories from three to four.

Jay M. Izes, M.D., who is Board-Certified in Pediatrics, will serve as the Medical Director of the Center. BCHN has an existing Transfer Agreement for emergency and backup services with BronxCare Health System, 5.6 miles (21 minutes travel time) from the proposed Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 18,131 visits in Year One and 30,294 in Year Three, with 58% Medicaid and 7% Charity Care in both years.

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 \$8,012,137 will be met with a \$1,758,158 grant through the American Rescue Plan Act's (ARP) Health Center Infrastructure Support Fund, \$1,000,000 in funds from the New York State Technology and Development Program, \$2,001,503 from FY2023 Omnibus Appropriations Bill, a \$2,652,000 New Markets Tax Credit (NMTTC) through Community Health Center Capital Fund, Inc. A \$383,540 grant through the ARP Funding for Health Centers will be used to purchase the mobile van. The remaining \$216,936 in total project costs will be funded with equity from BCHN.

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues, Expenses, and Net Income (Loss).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 2, 2023.

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 forty-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 documentation confirming final approval of the executed New York State Technology and Development Program grant contract, acceptable to the Department of Health. [BFA]
4. Submission of documentation confirming final approval of the executed non-competitive grant contract for Community Project Funding allocated from the FY2023 Omnibus Appropriations Bill, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming final approval of the executed New Markets Tax Credit contract, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **December 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **September 15, 2024**, 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 approved 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area is the Williamsbridge neighborhood in the Bronx, extending out to North Baychester and Pelham Gardens. The Cornell Program on Applied Demographics projects the population of Bronx County to increase by 8.4% to 1,590,942 by 2028. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Totals for Primary Service Area	Bronx County	New York State
Total Population	269,712	1,468,262	20,114,745
Hispanic or Latino (of any race)	31.9%	56.1%	19.2%
White (non-Hispanic)	14.8%	9.0%	54.7%
Black or African American (non-Hispanic)	44.9%	28.5%	13.9%
Asian (non-Hispanic)	4.4%	3.7%	8.6%
Other (non-Hispanic)	4%	2.7%	3.6%

Source: 2021 US Census Population Estimates from the American Community Survey According to Data USA, in 2020, 92% of the population of Bronx County had health coverage as follows:

Employee plans	30.8%
Medicaid	41.8%
Medicare	6.79%
Non-group plans	12.1%
Military or VA plans	0.417%

The projected payor mix includes 24% Commercial, 58% Medicaid, 11% Medicare, 4% Private Pay, and 3% Charity Care in Year One and Year Three of operations. The applicant projects 18,131 visits in Year One and 30,294 in Year Three.

The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care and Dental and is also a Medically Underserved Area/Population (MUA/P). The applicant is committed to providing services to all patients needing care, regardless of their ability to pay or the source of payment.

The applicant has a Transfer & Affiliation Agreement with BronxCare Health System (Fulton Division), located 5.6 miles and 21 minutes away. The hours of operation of the Center will be Monday through Thursday, from 8:00 A.M. to 7:00 P.M.; Fridays from 8:00 A.M. to 5:00 P.M.; and Saturdays from 10:00 A.M. to 1:00 P.M. Additional evening or weekend hours may be added as needed. The Center will offer services both by appointment and walk-in.

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 PQI rates for 2020 related to this application which indicates that the service area has higher PQI rates than the county and New York State.

Hospital Admissions per 100,000 Adults			
PQI Name	Zip Code 10467	Bronx County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	551	531	244
Hypertension	130	129	63
Heart Failure	455	444	336
Bacterial Pneumonia	118	117	105
Uncontrolled Diabetes	118	100	45
Prevention Quality Overall Composite	1672	1578	994

Conclusion

Approval of this project will increase access to Medical Services - Primary Care, Dental O/P, and Podiatry O/P services in an underserved area.

Program Analysis

Project Proposal

Bronx Community Health Network, Inc., an existing not-for-profit, community-based organization and Federally Qualified Health Center, seeks approval to establish and construct a brick-and-mortar Article 28 diagnostic and treatment center to be located at 3763 White Plains Road, Bronx (Bronx County) and a mobile van extension clinic to be parked overnight in a secured parking area located at 3676 White Plains Road, Bronx (Bronx County). The proposed brick-and-mortar center will provide Medical Services - Primary Care, Podiatry, and Dental O/P. The proposed mobile van will provide Medical Services - Primary Care and Dental O/P.

Proposed Operator	Bronx Community Health Network, Inc.
To Be Known As	Bronx Community Health Network, Inc.
Site Address	<p>Primary Site: 3763 White Plains Road Bronx, NY 10467 (Bronx County)</p> <p>Mobile Van: 3676 White Plains Road Bronx, NY 10467 (Bronx County)</p>
Specialties	<p>Primary Site: Medical Services-Primary Care Podiatry Dental O/P</p> <p>Mobile van: Medical Services-Primary Care Dental O/P</p>
Hours of Operation	<p>Primary Site: Monday to Thursday, 8:00 am to 7:00 pm Fridays 8:00 am to 5:00 pm</p>
Staffing (1st Year / 3rd Year)	24.66 FTEs / 38.20 FTEs
Medical Director(s)	Jay Izes, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by BronxCare Health System 5.6 mile / 21 minutes

Character and Competence

The members of Bronx Community Network, Inc. are:

<u>Name</u>	<u>Title</u>
<i>Sandra Piggee</i>	President
<i>Marjorie Cadogan</i>	Vice President
<i>John Ruiz</i>	Treasurer
<i>Zahra Elmekaw</i>	Corporate Secretary
<i>Victor Quarshie</i>	Recording Secretary
<i>Arthur Edwards</i>	Board Member
<i>Hamid Khalique</i>	Board Member
<i>Richard Thomas</i>	Board Member
<i>Rachaele Raynoff</i>	Board Member
<i>James Paine</i>	CEO
<i>Jay Izes, M.D.</i>	CMO

Jay Izes, M.D., is the proposed Medical Director and Chief Medical Officer. He is the Chief Medical Officer of Bronx Community Health Network, Inc., for over 12 years. He retired as the Vice President for Medical Affairs from St. John's Riverside Hospital and Yonkers General Hospital in December 2007 after over six (6) years. He was the Medical Director of Park Care Center for over one (1) year. He was the Medical Director of Valentine Lane Family Practice for three (3) years. He was the Owner of a private practice for over 23 years. He was a School Physician for approximately 13 years. He received his medical degree from Temple University School of Medicine. He completed his residency in Pediatrics at Montefiore Medical Center. He is board certified in Pediatrics.

Marjorie Cadogan is the Executive Deputy Commissioner in the Office of Citywide Health Insurance Access Human Resources Administration Department of Social Services for the City of New York for 21 years. She develops city proposals and initiatives in collaboration with City and State agencies and other stakeholders to promote and improve health insurance coverage for New York City residents and small businesses. She manages planning and operations for NYC Health Insurance Link, oversees the content and technical development of the OCHIA website, and develops training and materials to enhance the effective delivery of services of all Human Resources Administration's outreach divisions. She was the Director of Operations and External Affairs for Primary Care Development Corporation for seven (7) years. She managed the day-to-day operations as well as the government, press, and public relations functions for a not-for-profit corporation that provides targeted financial and technical assistance for primary care centers to expand access to quality health care in New York City's underserved communities. She was the General Counsel of the NYC Department of Parks and Recreation for the City of New York for 10 years. She advised the Commissioner and others on legal and policy matters relating to the management, operation, acquisition, and improvement of parks and recreational facilities within the City park system. She managed legal staff in the negotiation, drafting, interpretation, and enforcement of agreements for the use and occupancy of Department property and facilities. She negotiated agreements with property owners and developers. She was General Counsel for the NYC Loft Board for one (1) year. She provided counsel to members of Loft Board and staff regarding the interpretation and implementation of Loft Law. She supervised attorneys, paralegal staff, and administration staff in handling various proceedings. She was the Deputy Assistant Chief and the Assistant Corporation Counsel of the NYC Law Department for five (5) years. She supervised attorney and student intern staff in the preparation of legal documents. She represented city agencies and officials in defensive litigation, civil rights, and diversity action.

Zahara Elmekawy is the Director of Delivery System Innovation at the Peterson Center on Healthcare for approximately one (1) year. She leads a team focused on identifying and funding innovative solutions to reduce costs and improve healthcare quality in the U.S.; developed a grant strategy focused on addressing the needs of high-needs patients and transforming the delivery of primary care; and oversees grant fund stewardship, analysis of the program outcomes and compliance with the program requirements. She was previously the Senior Managing Director and Head of Global Operational Risk Management of American International Group for approximately four (4) years. She led an accelerated transformation of AIG's enterprise operational risk management framework; enabled relief from regulatory sanction by enacting corrective strategies for identifying and mitigating issues arising from process and system failures, external disruptions, and human errors. She sponsored training and incentive programs to promote staff empowerment and accountability. She elevated culture across 65K employees via a multi-pronged governance and incentive program. She advised business leaders on emerging risks in restructuring initiatives, outsourcing, and global shared services arrangements, supported and empowered a management team with oversight over 100 global professionals, and strengthened analysis and reporting with the creation of enterprise-wide vendor, risk, and compliance data and IT platforms. She was the previous Senior Vice President of Foreign Financial Institutions of the Federal Reserve Bank for approximately three (3) years. She served as the Senior Vice President and COO of Group Operations of the Federal Reserve Bank for approximately five (5) years. She served as the Vice President of Market Risk of the Federal Reserve Bank for approximately four (4) years. She owned the supervision and regulation of 150+ foreign banking organizations and led teams of examiners with oversight over the analysis of firms' strategy, financial condition, risk management, and compliance. She liaised between firm C-Suite teams and foreign regulators to drive consensus on supervisory findings and remediation strategies. She collaborated with policymakers on responses to the 2012 European financial crisis, including a revised approach to Federal Reserve Discount Window lending. She led dialogue and implementation across the jurisdiction, captured opportunities to strengthen staff engagement, served as

the Executive Sponsor of the African American and Latina Employee Resource Network, and helped found the Federal Reserve's Diversity Advisory Council.

Arthur Edwards retired in July 1995. He is a Board Member of the New York City Health and Hospitals Corporation for 14 years in the Office of Corporate Planning.

Hamid Khalique is the Director of Deutsche Bank Securities for over three (3) years. He understands US GAAP reporting companies and the financial risks present on income statements and balance sheets. He appropriately networks with key stakeholders and manages high-profile transactions executing minimal risks and slippage. He was the Vice President of NatWest Markets Securities, Inc. for three (3) years. He created and executed the growth plan of the US Corporate and FI Risk Solutions business, worked with management to understand the base, opportunities, and produced a tangible business plan. He self-led the reinvigoration of client relationships centered on a customer problem framework. He was an Associate and Analyst at the Royal Bank of Scotland for six (6) years. He worked closely with team members to deliver risk management solutions to financial institution clients and completed regular internal training on regulatory requirements. He learned the finance industry, developed a technical understanding of finance products, and became a key owner of internal trade booking and confirmation processes.

Sandra Piggee retired in June 2018. She is on the Board of Directors of the Bronx Community Health Network for 28 years. She and the board work with the CEO and staff to oversee the organization's partnerships with Montefiore Hospital and Promesa, secure and monitor the deployment of federal funds, monitor BCHN's organizational and financial health, and support the development of strategic growth initiatives. She was a Special Consultant II in the New York City Department of Health and Mental Hygiene for 35 years. She advised public, private, and volunteer agencies receiving NYC funding to provide various mental health and social services on issues related to regulatory and/or legal compliance, operations, and service agreement execution. She negotiated contracts for City funding with providers, monitored and evaluated professional standards, physical facilities, quality of care, adequacy of services for contracted providers, and prepared reports for NYCDOHMH oversight. She provided technical assistance to program Executive Directors and their administrative teams to support program planning and policy development. She was the Assistant Director of Outreach and Advocacy for the Elderly at the Cathedral of Saint John the Divine for two (2) years. She was responsible for the design and implementation of the elderly outreach program's operation and policies. She also supervised and trained a staff of nine.

James Paine is the Senior Vice President and COO of the Damian Family Care Centers, Inc. for two (2) years. He launched a new 5,000 square foot, co-located health facility in partnership with an NYC homeless services provider to support the healthcare needs of asylum seekers and improved the Cancer Screening and Quality Disease Metric by 25% and 32%, respectively, within his first quarter in the role. He increased the closed chart rate within 48 hours of visit from 35% to 78% within his first quarter in the role. He launched a state-of-the-art Food Pharmacy to provide food assistance in K-12 school communities and substance use facilities and secured collaborative partnerships to provide primary care services within two NYC public schools and three NYC community colleges. He was the Executive Vice President and COO of CareSTL Health for six (6) years. He expanded the organization's service footprint by more than 60,000 square feet, secured over \$27M in response to a regional RFP to provide school-based services, and reduced opioid dependency by nearly 60% through collaboration with the local health science university and the provision of chiropractic care for pain management. He launched a new 501c3 foundation responsible for securing more than \$10M in unrestricted funds, reduced overall patient visit cycle times to less than 50 minutes, and decreased patient no shows from 50% to less than 10% across all providers and service lines. He was the Vice President for Administration and Student Affairs and the Dean of Student Services at Logan University for five (5) years. He secured funds to support the expansion of the campus, launched DEI training, led strategic planning, and expanded the University's fee-for-service student health clinic footprint. He was the Associate Director of University Housing and Residential Education at St. Louis University for two (2) years. He increased vendor service offerings and restructured agreements, expanded the housing services footprint, completed facility improvements, and established residential housing learning communities and affinity groups. He was the Director of Marketing, Communications, and College Operations for Chamberlain College of Nursing for one (1) year. He increased student inquiries, leads, and applications, leveraged tuition discounts to recruit and retain

students, and launched psychosocial onboarding programs for new students. He was the Director of Finance and Business Operations of Everest Allies Health College for two (2) years. He reduced bad debt expenses by 15% and implemented an internal audit procedure. He was the Associate Director of Student Financial Aid and Coordinator of Student Financial Aid for four (4) years. He served as the Chief Compliance Officer for NCAA athletic Scholarship award and partnered with 25 corporate partners across the region to launch endowed scholarship awards.

Victor Quarshie was the Utility Steward at the Four Seasons Hotel for over 14 years. He was responsible for the kitchen hotline cleaning, overnight cleaning, setting up the back of the house, cleaning dishes and washing pits, and setting up banquets. He was previously a Housekeeper at Bainbridge Nursing Home for seven (7) months. He was responsible for tidying of premises, mopping and cleaning resident rooms, and stripping and waxing of premises. He was previously employed in the Ghana Airforce for 22 years. He was a Radio Officer and Air Traffic Control Assistant for three (3) tours. He maintained communication between the control tower and the aircraft, dispatched and received the aircraft, and supervised protective details for a faction leader. Mr. Quarshie currently serves as a member of the Bronx Community Health Network. In his leadership capacity, he functions as the Recording Secretary for the Board of Directors.

Rachaele Raynoff retired in February 2020. She was the Press Secretary of the New York City Department of City Planning for 17 years. She led media outreach to promote City Planning's work plan. She developed clear messaging to redefine City Planning as a proactive, innovative, and vital agency. Over the course of two (2) mayoral administrations, she adapted media strategy to reflect issues and the priorities of each, enhanced transparency and fostered new relationships with reporters in order to educate the public about initiatives and urban planning matters, identified key stakeholders for outreach to build support and facilitate the adoption of public proposals, and in cooperation with multiple agencies and persons, used a variety of media strategies and high profile events to amplify each administration's agenda. She was an Independent Policy and Media Consultant for over six (6) years. She founded neighborhood-based programs in cooperation with local schools to train youth in journalism, civic awareness, and the use of technology. She served as a media and policy consultant for the "Clean Money, Clean Election" campaign and created web pages for the "Get Ready to Read" project. She was the Press Secretary and Director of Education at the New York City Campaign Finance Board for over two (2) years. She created initiatives to increase awareness, directed and publicized expansion of the CFB's computerized public disclosure service, targeted outreach to areas with little knowledge of the CFB, conceived and ran successful campaigns, and produced high-profile conferences and educational programming. She was the Director of Policy and Special Projects in the Office of the Bronx Borough President for one (1) year and the Deputy Press Secretary for six (6) years.

John Ruiz retired in September 2010. He is the Board Treasurer of Bronx Community Health Network for two (2) years. He also served on two (2) committees for the National Association of Community Health Centers, the Subcommittee on Health Center Financing and Operations and the Legislative Committee. He is also a Board Member of La Casa De Salud. He has completed the following certifications while being a board member for the FQHC: the National Association of Community Health Center Certificate in Health Center Governance, Emergency Care Research Institute: Ambulatory Care Risk Management Certificate, Columbia Business School Executive Education: Digital Transformation in Healthcare Certificate, and NYS Public Citizen Health Leader Certificate.

Richard Thomas retired in August 2005. He is a current board member of Bronx Community Health Network, Inc. In his leadership capacity, he has served as the Chair of the Bylaws and Fundraising Committees. He also serves as a member of the Audit Committee.

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

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$4,967,661 and is distributed as follows:

Renovation and Demolition	\$3,125,378
Design Contingency	312,538
Construction Contingency	343,792
Architect/Engineering Fees	224,789
Other Fees	1,182,682
Movable Equipment	1,753,555
Financing Costs	1,031,021
Application Fee	2,500
Additional Processing Fee	<u>35,882</u>
Total Project Cost	\$8,012,137

Application Fee amount of \$2,500 represents the \$1,250 fee for CON project 212219 and the \$1,250 fee for CON project 231208.

The financing for this project will be as follows:

Cash/Accumulated Funds	\$216,936
Government Grants	5,143,201
New Markets Tax Credit Program	<u>2,652,000</u>
Total	\$8,012,137

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Year One and Year Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$162.19	\$705,870	\$168.14	\$1,222,385
Medicare FFS	\$172.47	334,758	\$173.58	590,528
Medicaid FFS	\$184.50	1,340,208	\$186.84	2,203,779
Medicaid MC	\$184.50	602,024	\$186.84	1,054,899
Private Pay	\$47.86	<u>36,708</u>	\$48.49	<u>61,680</u>
Total Pat. Revenue		\$3,019,568		\$5,133,271
Other Oper. Rev.*		<u>1,295,712</u>		<u>2,209,524</u>
Total Proj. Revenue		\$4,315,280		\$7,342,795
Expenses:				
Operating	\$180.83	\$3,278,571	\$172.48	\$5,225,083
Capital	<u>57.97</u>	<u>1,051,108</u>	<u>28.91</u>	<u>875,760</u>
Total	\$238.80	\$4,329,679	\$201.39	\$6,100,843
Net Income / (Loss)		<u>(\$14,399)</u>		<u>\$1,249,952</u>
Total Visits		18,131		30,294
Cost per Visit		\$238.80		\$201.39

* Other Operating Revenue is comprised of FQHC grants and 340B program revenue.

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

Payor:	Years One	Year Three
	2024	2026
Commercial FFS	24.00%	24.00%
Medicare FFS	10.71%	11.23%
Medicaid FFS	40.06%	38.93%
Medicaid M/C	18.00%	18.64%
Private Pay	4.23%	4.20%
Charity	3.00%	3.00%
Total	100.00%	100.0%

The following is noted with respect to the submitted budget:

- Reimbursement rate assumptions are based on the experience of the applicant as an existing Federally Qualified Health Center that contracts with existing health care providers in the Bronx for the delivery of proposed health care services.
- Staffing is based on the expected utilization and the experience of the applicant as a Federally Funded Health Center in contracting with other Article 28 providers.
- Expenses are based predominantly on the labor costs for the staffing model that includes RNs, LPNs, and Nurse Practitioners (combined 6.5 FTEs by year three), Physicians (2.0 FTE by year three), Other Therapists and Assistants (at 10.0 FTEs by year three), Clerical and Other Administrative (13.0 FTEs by year three), Dentists and Hygienists (2.5 FTEs by year three) Management and Supervision (1 FTEs by year three), as well as medical supplies, other direct expenses and rent expense as documented per the lease assignment agreement.

The applicant indicated they are committed to providing high-quality and efficient health care services to underserved and uninsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The center maintains a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Executed Lease Agreement

White Plains Estates LLC as the landlord, and BCHN as the tenant, have entered into a proposed lease agreement for site control of the facility. The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 27, 2021
Premises:	Building and land located at 3763 White Plains, Bronx, New York, 10467
Landlord:	White Plains Estates LLC
Tenant:	Bronx Community Health Network, Inc.
Term:	10-year term with two 5-year extensions
Rental:	\$330,000 per year (\$27,500 per month) Security deposit of \$55,000 and an additional sum of \$27,500, which shall be applied against the minimum annual rent due on the Rent Commencement Date. Rent will increase by 2.5% starting with lease Year Three.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance.

The applicant submitted an affidavit stating the lease agreement between the property owner and the lessee is an arm's length arrangement. The applicant has submitted letters from two New York State licensed realtors attesting to the reasonableness of the per-square footage rental.

Capability and Feasibility

The total project cost of \$8,012,137 will be met with \$1,758,158 in a grant award through the American Rescue Plan Act's (ARP) Health Center Infrastructure Support fund; \$1,000,000 in funds from the New York State Technology and Development Program; \$2,001,503 funding allocation towards BCHN's Community Project in FY2023 Omnibus Appropriations Bill; \$2,652,000 from the New Markets Tax Credit (NMTC) program through Community Health Center Capital Fund, Inc.; a \$383,540 grant award through

the ARP Funding for Health Centers (to be used to purchase the mobile van); and, the remaining \$216,936 in total project costs will be funded with equity from BCHN.

Working capital requirements are estimated at \$1,016,807 based on two months of third-year expenses and will be funded through ongoing operations of BCHN. BFA Attachment A present the BCHN's Certified Financial statements for the year ended December 31, 2021, during which the entity maintained positive working capital and positive net equity and reported an operating income of \$520,079. BFA Attachment B shows BCHN's Internal Financial Statements for the year ended December 31, 2022, in which BCHN reported positive working capital and positive net equity and generated \$625,703 in operating income. BFA Attachment C presents BCHN's Internal Financial Statements for March 31, 2023. The entity reported positive working capital and equity. During this period, BCHN reported a \$231,430 revenue deficiency over expenses, which is attributable to a delay in receipt of the grant funding. As indicated in BFA Attachments A through C, BCHN has sufficient resources to fund the working capital and equity requirements. BFA Attachment E is the Pro-Forma Balance Sheet for BCHN, which shows the operation will start with \$10,069,334 in net equity.

The submitted budget projects a net loss of \$14,399 and a net income of \$1,249,952 during Years One and Three of operations, respectively. The ongoing operations of BCHN will cover first-year losses. An increase in staffing for the proposed services drove revenue and utilization growth between Years One and Three.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Attachments

BHFP Attachment	Map
BFA Attachment A	Bronx Community Health Network, Inc. – December 2021 Certified Financial Statements
BFA Attachment B	Bronx Community Health Network, Inc. – December 2022 Internal Financial Statements
BFA Attachment C	Bronx Community Health Network, Inc. – March 2023 Internal Financial Statements
BFA Attachment D	Organization Chart
BFA Attachment E	Pro-Forma Balance Sheet



Project # 231218-B
Moses Health Center

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: June 8, 2023

Executive Summary

Description

871 Moses LLC requests approval to establish and construct a new Diagnostic and Treatment Center (D&TC) in leased space at 871 Westchester Avenue, Bronx, New York. 871 Moses LLC will renovate the building to include nine (9) general exam rooms, one (1) ultrasound exam room, and one (1) specialty exam room. The Center will provide comprehensive primary care and specialty services to residents in the Morrisania and Crotona communities in the Bronx. Upon approval of this application, the site will be known as Moses Health Center.

The proposed operators of Moses Health Center are Vasant Chheda, MD. (33.33%), John Johnson (33.33%), and Danielle Ben-Ishay (33.33%). Dr. Chheda will also act as the Center's Medical Director. Lincoln Hospital will serve as the backup hospital.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 7,920 visits in Year One and 16,720 in Year Three, with Medicaid at 57.00% 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 \$1,853,400 will be met with \$185,340 in members' equity and a bank loan of \$1,668,060 at an interest rate of 6% for a ten-year term.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenue, Expense, and Net Income.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 5, 2023.

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 a working capital loan that is acceptable to the Department of Health. [BFA]
4. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon

1. This project must be completed by **March 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 15, 2024**, and construction must be completed by **December 15, 2024**, 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 approved 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area is Morrisania and Crotona Community in the Bronx which includes the Claremont, Crotona Park East, Melrose, and Morrisania neighborhoods. The US Census estimates the population of Bronx County to be 1,468,262 in 2021. The Cornell Program on Applied Demographics projects an increase of 8.4% to 1,590,942 by 2028.

Demographics for the primary service area are noted below, including a comparison with the county and New York State.

Demographics	Totals for Primary Service Area	Bronx County	New York State
Total Population	195,710	1,468,262	20,114,745
Hispanic or Latino (of any race)	64.24%	56.1%	19.2%
White (non-Hispanic)	1.75%	9.0%	54.7%
Black or African American (non-Hispanic)	31.75%	28.5%	13.9%
Asian (non-Hispanic)	0.56%	3.7%	8.6%
Other (non-Hispanic)	1.70%	2.7%	3.6%

Source: 2021 US Census Population Estimates from the America Community Survey

According to Data USA, in 2019, 92% of the population in Bronx County had health coverage as follows.

Employer Plans	30.8%
Medicaid	41.8%
Medicare	6.79%
Non-Group Plans	12.1%
Military or VA	0.417%

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

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	17.01%	17.00%
Medicare	21.00%	21.00%
Medicaid	56.99%	57.00%
Private Pay	3.01%	3.00%
Charity Care	1.99%	2.00%
Total Visits	7,920	16,720

The proposed facility would be in a Medically Underserved Area and a Health Professional Shortage Area for Primary Care, Dental Health, and Mental Health. The applicant plans to provide comprehensive Primary Care, Podiatry, and Other Medical Services, including, Gynecology, Gastroenterology, Endocrinology, Pain Management, Pediatrics, Oncology, Cardiology, Ultrasound, Orthopedics, Neurology, Urology, and Behavioral Health. The applicant seeks to reduce preventable admissions for patients in the community, as well as improve overall health.

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, which shows higher rates in Bronx County compared to the State.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2020	Bronx County	New York State
All PQI's	1578	994

Hours of operation will be Monday-Friday, 8:00 AM-5:00 PM; Saturday, 9:00 AM-1:00 PM. The applicant projects 7,920 visits in the first year and 16,720 by the third.

Conclusion

The applicant plans to provide comprehensive services in Bronx County while helping to reduce preventable hospital admissions.

Program Analysis

Project Proposal

871 Moses LLC d/b/a Moses Health Center seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 871 Westchester Avenue in Bronx (Bronx County). The proposed Article 28 diagnostic and treatment center will provide Medical Services - Primary Care and Medical Services - Other Medical Specialties, including Behavioral Health, Endocrinology, Gastroenterology, Gynecology, Neurology, Podiatry, Gastroenterology, Pediatrics, Pain Management, Orthopedics, Radiology-Ultrasound, Oncology, Endocrinology, Cardiology, and Urology.

Proposed Operator	871 Moses LLC
To Be Known As	Moses Health Center
Site Address	871 Westchester Avenue Bronx, NY 10459 (Bronx County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Behavioral Health Endocrinology Gastroenterology Gynecology Neurology Oncology Orthopedics Pediatrics Pain Management Podiatry Radiology-Ultrasound Urology
Hours of Operation	Monday-Friday 8:00 am to Friday 5:00 pm
Staffing (1st Year / 3rd Year)	13.39 FTEs / 24.61 FTEs
Medical Director(s)	Vassant Chheda, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Lincoln Hospital 1.0 miles / 6 minutes away

Character and Competence

The members of Moses Health Center are:

Name	Ownership Interest
<i>Vassant Chheda</i>	33.34 %
<i>John Johnson</i>	33.33%
<i>Danielle Ben Ishay</i>	33.33%
Total	100.00%

Dr. Vassant Chheda is the proposed Medical Director and Owner. He retired in December 2022 from clinical Anesthesia work and Lifeguard Medical. He was the Founder and CEO of Lifeguard Medical, PLLC, and Horizon Anesthesia, P.C. for 21 years. He was the Director of Anesthesia at Kips Bay Endoscopy Center for four(4) years. He was a Clinical Assistant Professor of Anesthesiology at SUNY Downstate Medical Center for two (2) years. He was the Medical Director of Anesthesia at St. Anthony's Memorial Hospital for 12 years. He was an Attending Anesthesiologist at Sarah Bush Lincoln Hospital for two (2) years. He received his medical degree from G.S. Medical College in India. He completed his Internal Medicine Residency at Flushing Medical Center. He completed his Anesthesiology Residency at Albert Einstein College. He completed his Cardiac Anesthesia Fellowship at Maimonides Medical Center. Dr. Chheda received the U.S. Congress Physician of the Year in 2003 and Pioneer of Healthcare Reform in 2004. He is Board Certified in Anesthesiology.

Danielle Ben Ishay is the Founder and President of JLD Advisory for eight (8) years. She researches and analyzes market trends and areas for rural estate development while determining the highest and best use of financial assets, performs as a liaison between landlords, hotels, and city agencies to increase property revenue, and provides property management services for commercial property. She also identifies, purchases, and develops distressed properties to bring value to underdeveloped areas, provides clients with real estate and construction consulting services, and strategizes with other stakeholders in the development and design of properties. She was the Founder of Austin Staffing, Inc. for four (4) years. She created marketing materials to generate corporate and domestic staffing business and took potential job candidates through the process from screening through placement. She organized and maintained informational databases on candidates and positions, liaised between employees and employers to ensure a smooth transition, and maintained professional and personal calendars to schedule internal and external meetings. She was the Executive Assistant of the REDA Group L.T.D. for seven (7) years. She researched and analyzed market trends and areas for hotel development, acted as a liaison between hotel franchises and vendors for project development, maintained company accounts using Quickbooks, organized and maintained performance informational databases and files on investments, and kept the Company Executives organized and apprised of deadlines. She also edited and proofread financial and legal documents. Lastly, she maintained personal and professional calendars to schedule internal and external meetings and coordinate travel.

John Johnson is the Principal of Tenaj Real Estate and Development Advisors for three (3) years. He is responsible for working on transitional, low-income, affordable, and supportive housing projects, including mixed and integrative housing with and without co-located commercial businesses. His clientele includes non-profit and for-profit corporations. He is responsible for housing development and management, including site identification, long-term lease and acquisition negotiations, project development performance, construction management, adherence to government and private funding regulations and guidelines, representing clients in meetings, and preparation and submission of reports required by clients and lenders. He was the Chief Development Officer of the Bronx Parent Housing Network for one (1) year. He was responsible for all real estate portfolio aspects of an \$85M/year non-profit, including acquisition, contracts, budgets, and procurement. He set measures and policies to comply with funding sources and government agency procurement regulations. He managed teams to address facility-related issues, including response to regulatory agency violations and orders and the design and construction of shelter capacity to adhere to regulatory agencies' compliance. He instituted corrective action plans to address deficiencies and monitor the progress and completion. He was the Chief of Portfolio Planning and Development of the New York City Department of Social Services and Department of Homeless Services for one (1) year. He oversaw and implemented strategic planning for three (3) departments, including Capacity Planning and Development, Budget, and Vacancy Control Systems, and Capacity Planning and Development. He identified sites and assessed the feasibility of development to serve as shelter to various populations. He was the Head of the Budget Department with a \$1.7B contract portfolio, including real estate, human services contracts, service contracts, and procurement contracts. He managed the Vacancy Control Department. He was the Assistant Commissioner of Facility Operations for one (1) year. He ensured operational support for approximately 600 shelters through direct trades staff, vendor contracts, and direct consultation. He managed a support unit with OTPS budget of over \$60M. He was the Deputy Executive Director for Administration at the Bowery Residents' Committee for 11 years. He managed, developed, and supervised departments related to real estate management, property acquisition, construction asset management, information technology, and purchasing for non-profits with an annual budget of over \$70M. He was the Director of the Palace Employment Program. He held multiple roles at the New York City Department of Juvenile Justice, including Director of Detention Services in the Office of the Deputy Commissioner for 10 months, the Director of Operations at Horizon Juvenile Center for 10 months, and the Director of Security and Support Services for five (5) months. He was the Administrative Director of Social Services of the New York City Department of Homeless Services for two (2) 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 individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovation and the acquisition of moveable equipment, is estimated at \$1,853,400, broken down as follows:

Renovation and Demolition	\$1,133,000
Design Contingency	114,400
Construction Contingency	113,300
Planning Consultant Fees	20,000
Architect/Engineering Fees	88,000
Other Fees (Consultant)	50,000
Moveable Equipment	231,451
Financing Costs	60,748
Interim Interest Expense	30,374
CON Fees	2,000
Additional Processing Fee	<u>10,127</u>
Total Project Cost	\$1,853,400

The applicant's financing plan appears as follows:

Equity (Members)	\$185,340
Bank Loan (6% for a ten-year term)	\$1,668,060

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$175.00	\$180,250	\$175.00	\$380,450
Commercial MC	\$148.75	\$47,154	\$148.75	\$99,514
Medicare FFS	\$175.00	\$235,550	\$175.00	\$497,350
Medicare MC	\$148.75	\$47,154	\$148.75	\$99,514
Medicaid FFS	\$215.55	\$34,057	\$215.55	\$71,993
Medicaid MC	\$183.22	\$798,086	\$183.22	\$1,684,849
Private Pay	\$200.00	<u>\$47,600</u>	\$200.00	<u>\$100,400</u>
Total Revenues		\$1,389,851		\$2,934,070
Expenses:				
Operating	\$112.09	\$887,753	\$95.13	\$1,590,556
Capital	<u>\$59.83</u>	<u>\$473,877</u>	<u>\$27.44</u>	<u>\$458,828</u>
Total Expenses	\$171.92	\$1,361,630	\$122.57	\$2,049,384
Net Income		\$28,221		\$884,686
Utilization: (Visits)		7,920		16,720

The following is noted with respect to the operating budget:

- Utilization assumptions are based on the demographic needs of the proposed service area. Specifically, Medicaid utilization is based on the current statistical analysis of the population and the patients to be served.
- Expense assumptions are based on the historical experience of the facilities in the geographical area.

- Reimbursement rates are based on current reimbursement methodologies for the services they are proposing to provide.

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	13.01%	13.00%
Commercial MC	4.00%	4.00%
Medicare FFS	17.00%	17.00%
Medicare MC	4.00%	4.00%
Medicaid FFS	1.99%	2.00%
Medicaid MC	55.00%	55.00%
Private Pay	3.01%	3.00%
Charity Care	<u>1.99%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

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

Premises	5,000 square feet located at 871 Westchester Avenue, Bronx, New York.
Lessor	Prospect Triangle, LLC
Lessee	871 Moses LLC
Term	Ten years and four months with a twenty-year renewal period.
Rental	Year One \$220,000 (\$44.00 per sq.ft.) with a 2% annual increase thereafter.
Provisions	The lessor shall be responsible for maintenance, real estate taxes, and utilities.

The applicant has submitted an affidavit indicating that there is no relationship between the lessor and the lessee. The applicant has submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project cost of \$1,853,400 will be met as follows: Bank Loan of \$1,668,060 at an interest rate of 6% for a ten-year term and equity of \$185,340 from the proposed members' personal resources. The applicant has provided a letter of interest regarding the financing.

Working capital requirements are estimated at \$341,564 based on two months of third-year expenses. The applicant will finance \$170,782 at an interest rate of 6% for a three-year term. The applicant has submitted a letter of interest for the financing. The remaining \$170,782 will be provided with equity from the proposed members' personal resources. Presented as BFA Attachment A are the personal net worth statements of the proposed members of 871 Moses LLC and indicates the availability of sufficient funds for the equity contribution for the total project cost and the working capital requirements. Presented as BFA Attachment B is the pro forma balance sheet of 871 Moses LLC as of the first day of operation and indicates a positive net asset position of \$356,122.

The submitted budget projects a net income of \$28,221 and \$884,686 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for the services they are proposing to provide. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Pro Forma Balance Sheet



Project # 231223-B
JAY Health, Inc.

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: June 12, 2023

Executive Summary

Description

JAY Health, Inc., an existing New York State not-for-profit corporation, seeks to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) at 107-15 71st Avenue in Forest Hills (Queens County) to provide primary care, behavioral health, and medical specialty services, including cardiology and endocrinology. The proposed D&TC will have 20 exam rooms, including two that will be used for bariatric patients, six office/consultation rooms, and requisite support space.

Jay Health, Inc. has entered into a proposed lease agreement with Forest Hills 17, LLC. The applicant has submitted an affidavit stating the lease is an arm's length arrangement.

Simon Fensterszaub, D.O., Board-Certified in Family Medicine, will serve as the Center's Medical Director. Long Island Jewish Forest Hills, 0.8 miles (5-minute travel time) away, has communicated a willingness to enter into a transfer agreement.

BFA Attachment A provides an organizational chart for the proposed center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projected 28,000 visits in the first year and 41,860 in the third. Medicaid utilization is projected at 41%, with 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 \$4,991,599 will be met with \$4,050,000 from the current landlord, Forest Hills 17 LLC; a \$499,160 contribution from PAJ Member LLC, an entity related to the landlord through common ownership; and a \$442,439 loan from Eastern Union Healthcare Group, with a five-year term and interest rate of 7%.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows include Revenues, Expenses, and Net Income (Loss).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 8, 2023.

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 forty-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. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]
4. Submission of an executed construction loan acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **June 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **March 15, 2025**, 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 approved 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area includes the neighborhoods of Forest Hills, Rego Park, and Kew Gardens in Queens County.

The Cornell Program on Applied Demographics projects the population of Queens County to increase to 2,544,231 by 2028. Demographics for the primary service area are noted below, including comparisons with the county and New York State:

Demographics	Totals for Primary Service Area	Queens County	New York State
Total Population-2021 Estimate	334,739	2,393,104	20,114,745
Hispanic or Latino (of any race)	27.3%	27.9%	19.2%
White (non-Hispanic)	46.9%	24.6%	54.7%
Black or African American (non-Hispanic)	3.0%	16.8%	13.9%
Asian (non-Hispanic)	19.2%	25.6%	8.6%
Other (non-Hispanic)	3.5%	5.1%	3.6%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 91.1% of the population in Queens County had health coverage as follows.

Employer Plans	43.3%
Medicaid	25.7%
Medicare	10.4%
Non-Group Plans	11.4%
Military or VA	0.3%

The proposed Diagnostic and Treatment Center will provide primary medical care, behavioral health, and medical specialty services, including cardiology and endocrinology. Hours of operation will be Monday, Tuesday, Thursday, and Friday from 9 AM to 5 PM, Wednesday from 12 PM to 8 PM, and Saturday from 9 AM to 1 PM. The applicant aspires to become a Federally Qualified Health Center in the future.

The applicant projects 28,000 visits in the first year and 41,860 in the third. The table below shows the projected payor mix.

Projected Payor Mix		
Payor	Year One	Year Three
Commercial FFS	10%	10%
Commercial MC	25%	25%
Medicare FFS	15%	15%
Medicare MC	5%	5%
Medicaid MC	41%	41%
Private Pay	2%	2%
Charity Care	2%	2%

Conclusion

The proposed D&TC will improve access to a variety of medical care services for the residents of the neighborhoods of Forest Hills, Rego Park, and Kew Gardens in Queens County.

Program Analysis

Project Proposal

JAY Health, Inc., an existing not-for-profit corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center at 107-15 1st Avenue, aka Continental Avenue, in Forest Hills (Queens County). The proposed center will provide Medical Services - Primary Care, including Behavioral Health and Medical Services - Other Medical Specialties, including Endocrinology and Cardiology.

Proposed Operator	JAY Health, Inc.
To Be Known As	JAY Health
Site Address	107-15 1 st Avenue or Continental Avenue Forest Hills, NY 11375 (Queens County)
Specialties	Medical Services-Primary Care Behavioral Health Medical Services-Other Medical Specialties Endocrinology Cardiology
Hours of Operation	Monday, Tuesday, Thursday, and Friday, 9:00 am to 5:00 pm Wednesday, 12:00 pm to 8:00 pm Saturday, 9:00 to 1:00 pm
Staffing (1st Year / 3rd Year)	19.80 FTEs / 23.70 FTEs
Medical Director(s)	Simon Fensterszaub, D.O.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Long Island Jewish Forest Hills 0.8 miles / 5 minutes away

Character and Competence

The members of JAY Health, Inc. are:

Name	Membership
Moshe Schwartz	CEO
Jonah Weiss	Chairman, Board Member
Moshe Mann	Secretary, Board Member
Rabbi Simcha Feuerman	Board Member

Dr. Simon Fensterszaub is a Physician at Emerald Multispecialty for eight (8) years. He was a Physician at Quality Health Center ODA Primary Care for 12 years. He is an Adjunct Clinical Professor at New York College of Osteopathic Medicine in Family Medicine for 13 years. He received his Medical Degree from New York College of Osteopathic Medicine. He completed his Family Practice Residency at North Shore LIJ Plainview Hospital. He is Board Certified in Family Medicine and Osteopathic Manipulative Medicine.

Moshe Mann is The CEO of Supreme Medical Management for seven (7) years. He has oversight of all company activities relating to revenue cycle management services of multiple primary care, urgent care, and ancillary healthcare businesses. He was the General Manager of Medpoint Billing for three (3) years. The company merged and was rebranded to Supreme Medical Management.

Rabbi Simcha Feuerman is a Licensed Social Worker at a Private Practice for 29 years. He specializes in high-conflict couples and families. He is the Director of Lifetime Care Foundation for the Jewish Disabled for 22 years. He is the Director of a non-profit community organization that provides financial planning and advocacy for persons with disabilities and their families. He supervises psychiatric and geriatric case management. He maintains legal and financial oversight of pooled community trust that manages assets for persons with disabilities and maintains the Board of Directors, separate from the

Ohel Board. He was previously the Director of Mental Health at Sephardic Bikur Holim for over one (1) year. He provided horizontal and vertical strategic planning and analysis, including reimbursement methodology, managed care, clinical staff development, retention and recruitment, EMR, and managed care contracting. He was an Adjunct Professor at Concordia College of Social Work for three (3) months. He was an Adjunct Professor at Yeshiva University Wurzweiler School of Social Work for seven (7) months. He was the President of NEFESH International, a training and trade organization, for nine (9) years. He increased membership and modernized the website. He was the Senior Director of Operations of Ohel Children's Home and Family Services for six (6) years. He had oversight and responsibility of the two (2) outpatient Article 32 mental health centers and developed an Integrative Health Model between Primary Care and Behavioral Health. He had oversight of Foster Care, Preventative Care, Geriatric Services Division, Geriatric Pooled Trust Program, Sexual Abuse Prevention and Training Program, Domestic Violence Shelters and Services Program, Children Under Five Program, School-Based Mental Health Services, Trauma Services Division, and Mobile Team. He coordinated grant writing and new program development. He was an Adjunct Psychology Professor at Lander College for Men for four (4) months. He was the Director of Community Mental Health Services for six (6) years. He was the Director of Community Mental Health Services. He supported the Mobile Outreach and Intervention Unit, which provided 600 encounters per year to those in crisis. He supported an initiative to provide school counseling, educational risk prevention, and self-esteem-building groups. He helped provide Family Support Services under the Auspices of NYS Offices of Children and Family Services, Temporary Assistance to Needy Families, to provide family counseling and case management. He also provided administrative and clinical oversight to Ohel's psychiatric community residences and supportive apartments. He was the Director of Intake at Ohel for two (2) years. He established a centralized intake and assessment system for admission group homes, foster care, Medicaid waiver, and nine (9) other community outpatient programs and services. He created a unified data collection and report system to provide in-depth statistical analysis and client retention trends. He was an Adjunct Professor at Touro Graduate School of Social Work for one (1) year. He was an Undergraduate Adjunct Professor of Psychology at Lander College for one (1) year. He was the Administrative Director of Rheumatology and Center for Arthritis and Autoimmunity at the Hospital for Joint Diseases for two (2) years. He managed a 21-physician multispecialty practice and supervised medical billing and clerical staff. He negotiated managed care contracts. He was the Practice Administrator of Rheumatology at the Hospital for Joint Diseases for five (5) years. He managed the medical billing staff, computer systems, telecommunications, managed care contracts, and clerical staff. He was a Senior Social Worker and Coordinator of the Supervised Independent Living Program at the Jewish Child Care Association of New York for three (3) years. He provided counseling for adolescents in foster care and their families. He was a Staff Psychotherapist at the Long Island Consultation Center for two (2) years. He provided psychotherapy within a managed care setting.

Moshe Schwartz is the CEO of JAY Health, Inc. for one (1) year. He is responsible for overseeing finance and operational projecting and modeling as well as oversight of the various consulting relationships, including finance, compliance, building, planning, and design. He was the Contract Interim CEO of Xeron Clinical Laboratory for four (4) months. He provided CEO consulting services to a newly acquired clinical laboratory on an interim basis. His responsibilities included contract management, employee engagement and retention, benefits assessment and migration, and oversight of laboratory operations. He was the Vice President of Operations and Compliance of MedElite Group for seven (7) months. He operated a medical services organization with 150 providers. He oversaw the daily operations of the organization, including the primary care, specialty care, optometry, and psychiatry service lines. He was responsible for the design and monitoring of the company-wide KPI's including team scheduling, management of back-office teams, communication teams, data entry, and analytics teams. He provided guidance, planning, and execution of overall growth strategies, ensured compliance with regulations, and oversaw company-wide initiatives. He was the Vice President of Business Initiatives and Mergers and Acquisitions for three (3) years. He was responsible for identifying off and on-market opportunities for the acquisition of healthcare assets across the entire spectrum of long-term care services and for strategic real estate acquisitions. He managed the due diligence process, identified and coordinated with company stakeholders, and served as a forward-facing representative for the enterprise at business networking events and conferences. He was in a business initiative role, leading the sales and operations team in various new business opportunities, including Telemedicine and Diagnostic Laboratory Services. He was accountable for market analysis, strategy, planning, and implementation of plans. He consummated transactions with a portfolio value in excess of \$120M. He was the Senior

Account Executive of MiMedx Group for five (5) years. He drove sales and marketing for a portfolio of regenerative human placental tissue for transplant in hospitals and private offices, cultivating and maintaining business relationships with stakeholders and medical personnel, providing deep analysis and consulting for revenue cycle, and identifying business opportunities for expanded services to prospective and current healthcare customers. He initiated processes for prior authorizations and reimbursement support across revenue cycles. He ensured regulatory compliance and maintenance of HIPPA compliance. He was the District Vice President of Advanced Oxygen Therapeutics Inc. for three (3) years. He introduced new hyperbaric wound care devices to the NYC marketplace and recruited and managed distribution channels, including direct sales. He directed yearly business growth of 250%, exceeding \$2M annually. He was the Business Development Manager of EZ Surgical for one (1) year. He developed marketing and sales for a VC-backed start-up. He achieved market penetration after 10 months. He was an Account Executive at Tr-anim Health Services for four (4) years. He facilitated the sales of specialty critical care equipment. He was the Clinical Application Specialist at Cardiac Science Corporation for three (3) years. He was a Paramedic at Northwell Health for eight (8) years.

Jonah Weiss is the Vice President of 1LLC GM Management for four (4) years. He is responsible for overseeing the operations of a commercial and residential real estate management company, including tenant relations, occupancy management, and oversight of maintenance teams. He was the Managing Director of Physician Services of MedElite Group, LLC, for six (6) years. He led the provider recruitment department and quality assurance department. He ensured KPI metrics were met related to provider recruitment and onboarding, as well as client and provider satisfaction. He also was responsible for schedule and timekeeping management for office and clinical staff.

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$4,991,599 and is distributed as follows:

Renovation and Demolition	\$3,542,500
Design Contingency	253,750
Construction Contingency	253,750
Architect/Engineering Fees	425,100
Other Fees	81,750
Movable Equipment	405,456
Application Fee	2,000
Additional Processing Fee	<u>27,293</u>
Total Project Cost	\$4,991,599

The financing for this project will be as follows:

Cash	\$499,160
Landlord Allowance	4,050,000
Loan (5 years, 7% interest)	<u>442,439</u>
Total	\$4,991,599

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for years one and three, summarized as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$110.10	\$308,275	\$110.10	\$460,884
Commercial MC	\$93.58	655,069	\$93.58	979,332
Medicare FFS	\$115.89	486,750	\$115.89	727,685
Medicare MC	\$98.51	137,914	\$98.51	206,184
Medicaid MC	\$155.94	1,790,190	\$155.94	2,676,398
Private Pay	\$23.18	<u>12,980</u>	\$23.18	<u>19,401</u>
Total Revenue		\$3,391,178		\$5,069,884
Expenses:				
Operating	\$104.15	\$2,916,220	\$84.51	\$3,537,496
Capital	<u>9.92</u>	<u>277,824</u>	<u>40.05</u>	<u>1,676,651</u>
Total	\$114.07	\$3,194,044	\$124.56	\$5,214,147
Net Income / (Loss)		<u>\$197,134</u>		<u>(\$144,263)</u>
Total Visits		28,000		41,860
Cost per Visit		\$114.07		\$124.56

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

<u>Payor:</u>	<u>Years One</u>	<u>Year Three</u>
Commercial FFS	10.0%	10.0%
Commercial MC	25.0%	25.0%
Medicare FFS	15.0%	15.0%
Medicare M/C	5.0%	5.0%
Medicaid M/C	41.0%	41.0%
Private Pay	2.0%	2.0%
Charity	<u>2.0%</u>	<u>2.0%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The expenses, revenues, and projected utilization for this project are based on the experience of similar D&TCs in New York State.
- The projected \$144,263 net loss in Year 3 is attributable to rent deferment during the first 20 months of the lease. Deferment repayment begins in Month 21, and the Center is projecting positive net income by Year 5.
- The increase in volume between Years One and Year Three is based on the applicant's knowledge of the medical underservice to residents in the PSA. The proposed services are tailored to meet the needs of residents in the PSA, resulting in increased utilization.
- Commercial rates are projected based on a percentage of the 2022 Medicare Fee or Service (FFS) rate, ranging from 95% for Commercial FFS payors down to 85% for Commercial Managed Care payors.
- Medicare MC and Medicaid MC rates are projected based on 85% of the 2022 Medicare FFS rate and 85% of the 2022 Medicaid FFS rate of \$184.17, which includes a \$15.15 capital component.
- Private Pay rate is based on 20% of the 2022 Medicare FFS rate.
- The number and mix of staff were based on the experience of similar D&TCs in New York State.
- Expenses are based predominantly on the labor costs for the staffing model that includes Technicians and Specialists (at 2.50 FTEs by year three), Registered Nurses (3.30 FTE by year three), Physicians (8.20 FTE by year three), Clerical and Other Administrative staff (4.50 FTEs by year three), Management and Supervision (1.00 FTE by year three), as well as medical supplies, other direct expenses and rent expense.

Executed Lease Agreement

The applicant has submitted an executed lease agreement, summarized below:

Date:	August 1, 2022	
Premises:	Building and land located at 107-15 71 st Avenue in Forest Hills, NY 11375	
Landlord:	Forest Hills 17 LLC	
Tenant:	Jay Health, Inc.	
Term:	30-year term following commencement.	
Rental:	<u>Years</u>	<u>Base Rent</u>
	1 - 5	\$1,445,580 (\$120,465 per month)
	6 - 10	\$2,225,580 (\$185,465 per month)
	11 - 15	\$2,481,138 (\$206,761 per month)
	16 - 20	\$2,729,252 (\$227,438 per month)
	21 - 25	\$3,002,177 (\$250,181 per month)
	26 - 30	\$3,302,395 (\$275,200 per month)
	31 - 35	\$3,632,634 (\$302,720 per month)
	For years after year 35 through the expiration date, base rent shall increase by 10% per annum every five (5) years during the lease term.	
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance.	

The applicant submitted an affidavit stating the lease agreement between the property owner and the lessee is an arm's length arrangement. The applicant has submitted letters from two New York State licensed realtors attesting to the reasonableness of the per-square footage rental.

Capability and Feasibility

The total project cost of \$4,991,599 will be met with \$4,050,000 from the current landlord, Forest Hills 17 LLC, a \$499,160 will be funded contribution from PAJ Member LLC, an entity related to the landlord through common ownership, and a \$442,439 loan from Eastern Union Healthcare Group with a five-year term and interest rate of 7%.

The working capital requirement based on the third year of operations is estimated at \$869,025 and will be funded with a \$434,513 equity contribution from PAJ Member LLC and a bank loan for \$434,512 for a five-year term at 7% interest. Eastern Union Healthcare Group has provided a letter of interest for the respective loans at the stated terms. PAJ Member LLC provided documentation showing sufficient equity.

BFA Attachment B is the Pro-Forma Balance Sheet for JAY Health, which shows the operation will start with \$1,245,607 in equity. The submitted budget indicates a net income of \$197,134 in Year One and a net loss of \$144,263 in Year Three. The projected net loss is attributable to rent deferment during the first 20 months of the lease. Deferment repayment begins in Month 21, with the center projecting positive net income by Year 5. The operating losses in Years Three and Four will be covered by an equity contribution from PAJ Member LLC in the amount of \$311,934 and a \$434,512 bank loan from Eastern Union Healthcare Group with a five-year term at 7% interest. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Organization Chart
BFA Attachment B	Pro-Forma Balance Sheet



Project # 231265-B
GMZY Health Management

Program: Diagnostic and Treatment Center County: Orange
Purpose: Establishment and Construction Acknowledged: June 14, 2023

Executive Summary

Description

GMZY Health Management LLC (GMZY), a New York State limited liability corporation, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to provide primary care services, laboratory services, and pulmonology. The proposed center will be housed in leased space in a medical office building at 745 Route 17M, Monroe, New York. The site will have ten exam rooms, a specialty exam room, and requisite support areas.

The proposed members and ownership percentages of GMZY Health Management, LLC are as follows:

Table with 2 columns: Members, % and rows for Yoel Gross (48%), Yechisiel Gross (26%), and Nuchem Grunhut (26%).

Seth Kurtz, M.D., Board Certified in Pediatrics and Emergency Medicine, will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Good Samaritan Hospital, 18.3 miles (28 minutes travel time) from the Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,000 visits in the first year and 12,652 by the third, with 57% Medicaid and 4% Charity Care in both years.

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 \$1,165,967 will be met through member equity. The applicant projects a net income of \$232,914 in the first year and \$200,442 by the third year.

Budget table with columns for Year One (2024) and Year Three (2026), showing Revenues, Expenses, and Gain/(Loss).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 31, 2023.

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-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **October 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 15, 2024**, and construction must be completed by **July 15, 2024**, 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 approved 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The proposed primary service area is Monroe in Orange County. Specifically, the applicant expects a large percentage of their patient volume to come from the Hassidic community of Kiryas Joel. **The applicant projects 11,000 visits in the first year and 12,652 by the third.** The proposed location is in a Health Professional Shortage Area for Primary Care. The applicant is committed to providing services to all patients needing care, regardless of their ability to pay or the source of payment.

The following services will be provided: pediatrics, adult medicine, laboratory services, and pulmonology. The proposed Center will operate Sunday 9:00 am - 8:00 pm, Monday - Thursday 8:00 am - 8:00 pm, and Friday 9:00 am - 5:00 pm. The applicant is seeking a Transfer and Affiliation Agreement for backup hospital services with Good Samaritan Hospital, located 18.3 miles and 28 minutes away.

According to Data USA, in 2020, 95.2% of the population of Orange County had health coverage as follows:

Employee plans	52.1%
Medicaid	19.4%
Medicare	10.8%
Non-group plans	11.5%
Military or VA plans	1.41%

Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	30.00%	30.00%
Medicare	8.00%	8.00%
Medicaid	57.00%	57.00%
Private Pay	1.00%	1.00%
Charity Care	4.00%	4.00%

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 PQI rates for 2020 related to this application, which indicates that the service area has lower PQI rates than the county. However, the county has higher PQI rates in many areas compared to New York State.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2020	Zip Code 10950	Orange County	New York State
Chronic Obstructive Pulmonary Disease and Asthma	138	277	244
Hypertension	37	94	63
Heart Failure	152	269	336
Bacterial Pneumonia	102	162	105
Uncontrolled Diabetes	19	44	45
Prevention Quality Overall Composite	533	1023	994

Conclusion

Approval of this project will allow for expanded access to Medical Services - Primary Care and Medical Services - Other Medical Specialty services for the residents of Orange County.

Program Analysis

Project Proposal

GMZY Health Management LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 745 Route 17M in Monroe (Orange County). The proposed Article 28 diagnostic and treatment center will provide Medical Services - Primary Care and Medical Services - Other Medical Specialties, including Pulmonology.

Proposed Operator	GMZY Health Management LLC
To Be Known As	GMZY Health Management
Site Address	745 State Route 17M Monroe, NY 10950 (Orange County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Pulmonology
Hours of Operation	Sunday, 9:00 am to 8:00 pm Monday to Thursday, 8:00 am to 8:00 pm Friday, 9:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	8.90 FTEs / 10.50 FTEs
Medical Director(s)	Seth Kurtz, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Good Samaritan 18.3 miles / 28 minutes away

Character and Competence

The members of GMZY Health Management, LLC are:

<u>Name</u>	<u>Ownership Interest</u>
Yoel Gross	48.00%
Yeischiel Gross	26.00%
Nuchum Grunhut	26.00%
Total	100.00%

Dr. Seth Kurtz is the proposed Medical Director. He is an Instructor at New York University School of Medicine Department of Pediatrics for 16 years. He is the Pediatric Director of the Phoenix Center for Rehabilitation and Pediatrics for nine (9) months. He is the President of Park Avenue Pediatrics for 17 years. He is the Medical Director of Beach Gardens Rehabilitation and Nursing Center for one (1) year. He is the President, Medical Director, and Attending Physician at QHC Upstate Medical P.C. for 14 years. He is the President of Crown Heights Medical for 17 years. He is the President, Medical Director, and Attending Physician of Park Avenue Pediatrics for 17 years. He was the Medical Director of Quality Health Center, Inc. for two (2) years. He is the Medical Director of Hempstead Park Nursing Home for two (2) years. He was the CEO and Medical Director of Kahr Health for one (1) year. He was the Medical Director of Goldcrest Care Center for over one (1) year. He is the Medical Director of New Franklin Center for Rehabilitation and Nursing for four (4) years. He is the Medical Director of Fort Tryon Center for Rehabilitation for four (4) years. He is the Medical Director of Split Rock Rehabilitation and Health Care Center for five (5) years. He was the Physician in Chief of Lasante Health Center for five (5) months. He was an Emergency Medicine Attending Physician at the Schumacher Group for eight (8) years. He is the President, Medical Director, and Attending Physician at Elite Healthcare for 12 years. He was an Emergency Physician at Tri State Physicians for seven (7) months. He received his medical degree from SUNY Downstate. He completed his Emergency Medicine Residency at Lincoln Medical and Mental Health Center. He completed his General Pediatrics Residency at Maimonides Medical Center. He is Board Certified in Emergency Medicine and Pediatrics.

Yechisiel “Mayer” Gross is the Director of Acquisitions of GSI Equities, Inc. for 16 years. He develops and executes the evaluation of financial and operational strategies for mergers, acquisitions, and divestiture projects. He is the Owner and CEO of LGP Capital LLC Financial Services for six (6) years. He manages and directs a \$5M revenue business providing financing solutions to realtors and other investors. He will act as the advisor on finance and budgets for the proposed project. His many years in the real estate industry, which is highly regulated, have given him an understanding of compliance requirements and the creation of policies and procedures to meet regulations.

Yoel “Joel” Gross is the Owner and CEO of RHYG Management LLC for 12 years. He oversees the day-to-day operations of KJ Medical Practice PC d/b/a Elite Healthcare, a group medical practice. His overall responsibilities include financial management, strategic planning, patient satisfaction, and quality of care efforts. He possesses financial management skills, including budget planning and management, revenue cycle management, and cost control. He has experience in staffing management, including hiring and training employees, developing and implementing employee performance evaluation programs, and managing employee schedules to ensure optimal staffing levels.

Nuchem Grunhut is the COO of The Mylu Team for 16 years. He oversees all the operations of the company. He was the Owner and COO of DoneRight Construction of OC Inc. for 12 years. He negotiated with companies, oversaw, and managed construction sites. He states that his work in construction led him to philanthropic work, and he got involved in the development of schools and other community projects.

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$1,165,967, detailed as follows:

Renovation & Demolition	\$615,353
Design Contingency	\$61,535
Construction Contingency	\$61,535
Planning Contingency	\$46,125
Architect/Engineering Fees	\$61,500
Other Fees	\$51,250
Movable Equipment	\$260,302
CON Application Fee	\$2,000
CON Processing Fee	<u>\$6,367</u>
Total Project Cost	\$1,165,967

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$1,165,967
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BFA Attachment A presents the members' net worth, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant submitted first and third-year operating budgets in 2023 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Medicaid-FFS	\$170.71	\$18,778	\$170.71	\$21,680
Medicaid-MC	\$170.71	\$1,051,574	\$170.71	\$1,209,310
Medicare-FFS	\$98.51	\$54,180	\$98.51	\$62,357
Medicare-MC	\$98.51	\$32,508	\$98.51	\$37,434
Commercial-FFS	\$137.13	\$150,843	\$137.13	\$173,469
Commercial-MC	\$137.13	\$301,686	\$137.13	\$346,939
Private Pay	\$150.00	<u>\$16,500</u>	\$150.00	<u>\$19,050</u>
Total		\$1,626,069		\$1,870,239
Expenses:				
Operating	\$97.76	\$1,075,400	\$105.88	\$1,339,593
Capital	<u>\$28.89</u>	<u>\$317,755</u>	<u>\$26.10</u>	<u>\$330,204</u>
Total	\$126.65	\$1,393,155	\$131.98	\$1,669,797
Net Income		\$232,914		\$200,442
Total Visits		11,000		12,652
Cost per Visits		\$126.65		\$131.98

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	110	1.00%	127	1.00%
Medicaid-MC	6,160	56.00%	7,084	56.00%
Medicare-FFS	550	5.00%	633	5.00%
Medicare-MC	330	3.00%	380	3.00%
Commercial-FFS	1,100	10.00%	1,265	10.00%
Commercial-MC	2,200	20.00%	2,530	20.00%
Private Pay	110	1.00%	127	1.00%
Charity	<u>440</u>	<u>4.00%</u>	<u>506</u>	<u>4.00%</u>
Total	11,000	100.00%	12,652	100.00%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service (FFS) and Medicaid Managed Care rates are based upon the current Freestanding APG Base rates.
- Medicare Fee for Service and Managed Care rates are based on the most current average regional rates for Article 28 facilities. The rate for Commercial Fee for Service is based on the Medicare Part B fee schedule, while the Commercial Fee for Service and Managed Care rates are based on the Congressional Budget Office's price analysis.
- Staffing and expense assumptions were based on the specific staff requirements to efficiently operate the D&TC, along with a review of similar type and size D&TCs within the region.
- Utilization by payor source is based on the demographic of the Orange County service area, which includes five Health Professional Shortage Areas and four medically underserved areas.
- Utilization is expected to grow from an increase in demand, community network relationships, hospital affiliations, and marketing.
- Breakeven utilization for Year One is 9,425 visits, and 11,296 visits for Year Three.

Lease Rental Agreement

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

Date:	June 28, 2022
Premises:	5,944 square feet located at 745 Route 17M, Monroe, NY
Landlord:	Commons On the Lake, LLC
Lessee:	GMZY Health Management, LLC
Term:	10 years, Base Rent at \$192,691.60 in year one with an annual 3% increase (\$32.42 per square foot)
Provisions:	Triple Net

The lease is an arms-length agreement, as there is no relationship between landlord and tenant. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value.

Capability and Feasibility

Total project costs of \$1,165,967 will be met through members' equity. Working capital requirements are estimated at \$278,300, based on two months of third-year expenses. Funding will be entirely from members' equity. A review of BFA Attachment A, Proposed Member's Net Worth, shows the members have sufficient equity to fund the project and meet the working capital requirements. Yechisiel Gross has provided a disproportionate share affidavit to cover any other members' equity shortfall for both total project cost and working capital.

BFA Attachment C presents GMZY Health Management LLC's Pro Forma Balance Sheet that shows operations will start with \$278,300 equity.

GMZY projects a net income of \$232,914 and \$200,442 in the first and third years. The applicant's budget appears to be reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Proposed Members of GMZY Health Management, LLC
BFA Attachment B	Organization Chart for GMZY Health Management, LLC
BFA Attachment C	Pro Forma Balance Sheet of GMZY Health Management, LLC



Project # 211108-E
Empress Dialysis, LLC d/b/a Brooklyn Community Dialysis

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Kings
Acknowledged: May 12, 2021

Executive Summary

Description

Empress Dialysis, LLC (Empress), a New York limited liability company, requests approval to be established as the new operator of Brooklyn Community Dialysis, an Article 28 Diagnostic and Treatment Center (D&TC) at 730 64th Street, Brooklyn. The D&TC is an extension clinic of Bronx Dialysis Center operated by Knickerbocker Dialysis, Inc. (Knickerbocker). The facility is a 24-station chronic renal dialysis center also certified to provide home hemodialysis and home peritoneal dialysis training and support. There will be no change in services provided, and Empress will continue to operate the facility under the name of Brooklyn Community Dialysis after the change of ownership.

On January 22, 2020, Empress entered into an Asset Purchase Agreement (APA) with Knickerbocker for the sale and acquisition of Brooklyn Community Dialysis's operating interest for \$5,813,000.

Ownership before and after the requested change is:

Current Operator
Brooklyn Community Dialysis
Knickerbocker Dialysis, Inc. 100%

Proposed Operator
Empress Dialysis, LLC
Members:
Knickerbocker Dialysis, Inc. 80%
Sun, Liang, Yang and Yap, LLC: 20%
Members:
Wei Yue Sun, M.D. 5%

Elizabeth Quail Liang, M.D. 5%
Li E Yang, M.D. 5%
Laurel Win Yap, M.D. 5%

Li E Yang, M.D., will continue as the Medical Director of the facility. The applicant has a transfer and affiliation agreement with Maimonides Medical Center, 1.2 miles from the facility. The applicant will enter into a Consulting and Administrative Services Agreement (CASA) with DaVita, Inc.

DaVita of New York, Inc., owned by DaVita, Inc., is the sole owner of shares in and parent of Knickerbocker Dialysis, Inc.

OPCHSM Recommendation

Contingent Approval

Need Summary

No changes in dialysis stations or home training and support services will result from this application.

Program Summary

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

Financial Summary

The \$5,813,000 purchase price will be met with a \$4,070,000 loan for a 5-year and two-month term with an estimated fixed interest rate of 7.41%. The remaining \$1,743,000 will be paid by the members of Empress Dialysis, LLC.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
	<u>(2024)</u>	<u>(2026)</u>
Revenues	\$5,776,137	\$5,972,375
Expenses	<u>\$4,641,418</u>	<u>\$4,643,315</u>
Net Income/(Loss)	\$1,134,719	\$1,329,061

Health Equity Impact Assessment

The was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on March 18, 2021.

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 loan agreement acceptable to the Department of Health. [BFA]
2. Submission of an amended and executed Operating Agreement acceptable to the Department. [CSL]
3. Submission of an amended and executed First Amendment to the Consulting and Administrative Services Agreement acceptable to the Department. [CSL]
4. Submission of an amended and executed Certificate of Amendment to the Articles of Organization for Sun, Lian, Yang & Yap, LLC, acceptable to the Department. [CSL]
5. Submission of an amended and executed Operating Agreement for Sun, Lian, Yang & Yap, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Certificate of Amendment of the Certificate of Incorporation of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Certificate of Authority of Davita, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/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 [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area for the facility remains Kings County, which had a population estimate of 2,641,052 in 2021, according to the American Community Survey estimates. The percentage of residents aged 65 and over was 14.4%. The non-white population percentage was 50.2%. These are the two population groups in which end-stage renal disease is most prevalent. Comparisons between Kings County and New York State are shown below.

County Residents:	Kings County	New York State
Ages 65 and Over:	15.6%	17.5%
Non-white:	50.4%	30.9%

Source: U.S. Census 2021

According to Data USA, in 2020, 93.3% of the population in Kings County had health coverage as follows.

Employer Plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-Group Plans	11.8%
Military or VA	0.327%

Projected Payor Mix for Outpatient Services		
Insurance Type	Year One	Year Three
Commercial	3.6%	3.5%
Medicare	75.0%	73.8%
Medicaid	21.4%	22.7%
Total Visits	16,800	17,400

The center is in a Health Professional Shortage Area for Primary Care. It is expected that most of the current patients will elect to continue receiving services at the facility after the change in ownership.

Conclusion

There will be no change in the number of dialysis stations or the services provided as a result of this application.

Program Analysis

Project Proposal

Empress Dialysis, LLC seeks approval to become the new operator of Brooklyn Community Dialysis, an existing 24-station chronic renal dialysis clinic located at 730 64th Street in Brooklyn (Kings County), which is currently operated by Knickerbocker Dialysis, Inc. Knickerbocker currently operates Brooklyn Community Dialysis as an extension clinic of Bronx Dialysis Center. Following this change in ownership, Brooklyn Community Dialysis will become the main site and principal place of business of Empress Dialysis, LLC, which will continue to operate the facility under the name Brooklyn Community Dialysis.

Proposed Operator	Empress Dialysis, LLC
Doing Business As	Brooklyn Community Dialysis
Site Address	730 64th Street Brooklyn, NY 11220 (Kings County)
Shift/Hours/Schedule	Monday-Wednesday-Friday, 6 am to 6 pm Tuesday-Thursday-Saturday, 6 am to 2 pm
Approved Services	Renal Dialysis-Chronic O/P Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	12.3 FTEs/16.8 FTEs
Medical Director(s)	Li E. Yang, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Maimonides Medical Center 1.2 mile/10 minutes

DaVita of New York, Inc (DAVNY), which is owned by DaVita Inc., is the sole owner of the shares of Knickerbocker Dialysis, Inc. DAVNY is also the owner of Huntington Artificial Kidney Center, Ltd., Empire State DC, Inc, and Liberty RC, Inc., operators of other chronic renal dialysis facilities in New York State.

Knickerbocker is also a member of:

Enchanted Dialysis, LLC

True North Dialysis Center, LLC

True North DC Holding, LLC, which is a member of True North II DC Holding, LLC and True North III DC Holding.

Bandelier Dialysis, LLC

Knickerbocker is the licensed operator of 34 chronic renal dialysis facilities in the state, while DaVita is the operator of more than 2,400 dialysis facilities in the United States.

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

Character and Competence

The proposed membership of Empress Dialysis, LLC are:

Member Name/Title	Membership Interest
Knickerbocker Dialysis, Inc	80%
<i>John D. Winstel President</i>	
<i>Luann Regensburg Treasurer</i>	
<i>Nicholas Gossman Secretary</i>	
<i>Caroline Pierce Vice President</i>	
<i>Samuel Wey Asst. Secretary</i>	
Sun, Liang, Yang & Yap, LLC	20%
Total	100.0%

Empress Dialysis, LLC is managed by its members through a Board of Members comprised of managers appointed by the members of Empress. The officers of Empress Dialysis, LLC are as follows:

<u>Name</u>	<u>Title</u>
Luann D. Regensburg	Manager
Wei Y. Sun, M.D., Ph.D.	Manager
Caroline Pierce	Manager

Li E. Yang, M.D., will continue to serve as the facility's Medical Director. She is an Attending Physician at Chinatown Kidney Care for nine (9) years. She is the Medical Director at DaVita Brooklyn Chinatown Dialysis Center for six (6) years. She is an Attending Physician at NYU Lutheran Medical Center for nine (9) years. She is an Attending Physician at Mount Sinai Beth Israel and North Shore LIJ for eight (8) years. Dr. Yang received her medical degree from Beijing Medical University in China. She completed her residency in Internal Medicine at Kingsbrook Jewish Medical Center. She completed a Nephrology Fellowship at Virginia Commonwealth University Medical College of Virginia. She is board-certified in Internal Medicine and a sub-specialty in Nephrology.

Mr. Nicholas Gossman is the Group Finance Director for DaVita, Inc., for over three (3) years. He is a key contributor to monthly financial reviews with senior leadership, provides root cause analysis and recommendations on action plans, coordination of the budget process, joint venture reporting, and communication with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five (5) Finance Managers and one (1) Financial Analyst; and has active roles in national projects for DaVita including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Dr. Elizabeth Liang is a practicing Nephrologist. She is currently an Attending at Flushing Medical Center and Mount Sinai Beth Israel Medical Center for over nine (9) years. She is a Consultant Physician at Chinatown Kidney Care PLLC for over nine (9) years. She was a previous Hospitalist at Montefiore Medical Center for five (5) months. She received her medical degree from SUNY Downstate College of Medicine. She completed her Internal Medicine residency at Brown University. She completed her Nephrology fellowship at Albert Einstein College of Medicine. She is board certified in Internal medicine with a sub-specialty in Nephrology. Dr. Liang disclosed ownership interest in the following healthcare facility:

USRC Renal Forest Hills 04/01/20-present

Mrs. Caroline Pierce is the Division Vice President of DaVita, Inc for three (3) years. She was the previous Regional Operations Director of DaVita, Inc. She is responsible for the general management and oversight of operations within the assigned division. She provides strategic and tactical leadership along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator for over one (1) year of DaVita, Inc. She was a Math Teacher for three (3) years and the Director of Growth for four (4) years in the Phoenix Charter Academy Network.

Ms. Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners for six (6) years. She is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She was the previous Regional Operations Director for approximately ten (10) years. She oversaw the overall management of 11 facilities serving 1,400 patients in Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300-plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence of potential acquisition. She was the previous Director of Clinical Support Services at Mercy Medical Center for over 20 years.

Dr. Wei Sun is currently a practicing Nephrologist at Chinatown Kidney Care, PLLC, for over 19 years. He is an Assistant Attending Physician in Internal Medicine and Nephrologist at Beth Israel Medical Center for over 19 years. He was previously a Clinical and Public Health Epidemiologist at the Division of Family Health Services for New York City Department of Health for over two (2) years. He received his medical degree from Sun Yat-Sen University of Medical Sciences in China. He completed his residency at Brookdale University Hospital and Medical Center. He completed his Nephrology fellowship at Brookdale University Hospital and Medical Center. He received his Master of Public Health from University of Wisconsin - La Crosse. He received his Master of Health Sciences Education from University of Florida. He received his Ph.D. in Health Behavior Sciences and Epidemiology from Columbia University.

Mr. Samuel Wey has been employed at DaVita, Inc for over ten (10) years. He currently holds the role of Senior Director, Licensure and Certification for over two (2) years. His responsibilities include overseeing all operational lanes of the licensure and certification department to ensure the timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing and leveraging; collaborated with multiple Medicaid agencies resulting in 3.5M dollars of accounts receivable dollars that had been deemed uncollectable; revamped processes across three functional lanes of the licensure and certification department to bring uniformity to processes, while also mitigating the risk to broader organization; led the design and implementation of the first-ever operations reports, which provided field operators visibility to see where their facilities were in the licensure and certification process. He held the previous roles of Director of Licensure and Certification for approximately two (2) years, Manager of Acquisitions & Integrations for over two (2) years, and Facility Administrator for over two (2) years at DaVita, Inc.

Mr. John Winstel is the current Chief Accounting Officer of DaVita, Inc for three (3) years. He was the previous Group Vice President for five (5) months. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, the board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company for approximately four (4) years.

Dr. Laurel Win Yap is currently a Nephrologist at Chinatown Kidney Care, PLLC, for eight (8) years. She is a Primary Care Physician at Grace Medical Care for eight (8) years. She was an Attending Nephrologist at Downtown Renal Medicine for one (1) year. She was a Primary Care Physician at Universal Medical Services for five (5) months. She was a Clinical Assistant at Kelvin NT Lin M.D. for two (2) years. She was an Assistant Attending Physician at Sabe Phyu Medical Center for eight (8) months. She was a Private Instructor in Medicine in Myanmar for two (2) years. She was an Internal Medicine Officer at Yangon General Hospital. She completed her Nephrology fellowship at SUNY Downstate Medical Center. She completed her Internal Medicine residency at Coney Island Hospital. She is board certified in Internal Medicine with a sub-specialty in Nephrology.

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.

A Character and Competence Review was conducted on the members of Knickerbocker Dialysis, Inc, and Sun, Liang, Yang & Yap, LLC.

Compliance with Applicable Codes, Rules, and Regulations

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

This Record of Legal Actions is submitted by DaVita Inc., as the consultant for the applicant, Empress Dialysis, LLC d/b/a Brooklyn Community Dialysis, and sets forth: (i) ongoing inquiries, investigations, and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years.

Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006, through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) in February 2016. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of \$63,700,000, of which \$41,500,000 was an incremental cash payment and \$22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible healthcare offenses. The subpoena covered the period from January 1, 2007, to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of US. ex rel. David Gonzalez v. DaVita Healthcare Partners, et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado, informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each of August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida, that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter, requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of US. ex rel. Lorne Holland et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

2019 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc., et al. v. DaVita Inc. In November 2019, several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania, alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey, served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on several topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

2020 Department of Justice Investigation: In October 2020, the Company received a CID from the Department of Justice pursuant to a False Claims Act investigation concerning allegations that DMG may have submitted undocumented or unsupported diagnosis codes in connection with Medicare Advantage beneficiaries. The CID covers the period from January 1, 2015, through June 19, 2019, the date the Company completed the divestiture of DMG to Collaborative Care Holding, LLC, the Company is cooperating with the government in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization. The complaint further alleges that the process by which patients obtained commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.

In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters

2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency \$267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint *United States ex rel. David Barbeta v. DaVita, Inc. et al.*, No. 09-cv-02175-WJM KMT (D. Colo.).

2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter: In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014, DaVita refunded \$712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed.

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company

finalized the terms of a settlement with plaintiffs, including a settlement amount of \$450 million and attorney fees and other costs of \$45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiffs' Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain MA plans for which JSA provided services and seeking information regarding JSA's communications about patient diagnoses as they related to certain MA plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking production of a wide range of documents relating to the Company's and its subsidiaries (including DMG and its subsidiary JSA) provision of services to MA plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012, acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay \$270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the \$270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene, and in January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice.

Swoben Private Civil Suit: In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations might not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG, including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc. . Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (*Menchaca v. DaVita Healthcare Partners, Inc.*, *Saldana v. DaVita Healthcare Partners, Inc.* and *Hardin v. DaVita Healthcare Partners, Inc.*), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The *Menchaca* and *Saldana* actions arose out of the treatment of patients in California, while the *Hardin* action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding \$85 million in compensatory damages and \$375 million in punitive damages. Judgment on this verdict was not entered,

and in November 2018, the parties settled all three actions collectively for \$25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis. Sun City Dialysis Center and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita (Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the facilities appealed the revocations, and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed, and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida, informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida, notified the court on April 4, 2019, of its decision to not intervene in the matter of Gabriel Valle, MD, et al. v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida, by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly owned subsidiary of DaVita and owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved.

Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of \$130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1 or 2-star rating does not mean a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis.

Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates over 3400 dialysis centers, 61 of which are in New York State. Knickerbocker Dialysis, Inc. is a subsidiary of DaVita, Inc. The star ratings for the New York State facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11 th Street Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Ave Garden City, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road Orchard Park, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive Brooklyn, NY 11230	****
Bronx Dialysis Center	1615-1617 Eastchester Road Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233 rd Street Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Boulevard Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road Bronx, NY 10475	***
Soundview Dialysis Center	1622-24 Bruckner Boulevard Bronx, NY 10473	****
Lynbrook Dialysis Center	147 Scranton Road Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road Amityville, NY 11701	***
Queens Village Dialysis Center	222-02 Hempstead Avenue, Queens Village, NY 11429	****
Suburban Dialysis Center	705 Maple Road Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue, Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road, Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road, Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard, Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue East Islip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive, Suite 100, Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive, Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard, Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway, Huntington Station, NY 11746	****
Deer Park Dialysis	860 Grand Boulevard, Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16 th Street, 5 th Floor, Brooklyn, NY 11129	N/A
Longwood Dialysis	931 Bruckner Boulevard, Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59, Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street, Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue, Staten Island, NY 10312	****
Wingate Dialysis	550 Kingston Avenue, Brooklyn, NY 11203	N/A
Mount Eden Dialysis	1490 Macombs Road Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Boulevard, Bayside, NY 11361	****

Facility Name	Address	Star Rating
Laconia Dialysis	3440 Boston Road, Bronx, NY 10469	N/A
Sandford Boulevard Dialysis	120 East Sanford Boulevard, Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street, Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road, Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Boulevard, Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue, Yonkers, NY 10704	N/A
Brooklyn Community Dialysis	730 64 th Street, Brooklyn, NY 11220	N/A
Buffalo Downtown Dialysis	520 Ellicott Street, Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11, Rochester, NY 14621	***
Melrose Dialysis	459 East 148 th Street Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue, Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue, Jamaica, NY 11216	*
Williamsbridge Dialysis Center	3525 White Plains Road, Suite A, Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street Montour Falls, NY 14865	***
Coming Dialysis	8 W Pulteney Street, Suite 101, Coming, NY 14830	*****
Ivy Dialysis	602 Ivy Street, Elmira, NY 14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard, Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road, Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road, Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue, Jamestown, NY 14701	*****
Borough Park Dialysis	4102 13 th Avenue, Brooklyn, NY 11219	**
NEOMY Dialysis Center	1122 Coney Island Avenue, Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue, Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue, Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place, Suite 15, Cortland Manor, NY 10566	****

Conclusion

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

Financial Analysis

Operating Budget

The applicant submitted an operating budget, in 2023 dollars, for the current year (2022) and the first (2024) and third year (2026) after the change in ownership, summarized below:

	<u>Current (2022)</u>		<u>Year One (2024)</u>		<u>Year Three (2026)</u>	
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
Revenues:						
Medicaid FFS	\$364.69	\$1,312,872	\$364.59	\$1,312,521	\$364.51	\$1,443,468
Medicare FFS	\$327.34	\$4,045,950	\$327.62	\$4,127,961	\$327.55	\$4,205,776
Commercial MC	\$1,173.91	<u>\$704,346</u>	\$1,173.91	<u>\$704,346</u>	\$1,173.91	<u>\$704,346</u>
Bad Debt		(\$363,790)		(\$368,690)		(\$381,215)
Total Revenue		\$5,699,378		\$5,776,137		\$5,972,375
Expenses:						
Operating	\$211.72	\$3,506,100	\$208.03	\$3,494,914	\$204.86	\$3,564,589
Capital	<u>\$48.20</u>	<u>\$798,192</u>	<u>\$68.24</u>	<u>\$1,146,504</u>	<u>\$62.00</u>	<u>\$1,078,725</u>
Total Expenses	\$259.92	\$4,304,292	\$276.27	\$4,641,418	\$266.86	\$4,643,314
 Net Income/(Loss)		<u>\$1,395,086</u>		<u>\$1,134,719</u>		<u>\$1,329,061</u>
 Treatments		16,560		16,800		17,400

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

- Revenues, expenses, and utilization are based on the experience at the facility, as well as the experiences of the members of Empress Dialysis, LLC, particularly Knickerbocker Dialysis, Inc.
- Knickerbocker operates more than 50 chronic renal dialysis facilities in New York State, including Westchester Home Training.

Utilization broken down by payor is as follows:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
	<u>(2022)</u>	<u>(2024)</u>	<u>(2026)</u>
Medicaid FFS	21.74%	21.43%	22.76%
Medicare FFS	74.64%	75.00%	73.79%
Commercial MC	<u>3.62%</u>	<u>3.57%</u>	<u>3.45%</u>
Total	100.00%	100.00%	100.00%

Asset Purchase Agreement

The applicant submitted an executed APA for the purchase of the operations for a purchase price of \$5,813,000. The executed APA is summarized below:

Date:	January 22, 2020
Purpose:	Purchase all rights of Seller to own and operate the Dialysis Center.
Seller:	Knickerbocker Dialysis, Inc.
Buyer:	Empress Dialysis, LLC
Assets Acquired:	All of Knickerbocker’s rights, title, and interest in and to all tangible and intangible assets of the center owned by Knickerbocker (other than the Intercompany payables and intercompany receivables) and used in and for the sole benefit of the Dialysis business.
Assumed Liabilities:	All debts, obligations, and liabilities of Knickerbocker with respect to the Dialysis Business regardless of when incurred, including without limitations: (1) Salaries, wages, benefits, and accrued paid time off of all employees employed in the business of the center; (2) All obligations arising under all contracts and leases relating to the center and assigned to the company; and (3) Any and all existing debts, liens, claims, encumbrances, liabilities and obligations to which any of the assets may be subject, including without limitation, all capital lease obligations and all accounts payable incurred or accrued in connection with the operations of the Dialysis business.
Purchase Price:	\$5,813,000
Payment of Purchase Price:	Cash at Closing

The proposed entity will fund the project as follows:

Bank Loan (5-year and two-month term, 5-year Federal Home Loan Bank Topeka rate currently 4.41% plus 3.00%, fixed interest rate estimated at 7.41%)*	\$4,070,000
Member’s Equity Contribution	<u>\$1,743,000</u>
Total	<u>\$5,813,000</u>

* Interest rate is based on 3.00% plus 5-year Federal Home Loan Bank Topeka rate (4.41% as of 7/26/2023) estimated at 7.41%.

A draft loan agreement has been provided to Empress Dialysis, LLC by BOKF, NA dba BOK Financial.

The applicant 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 7/23/2023, the facility has no outstanding Medicaid overpayment liabilities.

Administrative Services Agreement

The applicant submitted an executed Consulting and Administrative Services Agreement (CASA), summarized below:

Date:	1/22/2020
Company:	DaVita, Inc.
Operator:	Empress Dialysis, LLC
Services Provided:	Purchase, lease, license, or otherwise acquire or arrange for the use of all assets necessary to operate the center, maintain each item of equipment and all authorized additions, attachments, and accessories, provide computer hardware and software, supplies and prescription drugs, billing and collecting, bookkeeping, accounting and taxes, funds management, insurance acquisition, policy and procedure development, quality assurance and review, licenses, permits and provider numbers, compliance assistance, legal actions, other acts and expenditures and compliance with laws.
Term:	10 years with (2) automatic 5-year renewals
Compensation:	\$309,135 annually, the fee will be reviewed annually to see if it is in line with fair market value

The executed CASA provides that the licensed operator retains ultimate authority, responsibility, and control in all final decisions associated with the services, acknowledges the reserve powers that must not be delegated, and the conflicts clause provisions that ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any such illegal delegation, and understands that the Department will hold the applicant accountable.

Lease / Lease Assignment Agreement

The applicant submitted an executed lease agreement and assignment of lease agreement, summarized below:

Date of Lease:	12/4/2015
Date of Assignment:	1/22/2020
Premises:	10,626 square feet located at 730 64 th Street, Brooklyn, NY
Landlord:	730 64 th Street Company, LLC
Lessee:	Knickerbocker Dialysis, Inc.
Assignee:	Empress Dialysis, LLC.
Term:	10-year lease, with three 5-year extensions
Rental:	Years One-Five \$393,162 annually with a 10% increase at every five-year increment (\$37 per sq. ft.).
Provisions:	Lessee responsible for real estate taxes, maintenance, and utilities.

The applicant indicated that the lease is an arm's length lease agreement with non-related parties.

Capability and Feasibility

The purchase price of \$5,813,000 will be met with a \$4,070,000 loan from BOKF, NA dba BOK Financial, at the above-stated terms, and the remaining \$1,743,000 coming from members' equity.

The working capital requirement is estimated at \$773,886 based on two months of third-year expenses. The members of Empress Dialysis, LLC will provide the funds based on their overall ownership percentage (\$619,109 from Knickerbocker Dialysis, Inc. and \$154,777 from Sun, Liang, Yang and Yap, LLC). BFA Attachments A and B present the personal net worth statements of the individual members of Empress Dialysis, LLC, and the 2021-2022 Certified Financial Statements of DaVita, which indicate the availability of sufficient funds for the equity and working capital contribution.

As shown in BFA Attachment B, the 2021- 2022 Certified Financial Statements of DaVita, Inc., the entity had both positive average working capital and net asset positions and generated an average net income of \$769,425,000 for the period.

BFA Attachment C is the pro forma balance sheet which indicates a breakeven net asset position of as of the first day of operation.

The submitted budget projects a net income of \$1,134,719 and \$1,329,061 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for dialysis services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement for the Minority Members of Empress Dialysis, LLC
BFA Attachment B	Financial Summary - 2021-2022 Certified Financial Statements of DaVita, Inc. (Majority Member of Empress Dialysis, LLC)
BFA Attachment C	Pro Forma Balance Sheet as of the first day of operation
BFA Attachment D	Organizational Chart of Empress Dialysis, LLC



Project # 211109-E
Latsch Dialysis, LLC d/b/a Westchester Home Training

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Westchester
Acknowledged: May 12, 2021

Executive Summary

Description

Latsch Dialysis, LLC (Latsch), a New York limited liability company, requests approval to be established as the new operator of Westchester Home Training, an Article 28 Diagnostic and Treatment Center (D&TC), at 955 Yonkers Avenue, Yonkers (Westchester County). The D&TC is an extension clinic of Bronx Dialysis Center, which is operated by Knickerbocker Dialysis, Inc., and certified to provide home hemodialysis and peritoneal dialysis training and support services. There will be no change in services provided and no construction or acquisition of new equipment. Upon approval of this application, Westchester Home Training will become the main site of Latsch Dialysis, LLC. Latsch will continue to operate under the assumed name of Westchester Home Training.

On May 17, 2017, Latsch Dialysis, LLC entered into an Asset Purchase Agreement (APA) with Knickerbocker Dialysis, Inc., to acquire the Center's operating interest for \$1,250,200. Knickerbocker Dialysis, Inc. will maintain 70% ownership, and Westchester Dialysis, LLC will own the remaining 30% of Latsch. Westchester Dialysis, LLC is owned by four (4) physicians. Its members manage Latsch through a Board of Managers comprised of managers appointed by the members of Latsch.

Ownership before and after the requested change is as follows:

Table with 1 column: Current Operator. Westchester Home Training Knickerbocker Dialysis, Inc. 100%

Table with 2 columns: Proposed Operator, Members, and %. Latsch Dialysis, LLC. Members: Knickerbocker Dialysis, Inc. 70%, Westchester Dialysis, LLC: 30%. Members: Osahon Ukponmwan, MD 30.1%, Sadia Saboor, MD 30.1%, Gabriela M. Henriquez, MD 13.2%, Suman M. Reddy, MD 26.6%

Osahon Ukponmwan, MD, will continue to be the Medical Director of the facility. The applicant has a transfer and affiliation agreement with St. Joseph's Medical Center, three (3) miles from the Center. The applicant will enter into an administrative services agreement with Knickerbocker Dialysis, Inc., for consulting and administrative services.

Davita of New York, Inc., which is owned by Davita, Inc., is the sole owner of the shares of stock of Knickerbocker Dialysis, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
There are no plans to change the provision of dialysis services due to this change of ownership.

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 \$1,250,200 purchase price will be met with a \$1,384,000 loan for a five-year term with an interest rate at 5-year LIBOR plus 3% (approximately 8.25% as of 5/15/2023). The \$133,800 excess loan proceeds will be used in part to fund working capital.

<u>Budget:</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$1,928,064	\$2,617,596
Expenses	<u>\$1,583,355</u>	<u>\$2,118,432</u>
Net Income	\$344,709	\$499,164

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on March 18, 2021.

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 amended and executed Operating Agreement acceptable to the Department. [CSL]
2. Submission of an amended and executed First Amendment to the Consulting and Administrative Services Agreement acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Certificate of Amendment of the Certificate of Incorporation of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Certificate of Authority of Davita, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/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. [HSP]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

The primary service area for the facility remains Westchester County, which had a population of 999,273 in 2021, according to the U.S. Census American Community Survey estimates. The population of the county is estimated to increase to 1,029,448 by 2028 per projection data from the Cornell Program on Applied Demographics. The percentage of residents aged 65 and over was 17.8%. The non-white population percentage was 27.1%. These are two population groups most in need of end-stage renal dialysis services.

County Residents	Westchester County	New York State
Ages 65 and Over	17.8%	17.5%
Non-white	27.1%	30.9%

Source: U.S. Census 2021

According to Data USA, in 2020, 94.5% of the population of Westchester County had health coverage as follows:

Employee plans	55.9%
Medicaid	14.2%
Medicare	12.8%
Non-group plans	11.3%
Military or VA plans	0.318%

This application is a change in ownership and will not impact the dialysis services provided in Westchester County. This application does not involve any construction or acquisition of new equipment.

The number of projected procedures is 3,409 in Year One and 4,766 in Year Three. The projected payor mix includes 36% Commercial, 61.7% Medicare, 2.3% Medicaid, and no Charity Care in Year One and 33.8% Commercial, 63.2% Medicare, 3% Medicaid, and no Charity Care in Year Three of operations. The applicant is committed to providing services to all patients needing care, regardless of their ability to pay or the source of payment.

Service hours will be Monday through Friday from 8 am to 5 pm and will be expanded as needed to meet increases in utilization.

Conclusion

There will be no changes to services provided as a result of this application.

Program Analysis

Project Proposal

Latsch Dialysis, LLC seeks approval to become the new operator of Westchester Home Training, an existing home hemodialysis and home peritoneal dialysis training and support facility located at 955 Yonkers Avenue in Yonkers (Westchester County), which is currently operated by Knickerbocker Dialysis, Inc. Knickerbocker currently operates Westchester Home Training as an extension clinic of Bronx Dialysis Center. Following this change in ownership, Westchester Home Training will become the main site and principal place of business of Latsch Dialysis, LLC, which will continue to operate the facility under the name Westchester Home Training. The backup and transplant hospital will remain the same.

Proposed Operator	Latsch Dialysis, LLC
Doing Business As	Westchester Home Training
Site Address	955 Yonkers Avenue Yonkers, NY 10704 (Westchester County)
Shift/Hours/Schedule	Monday through Friday, 8:00 AM to 5:00 PM
Approved Services	Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	2.2 FTEs/4.3 FTEs
Medical Director(s)	Osahon Ukponmwan, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	St. Joseph's Medical Center 3.0 mile/14 minutes

DaVita of New York, Inc (DAVNY), which is owned by DaVita Inc., is the sole owner of the shares of Knickerbocker Dialysis, Inc. DAVNY is also the owner of Huntington Artificial Kidney Center, Ltd., Empire State DC, Inc, and Liberty R.C., Inc., which are also operators of chronic renal dialysis facilities in New York State.

Knickerbocker is also a member of:

Enchanted Dialysis, LLC

True North Dialysis Center, LLC

True North DC Holding, LLC which is a member of True North II DC Holding, LLC and True North III DC Holding.

Bandelier Dialysis, LLC

Knickerbocker is the licensed operator of 34 chronic renal dialysis facilities in the state, while DaVita is the operator of more than 2,400 dialysis facilities in the United States.

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

Character and Competence

The proposed membership of Latsch Dialysis, LLC are:

Member Name/Title	Membership Interest
Knickerbocker Dialysis, Inc <i>John D. Winstel President</i> <i>Luann Regensburg Treasurer</i> <i>Nicholas Gossman Secretary</i> <i>Caroline Pierce Vice President</i> <i>Samuel Wey Asst. Secretary</i>	70%
Westchester Dialysis, LLC <i>Osahon Ukponmwan, M.D.</i> <i>Sadia Saboor, M.D.</i> <i>Gabriela M. Henriquez, M.D.</i> <i>Suman Reddy, M.D.</i>	30%
Total	100.0%

Latsch Dialysis, Inc is managed by its members through a Board of Members comprised of managers appointed by the members of Latsch. The officers of Latsch Dialysis, LLC are as follows:

<u>Name</u>	<u>Title</u>
Luann D. Regensburg	Manager
Osahon Ukponmwan M.D.	Manager
Caroline Pierce	Manager

Osahon Ukponmwan, MD, will continue to serve as the facility's Medical Director. He is a Managing Partner and President of Yonkers Nephrology, P.C. for 24 years. He is the Medical Director for DaVita Yonkers Dialysis for over 21 years. He is the Medical Director of Pelham Parkway Dialysis Center for 22 years. He has been a Nephrologist at Yonkers Nephrology for 32 years. Dr. Ukponmwan completed his medical degree at the University of Benin College of Medical Science in Nigeria. He completed his residency in Nephrology at Albert Einstein College of Medicine of Yeshiva University. He is board certified in Internal Medicine with a sub-specialty in Nephrology.

Nicholas Gossman is the Group Finance Director for DaVita, Inc., for over three (3) years. He is a key contributor to monthly financial reviews with senior leadership and provides root cause analysis and recommendations on action plans, coordination of the budget process, joint venture reporting, and communication with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five (5) Finance Managers and one (1) Financial Analyst; and has active roles in national projects for DaVita including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Gabriela Henriquez, M.D. is a Physician for Kidney Medical Associates for 11 years. She received her medical degree from George Washington University School of Medicine. She completed her residency in Internal Medicine and Pediatrics at University of Miami, Jackson Memorial Hospital, and in Nephrology at Montefiore Medical Center. Dr. Henriquez discloses ownership interest in the following health facilities:
South Bronx Dialysis Facility 03/15 - present

Caroline Pierce is the Division Vice President of DaVita, Inc for three (3) years. She is also a Regional Operations Director of DaVita, Inc for seven (7) years. She is responsible for the general management and oversight of operations within the assigned division. She provides strategic and tactical leadership along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator for over one (1) year of DaVita, Inc. She was a Math Teacher for three (3) years and the Director of Growth for four (4) years in the Phoenix Charter Academy Network.

Suman Reddy, M.D. is a Physician at Kidney Medical Associates for six (6) years. He was previously employed as a Physician and Medical Director at Renal Medicine P.C. for 17 years. He received his medical degree from Rutgers Medical School. He completed his Internal Medicine and Nephrology residency at Boston Medical Center.

Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners for six (6) years. She is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She is the previous Regional Operations Director for approximately ten (10) years. She oversaw the overall management of 11 facilities serving 1,400 patients on Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300-plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence of potential acquisition. She is the previous Director of Clinical Support Services at Mercy Medical Center for over 20 years.

Sadia Saboor, M.D. is a Partner at Yonkers Nephrology, P.C. for 11 years. She completed her medical degree at Aga Khan Medical College in Pakistan. She completed her Internal Medicine and Nephrology residency at New York Medical College.

Mr. Samuel Wey has been employed at DaVita, Inc for over ten (10) years. He currently holds the role of Senior Director, Licensure and Certification for over two (2) years. His responsibilities include overseeing all operational lanes of the licensure and certification department to ensure the timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing and leveraging; collaborated with multiple Medicaid agencies resulting in 3.5M dollars of accounts receivable dollars that had been deemed uncollectable; revamped processes across three functional lanes of the licensure and certification department to bring uniformity to processes, while also mitigating the risk to broader organization; led the design and implementation of the first-ever operations reports, which provided field operators visibility to see where their facilities were in the licensure and certification process. He held the previous roles of Director of Licensure and Certification for approximately two (2) years, Manager of Acquisitions & Integrations for over two (2) years, and Facility Administrator for over two (2) years at DaVita, Inc.

John Winstel is the current Chief Accounting Officer of DaVita, Inc for three (3) years. He was the previous Group Vice President for five (5) months. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, the board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company for approximately four (4) 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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

A Character and Competence Review was conducted on the members of Knickerbocker Dialysis, Inc, and Latsch Dialysis, LLC.

Compliance with Applicable Codes, Rules, and Regulations

Knickerbocker Dialysis, Inc. owns 70%, and Westchester Dialysis, LLC owns the remaining 30% of the applicant, Latsch Dialysis, LLC. Westchester Dialysis, LLC is owned by four (4) physicians providing disclosure information in this Application. Its members manage Latsch through a Board of Managers comprised of managers appointed by the members of Latsch.

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.

This Record of Legal Actions is submitted by DaVita Inc., as the consultant for the applicant, Latsch Dialysis, LLC d/b/a Brooklyn Community Dialysis, and sets forth: (i) ongoing inquiries, investigations and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years.

Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006, through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) in February 2016. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of \$63,700,000, of which \$41,500,000 was an incremental cash payment and \$22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible healthcare offenses. The subpoena covered the period from January 1, 2007, to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of U.S. ex rel. David Gonzalez v. DaVita Healthcare Partners et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado, informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each of August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida, that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter, requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of U.S. ex rel. Lorne Holland et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

2019 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc., et al. v. DaVita Inc. In November 2019, several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania, alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey, served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on several topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

2020 Department of Justice Investigation: In October 2020, the Company received a CID from the Department of Justice pursuant to a False Claims Act investigation concerning allegations that DMG may have submitted undocumented or unsupported diagnosis codes in connection with Medicare Advantage beneficiaries. The CID covers the period from January 1, 2015, through June 19, 2019, the date the Company completed the divestiture of DMG to Collaborative Care Holding, LLC, the Company is cooperating with the government in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization. The complaint further alleges that the process by which patients obtained commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.

In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters

2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency \$267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint *United States ex rel. David Barbeta v. DaVita, Inc. et al.*, No. 09-cv-02175-WJM KMT (D. Colo.).

2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter: In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014, DaVita refunded \$712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed.

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company

finalized the terms of a settlement with plaintiffs, including a settlement amount of \$450 million and attorney fees and other costs of \$45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiffs' Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain M.A. plans for which JSA provided services and seeking information regarding JSA's communications about patient diagnoses as they related to certain M.A. plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking the production of a wide range of documents relating to the Company's and its subsidiaries (including DMG and its subsidiary JSA) provision of services to M.A. plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012, acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay \$270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the \$270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene, and in January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice.

Swoben Private Civil Suit: In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations might not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG, including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc. . Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (Menchaca v. DaVita Healthcare Partners, Inc., Saldana v. DaVita Healthcare Partners, Inc. and Hardin v. DaVita Healthcare Partners, Inc.), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The Menchaca and Saldana actions arose out of the treatment of patients in California, while the Hardin action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding \$85 million in compensatory damages and \$375 million in punitive damages. Judgment on this verdict was not entered,

and in November 2018, the parties settled all three actions collectively for \$25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis. Sun City Dialysis Center and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita (Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the facilities appealed the revocations, and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed, and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida, informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida, notified the court on April 4, 2019, of its decision to not intervene in the matter of Gabriel Valle, MD, et al. v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida, by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly owned subsidiary of DaVita and owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved. Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of \$130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2-star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine (9) measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the

domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates over 3400 dialysis centers, 61 of which are in New York State. Knickerbocker Dialysis, Inc. is a subsidiary of DaVita, Inc. The star ratings for the New York State facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue, Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard, Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road, Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11th Street, Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Avenue, Garden City, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road, Orchard Park, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard, East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive, Brooklyn, NY 11230	****
Bronx Dialysis Center	1615-1617 Eastchester Road, Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233rd Street, Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue, Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Boulevard, Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road, Bronx, NY 10475	***
Soundview Dialysis Center	1622-24 Bruckner Boulevard, Bronx, NY 10473	****
Lynbrook Dialysis Center	147 Scranton Road, Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road, Amityville, NY 11701	***
Queens Village Dialysis Center	222-02 Hempstead Avenue, Queens Village, NY 11429	****
Suburban Dialysis Center	705 Maple Road, Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue, Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road, Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road, Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard, Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue, East Islip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive, Suite 100, Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive, Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard, Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway, Huntington Station, NY 11746	****
Deer Park Dialysis	860 Grand Boulevard, Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16th Street, 5th Floor, Brooklyn, NY 11229	N/A
Longwood Dialysis	931 Bruckner Boulevard, Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59, Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street, Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue, Staten Island, NY 10312	****
Wingate Dialysis	550 Kingston Avenue, Brooklyn, NY 11203	N/A
Mount Eden Dialysis	1490 Macombs Road, Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Boulevard, Bayside, NY 11361	****
Laconia Dialysis	3440 Boston Road, Bronx, NY 10469	N/A

Facility Name	Address	Star Rating
Sandford Boulevard Dialysis	120 East Sanford Boulevard, Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street, Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road, Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Boulevard, Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue, Yonkers, NY 10704	N/A
Brooklyn Community Dialysis	730 64th Street, Brooklyn, NY 11220	N/A
Buffalo Downtown Dialysis	520 Ellicott Street, Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11, Rochester, NY 14621	***
Melrose Dialysis	459 East 148th Street, Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue, Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue, Jamaica, NY 11216	*
Williamsbridge Dialysis Center	3525 White Plains Road, Suite A, Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street, Montour Falls, NY 14865	***
Corning Dialysis	8 W Pulteney Street, Suite 101, Corning, NY 14830	*****
Ivy Dialysis	602 Ivy Street, Elmira, NY 14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard, Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road, Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road, Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue, Jamestown, NY 14701	*****
Borough Park Dialysis	4102 13 th Avenue, Brooklyn, NY 11219	**
NEOMY Dialysis Center	1122 Coney Island Avenue, Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue, Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue, Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place, Suite 15, Cortland Manor, NY 10566	****

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the current year (2021) and the first and third years after the change in ownership, summarized below:

	<u>Current</u> <u>(2021)</u>		<u>Year One</u> <u>(2024)</u>		<u>Year Three</u> <u>(2026)</u>	
	<u>Per</u> <u>Treatment</u>	<u>Total</u>	<u>Per</u> <u>Treatment</u>	<u>Total</u>	<u>Per</u> <u>Treatment</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$1,104.61	\$1,396,233	\$1,104.61	\$1,358,670	\$1,104.61	\$1,777,317
Medicare FFS	\$338.22	\$635,854	\$338.22	\$711,277	\$338.22	\$1,018,719
Medicaid FFS	\$339.15	<u>\$23,062</u>	\$339.14	<u>\$25,775</u>	\$339.15	<u>\$49,177</u>
Gross Revenues		\$2,055,149		\$2,095,722		\$2,845,213
Less Bad Debt		<u>164,412</u>		<u>167,658</u>		<u>227,617</u>
Net Revenues		\$1,890,737		\$1,928,064		\$2,617,596
Expenses:						
Operating	\$359.31	\$1,154,091	\$358.36	\$1,221,636	\$363.65	\$1,733,164
Capital	<u>\$109.14</u>	<u>\$350,550</u>	<u>\$106.11</u>	<u>\$361,719</u>	<u>\$80.84</u>	<u>\$385,268</u>
Total Expenses	\$468.44	\$1,504,641	\$464.46	\$1,583,355	\$444.49	\$2,118,432
Net Income		\$386,096		\$344,709		\$499,164
Treatments		3,212		3,409		4,766

- Revenues, expenses, and utilization are based on the experience at the facility, as well as the experiences of the members of Latsch, particularly Knickerbocker Dialysis, Inc.
- Knickerbocker operates more than 50 chronic renal dialysis facilities in New York State, including Westchester Home Training.

Utilization broken down by payor is as follows:

	Year One (2024)	Year Three (2026)
Commercial FFS	36.00%	33.76%
Medicare FFS	61.68%	63.20%
Medicaid FFS	<u>2.32%</u>	<u>3.04%</u>
Total	100.00%	100.00%

Asset Purchase Agreement

The applicant has submitted an executed APA for the purchase of the operations, summarized below:

Date:	May 17, 2017
Purpose:	Purchase all rights of Seller to own and operate the Dialysis Center.
Seller:	Knickerbocker Dialysis, Inc.
Buyer:	Latsch Dialysis, LLC
Assets Acquired:	All of Knickerbocker's rights, title, and interest in and to all tangible and intangible assets of the center owned by Knickerbocker (other than the Intercompany payables and intercompany receivables) and used in and for the sole benefit of the Dialysis business.
Assumed Liabilities:	All debts, obligations, and liabilities of Knickerbocker with respect to the Dialysis Business regardless of when incurred, including without limitations: (1) Salaries, wages, benefits, and accrued paid time off of all employees employed in the business of the center; (2) All obligations arising under all contracts and leases relating to the center and assigned to the company; and (3) Any and all existing debts, liens, claims, encumbrances, liabilities and obligations to which any of the assets may be subject, including without limitation, all capital lease obligations and all accounts payable incurred or accrued in connection with the operations of the Dialysis business.
Purchase Price:	\$1,250,200
Payment of Purchase Price:	Cash at Closing

The proposed entity will fund the purchase price, and part of the working capital needs through one loan. The terms are as follows:

Bank Loan for Purchase (five-year LIBOR plus 3% (equals 8.25% as of 5/15/2023))	\$1,250,200
Bank Loan Proceeds to be used for Working Capital	<u>\$133,800</u>
Total Bank Loan	\$1,384,000

An executed self-amortizing loan agreement has been provided by CoBiz Bank. BOK, NA is the successor in interest to CoBiz Bank and will honor the current agreement.

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 April 26, 2022, the facility has no outstanding Medicaid overpayment liabilities.

Administrative Services Agreement

The applicant submitted an executed consulting and administrative services agreement (CASA), summarized below:

Date:	May 17, 2017
Company:	DaVita, Inc.
Operator:	Latsch Dialysis, LLC
Services Provided:	Purchase, lease, license, or otherwise acquire or arrange for the use of all assets necessary to operate the center, maintain each item of equipment and all authorized additions, attachments, and accessories, provide computer hardware and software, supplies and prescription drugs, billing and collecting, bookkeeping, accounting and taxes, funds management, insurance acquisition, policy and procedure development, quality assurance and review, licenses, permits and provider numbers, compliance assistance, legal actions, other acts and expenditures and compliance with laws.
Term:	10 years with infinite 5-year renewals
Compensation:	\$34,718 annually with a 10% annual increase

The executed CASA provides that the licensed operator retains ultimate authority, responsibility, and control in all final decisions associated with the services, acknowledges the reserve powers that must not be delegated, and the conflicts clause provisions that ensure compliance with governmental agencies, statutes, and regulations. In addition, the applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any such illegal delegation, and understands that the Department will hold the applicant accountable.

Lease / Lease Assignment Agreement

The applicant has submitted an executed lease agreement and assignment of lease agreement, summarized below:

Date of Lease:	September 22, 2015
Date of Assignment:	May 17, 2017
Premises:	4,845 square feet located at 955 Yonkers Avenue
Landlord:	955 Yonkers Ave., LLC
Lessee:	Knickerbocker Dialysis, Inc.
Assignee:	Latsch Dialysis, LLC.
Term:	10-year lease, with unlimited 1-year extensions
Rental:	Year One \$133,237.50 with annual increases of 2% for years 2-10 (\$27.50 per sq. ft.).
Provisions:	Lessee responsible for real estate taxes, maintenance, and utilities.

The applicant indicated that the lease is an arm's length lease agreement with non-related parties.

Capability and Feasibility

The purchase price of \$1,250,200 will be met with a \$1,384,000 loan from BOK, NA, successor in interest to CoBiz Bank at five-year LIBOR plus 3% (equals 8.25% as of 5/15/2023 at the above-stated terms). The remaining \$133,800 from the loan will be used for working capital needs.

The working capital requirement is estimated at \$353,072 based on two months of third-year expenses; however, the proposed operator indicated they would provide \$1,042,800 for working capital as follows: Latsch Dialysis, LLC will provide \$909,000 or 87.17% (\$636,300 from Knickerbocker Dialysis, Inc. and \$272,700 from Westchester Dialysis, LLC) and the remaining 12.83% will be provided with the \$133,800 excess proceeds from the BOK, NA loan as previously detailed. BFA Attachments A and C Personal Net Worth Statements of the individual members of Westchester Dialysis, LLC, and the 2021 and 2022 Certified Financial Statements of DaVita, Inc., indicate the availability of sufficient funds for the equity contribution. Dr. Suman Reddy, a member of Westchester Dialysis, LLC, has provided a disproportionate

share affidavit to cover any other Westchester Dialysis, LLC member's equity shortfall. BFA Attachment B is the Pro Forma Balance Sheet, which indicates a positive net asset position of \$909,000 as of the first day of operation.

The submitted budget projects a net income of \$344,709 and \$499,164 during Years One and Year Three, respectively. Revenues are based on current reimbursement methodologies for dialysis services. The submitted budget appears reasonable. As shown on BFA Attachment C, 2021-2022 Certified Financial Statements of DaVita, Inc., the entity had an average positive working capital position, an average positive net asset position, and generated an average net operating income of \$1,568,216 for the period.

Conclusion

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

Attachments

BFA Attachment A	Personal Net Worth Statement for the Members of Westchester, LLC
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary - 2021-2022 Certified Financial Statements of DaVita, Inc.



Project # 231104-C
Health Quest Home Care, Inc. (Certified)

Program: Certified Home Health Agency
Purpose: Construction

County: Dutchess
Acknowledged: April 27, 2023

Executive Summary

Description

Health Quest Systems, Inc. d/b/a Health Quest Home Care (HQHC), a not-for-profit business corporation that operates a Certified Home Health Agency (CHHA), seeks approval to acquire and merge the assets of Hudson Valley Care Partners, LLC d/b/a Hudson Valley Certified Home Health Agency (HVCHHA). Health Quest Systems, Inc. is owned by Nuvance Health Network.

On February 21, 2023, Health Quest Home Care, Inc. and Hudson Valley Care Partners, LLC entered into an asset purchase agreement (APA), whereby Health Quest Home Care, Inc. agreed to purchase the operations of the CHHA.

Health Quest Home Care, Inc. currently serves Dutchess County from an office at 2469 South Road, Poughkeepsie, New York 12601. Hudson Valley Care Partners, LLC currently serves Ulster County from an office at 266 Vineyard Avenue, New York 12528.

Upon approval, Hudson Valley Care Partners, LLC d/b/a Hudson Valley Certified Home Health Agency will close and Health Quest Systems, Inc., d/b/a Health Quest Home Care will be the surviving CHHA serving Dutchess and Ulster Counties.

OALTC Recommendation
Approval

Need Summary

The applicant projects a total of 34,712 visits in Year One and 44,990 in Year Three for both counties. The projected payor mix includes 9.4% Medicaid and 2.9% Charity Care in Year One and 9.6% Medicaid and 2.9% Charity Care in Year Three of operations.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Summary

The \$700,000 purchase price will be met with equity from Nuvance Health and includes a payment of \$700,000 less \$250,000 as per a holdback agreement. \$100,000 of the holdback amount will be paid or caused to be paid no more than one year following the closing. The remaining \$150,000 of the holdback amount will be paid no more than two years after the closing. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues, Expenses, Net Income (Loss).

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. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

HQHC is currently certified to provide home care services in Dutchess County. The facility will continue to provide Home Health Aide, Medical Social Services, Medical Supply Equipment & Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech Pathology, and additionally provide maternal/child health visits and non-Medicare B infusion therapy services. The infusion therapy includes services such as total parenteral nutrition and intravenous antibiotic therapy, PICC line care, and port-a-cath care. The maternal-child health visits include providing services for newborn to adolescent age groups and post-partum mom visits.

HQHC is part of the Nuvance Health System, which includes Vassar Brothers Medical Center and Northern Dutchess Hospital in Dutchess County, and Putnam Hospital in Putnam County. The applicant reports Nuvance Health hospitals refer approximately 750-850 patients a year who reside in Ulster County for home care services. The Nuvance Health hospitals will be the primary source of referral; however, HQHC plans to market its services to hospitals in the surrounding counties that also discharge patients residing in Ulster County. According to the applicant, HQHC anticipates referral volume to increase in Ulster County from system hospital discharges. The applicant projects total visits for both counties at 34,712 visits in Year One and 44,990 visits in Year Three. The table below represents projected visits for only Ulster County.

Historical and Projected Patient Volume for Ulster County							
	HVCHHA 2018	HVCHHA 2019	HVCHHA 2020	HVCHHA 2021	HVCHHA 2022	HQHC Year 1*	HQHC Year 3*
Total patient admits	248	251	161	260	154	433	599
Total visits	13,413	11,975	8,715	8,093	6,752	7,330	10,121
Visits/patient admits	54.08	47.71	54.13	31.13	43.84	16.93	16.90

**Projected data
Source: Applicant*

The historical volume in the table above includes the long-term care program, which will not transition to HQHC.

The service area is Dutchess and Ulster County. The population of Dutchess County in 2021 was 296,012, according to the most recent American Community Survey (ACS) population estimates data, and it's estimated to decrease to 290,918 by 2028 per projection data from the Cornell Program on Applied Demographics, a decrease of 1.7%. The population of Ulster County in 2021 was 181,862, according to the most recent ACS population estimates data, and it's estimated to decrease to 177,480 by 2028 per projection data from the Cornell Program on Applied Demographics, a decrease of 2.4%. The 65+ population estimate for Dutchess and Ulster County combined is 88,508, according to the ACS estimate.

Based on the 2021 US Census Population Estimates from the ACS, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Ulster County	Dutchess County	New York State
Total Population	181,862	296,012	20,114,745
Hispanic or Latino (of any race)	10.7%	12.9%	19.2%
White (non-Hispanic)	76.0%	69.9%	54.7%
Black or African American (non-Hispanic)	5.6%	9.9%	13.9%
Asian (non-Hispanic)	1.7%	3.4%	8.6%
Other (non-Hispanic)	6%	3.9%	3.6%

Source: ACS 5-Year Estimates Data Profiles

According to Data USA, in 2020, the counties within the service area had health coverage as follows.

	Ulster County	Dutchess County
Health Coverage %	94.6%	95.5%
Employer Plans	47.4%	55.5%
Medicaid	18.6%	13.6%
Medicare	15.7%	13.5%
Non-Group Plans	12.1%	12.1%
Military or VA	0.787%	0.758%

Below is the applicant's projected payor mix.

Applicant Projected Payor Mix for Outpatient Visits		
Payor	Year One	Year Three
Commercial	9.89%	9.79%
Medicare	75.26%	75.23%
Medicaid	8.63%	8.78%
Private Pay	3.53%	3.47%
Charity Care	2.73%	2.73%

Conclusion

This change in operator will result in adding Ulster County to the service area of the applicant and continued services being provided by the CHHA to Dutchess County residents.

Program Analysis

Project Proposal

Health Quest Systems, Inc. d/b/a Health Quest Home Care (HQHC), a not-for-profit business corporation that operates a CHHA, seeks approval to acquire and merge the assets of Hudson Valley Care Partners, LLC d/b/a Hudson Valley Certified Home Health Agency.

On February 21, 2023, Health Quest Home Care, Inc. and Hudson Valley Care Partners, LLC entered into an asset purchase agreement (APA), whereby Health Quest Home Care, Inc. agreed to purchase the operations of the CHHA.

Health Quest Home Care, Inc. currently serves Dutchess County from an office at 2469 South Road, Poughkeepsie, New York 12601. Hudson Valley Care Partners, LLC currently serves Ulster County from an office at 266 Vineyard Avenue, New York 12528. Upon approval, Hudson Valley Care Partners, LLC d/b/a Hudson Valley Certified Home Health Agency will close, and Health Quest Systems, Inc. d/b/a Health Quest Home Care will be the surviving Certified Home Health Agency serving Dutchess and Ulster Counties.

Character and Competence Review

Health Quest Systems, Inc., d/b/a Health Quest Home Care is comprised of the following individuals:

Anne Robby - Chair

Health Quest Systems, Inc. d/b/a Health Quest Home Care

Affiliations

- Northern Dutchess Hospital
- Putnam Hospital
- Vassar Brothers Medical Center (Hospital)
- Health Quest Home Care, Inc. (LHSCA)
- Health Quest Home Care, Inc. (CHHA)

Steven Lant - Vice Chair

Health Quest Systems, Inc. d/b/a Health Quest Home Care

Affiliations

- Northern Dutchess Hospital
- Putnam Hospital
- Vassar Brothers Medical Center (Hospital)
- Health Quest Home Care, Inc. (LHSCA)
- Health Quest Home Care, Inc. (CHHA)

Daniel Debarba - Treasurer

Health Quest Systems, Inc. d/b/a Health Quest Home Care

Affiliations

- Northern Dutchess Hospital
- Putnam Hospital
- Vassar Brothers Medical Center (Hospital)
- Health Quest Home Care, Inc. (LHSCA)
- Health Quest Home Care, Inc. (CHHA)

Brian Wyatt – Secretary

Health Quest Systems, Inc. d/b/a Health Quest Home Care

Affiliations

- Northern Dutchess Hospital
- Putnam Hospital

- Vassar Brothers Medical Center (Hospital)
- Health Quest Home Care, Inc. (LHSCA)
- Health Quest Home Care, Inc. (CHHA)

Facility Compliance/Enforcement

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 Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic and Treatment Centers and reports as follows:

- Vassar Brothers Medical Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated October 29, 2021, for the Condition of Participation (COP) of Surgical Services allegation.

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 patients and to prevent recurrent code violations.

CHHA Quality of Patient Care Star Ratings*	
CHHA Name	Quality of Care Rating
Health Quest Systems, Inc.	3 out of 5 stars
Hudson Valley Care Partners, LLC	2 out of 5 stars

**CMS data as of July 18, 2023*

**New York Average is 3 out of 5 stars, and the National Average is 3.5. out of 5 stars.*

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Commercial Managed Care	\$592,000	\$791,000
Medicare FFS	4,466,000	6,177,000
Medicare Managed Care	1,931,000	2,591,000
Medicaid Fee for Service	156,000	220,000
Medicaid Managed Care	538,000	729,000
Private Pay	<u>55,000</u>	<u>72,000</u>
Gross Revenues	\$7,738,000	\$10,580,000
Less Bad Debt	<u>114,000</u>	<u>64,000</u>
Net Revenues	\$7,624,000	\$10,516,000
 <u>Expenses</u>		
Operating	\$8,678,262	\$10,901,454
Capital	<u>877,694</u>	<u>930,135</u>
Total Expenses	<u>\$9,555,956</u>	<u>\$11,831,589</u>
Net Income (Loss)	<u>(\$1,931,956)</u>	<u>(\$1,315,589)</u>
Utilization:		
Visits	34,712	44,990
Hours	3,991	5,210

The following is noted with respect to the operating budget:

- Increases in reimbursement were projected at 2% in Years One and Three. Adjustments were incorporated to account for the CBSA care differences, value-based purchasing at the Federal level, and other anticipated changes.
- Expense assumptions are based on current historical experience and inflation.
- Utilization assumptions are based on projected staffing levels and anticipated growth of inpatient referrals within Ulster and Dutchess Counties from Nuvance Health hospitals and physicians, as well as other community sources.

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	9.85%	9.79%
Medicare FFS	46.06%	45.98%
Medicare Managed Care	29.20%	29.25%
Medicaid FFS	1.69%	1.78%
Medicaid Managed Care	6.94%	7.00%
Private Pay	3.53%	3.47%
Charity Care	<u>2.73%</u>	<u>2.73%</u>
Total	100.00%	100.00%

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the acquisition of the CHHA, summarized below:

Date	February 21, 2023
Seller	Hudson Valley Care Partners, LLC
Purchaser	Health Quest Home Care, Inc.
Acquired Assets	All the goodwill and going concern value associated with the Assets and/or business, all of Seller's client, patient, and customer lists and client files, records, books, and Seller's CHHA certificate.
Assumed Liabilities	None
Purchase Price	\$700,000
Payment of Purchase Price	Payment to the Seller of \$700,000 by Nuvance Health less \$250,000 as the holdback amount. One hundred thousand dollars (\$100,000) of the holdback amount shall be paid or caused to be paid by the Buyer to Seller not more than one year following the Closing. The remaining one hundred fifty thousand dollars (\$150,000) of the holdback agreement shall be paid by the Buyer to the Seller not more than two years after the Closing.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 7/17/2023, the applicant has no outstanding audit liabilities.

Capability and Feasibility

The \$700,000 purchase price will be met with equity from Nuvance Health and includes a payment of \$700,000 less \$250,000 as per a holdback agreement. \$100,000 of the holdback amount will be paid or caused to be paid no more than one year following the closing. The remaining \$150,000 of the holdback amount will be paid no more than two years after the closing.

Working capital requirements are estimated at \$1,971,931, based on two months of first-year expenses, and will be met with equity from Nuvance Health. Presented as BFA Attachment A are the 2021-2022 Certified Financial Statements of Nuvance Health and Subsidiaries, which indicate the availability of sufficient funds to meet the purchase price and working capital requirements.

As shown in Attachment A, Nuvance Health and Subsidiaries had an average positive working capital position and an average positive net asset position in 2021 and 2022. The entity incurred an average loss of \$27,843,000 for the period. The 2022 loss of \$61,781,000 was attributed to unprecedented labor shortages, increases in premium pay, overtime and agency expenses, and the impact of inflation. To improve operations, the entity has implemented supply chain savings initiatives, enhanced access and growth through physician recruitment initiatives, and optimized patient throughput for efficiency.

As shown in Attachment B, 2021-2022 Income Statement of Hudson Valley Certified Home Health Agency, the CHHA incurred average losses of \$216,083 in 2021 and 2022, which they indicated were the result of the COVID-19 pandemic, which caused a census decline of 50%. The recovery in the census has been slow due to limited staffing, which has led to potential admissions occasionally not being accepted. To improve operations, the CHHA has implemented rigorous recruiting efforts, which include sign-on bonuses, increased compensation, flexible schedules, and on-the-job training.

Conclusion

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

Attachments

BFA Attachment A	2021-2022 Certified Financial Statements of Nuvance Health and Subsidiaries
BFA Attachment B	2021-2022 Income Statement of Hudson Valley Certified Home Health Agency



Project # 231234-E
Visiting Nurse Service of Ithaca & Tompkins County Inc

Program: Certified Home Health Agency
Purpose: Establishment

County: Tompkins
Acknowledged: June 14, 2023

Executive Summary

Description

Cayuga Health System, Inc. (CHS), a New York nonprofit corporation with its principal office at 101 Dates Drive, Ithaca (Tompkins County), seeks approval to be established as the sole member and active parent of Visiting Nurse Service of Ithaca & Tompkins County, Inc. (VNS) through an Affiliation Agreement. VNS will remain a separate nonprofit corporation authorized to operate an Article 36 Certified Home Health Agency (CHHA) in Tompkins County. There will be no change in VNS's authorized services or areas serviced due to the change in the governance structure.

CHS provides an integrated network of health services in Tompkins, Schuyler, Cortland Counties, and surrounding communities. Upon approval of this application, CHS will have the ability to exercise reserved powers over VNS. The affiliation will provide seamless, comprehensive, community-center care for the area residents.

Concurrently, VNS's affiliate, Community Health and Home Care (CHHC), a Licensed Home Care Services Agency (LHCSA), has submitted a CON application (CON # 231300) for CHS to become its sole member and active parent.

OALTC Recommendation

Approval

Need Summary

The applicant projects a total of 70,556 visits, reported as hours of service, in Year One and 127,324 in Year Three. This equates to a caseload of 2,760 patients in Year One and 4,980 in Year Three. The projected payor mix includes 58.7% Medicare, 19.6% Medicaid, and 2.2% Charity Care in Years One and Three of operations.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Summary

There are no project costs associated with this application.

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$10,265,928 vs \$19,141,824), Expenses (9,639,016 vs 17,620,712), Gain/(Loss) (\$626,912 vs \$1,521,112).

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. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

September 7, 2023

Need Analysis

Background and Analysis

There will be no change in services provided or service area covered. Cayuga Health System is the operator of a healthcare network located in Tompkins County, as well as the surrounding counties. The network consists of two hospitals: Cayuga Medical Center in Ithaca and Schuyler Hospital in Montour Falls. In addition, CHS provides an array of services through other healthcare facilities, including, but not limited to, an Article 32 substance abuse services program.

The table below represents projected visits for Tompkins County.

Historical and Projected Patient Volume for Tompkins County							
	2018	2019	2020	2021	2022	Year 1*	Year 3*
Total patient admits	2,813	3,134	2,772	2,744	3,086	2,760	4,980
Total visits	24,015	24,662	22,933	20,541	21,995	70,556	127,324
Visits/patient admits	9	8	8	7	7	26	26

**Projected data*

Source: Applicant

The applicant explains the projected increase in volume as a result of the affiliation with Cayuga Health System, with an increase in overall referrals, which will increase utilization. By having an affiliation with the health care network, VNS will be able to leverage its existing relations with community providers and patients. In the past, the VNS Nurse Service of Ithaca & Tompkins County has not maximized its potential capacity in terms of utilization. When utilization increases, VNS is confident they will be able to meet the demand, including the ability to provide sufficient staffing, which includes collaborations with job fairs and hiring practices.

The service area is Tompkins County. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Mental Health, and Dental and is not a Medically Underserved Area/Population (MUA/P). The population of Tompkins County in 2021 was 105,638, according to the most recent American Community Survey (ACS) population estimates data. The population of the county is estimated to increase to 108,623 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 2.8%. The 65+ population estimate for Tompkins County is 15,422, according to the ACS estimate.

Based on the 2021 US Census Population Estimates from the ACS, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Tompkins County	New York State
Total Population	105,638	20,114,745
Hispanic or Latino (of any race)	5.3 %	19.2%
White (non-Hispanic)	76.9 %	54.7%
Black or African American (non-Hispanic)	3.5 %	13.9%
Asian (non-Hispanic)	9.3 %	8.6%
Other (non-Hispanic)	5%	3.6%

Source: ACS 5-Year Estimates Data Profiles

According to Data USA, in 2020, Tompkins County had health coverage as follows:

	Tompkins County
Health Coverage %	96.4%
Employer Plans	54.5%
Medicaid	13.0%
Medicare	10.5%
Non-Group Plans	17.7%

Military or VA	0.612%
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A sliding fee scale will be used by the CHHA in compliance with recognized standards for providing charity care to patients who do not qualify for charity care but have the means to pay for some of their care. Patients will not be denied service(s) because of an absence of a means for payment of program services.

Below is the applicant's projected payor mix.

Applicant Projected Payor Mix for Outpatient Visits		
Payor	Year One	Year Three
Commercial	0%	0%
Medicare	58.7%	58.7%
Medicaid	19.6%	19.6%
Private Pay	0%	0%
Charity Care	2.2%	2.2%
Other*	19.5%	19.5%

* Other includes special needs residents covered under Medicaid Managed Care and MLTC.

Conclusion

This transfer of ownership will result in continued services being provided by the CHHA to Tompkins County residents.

Program Analysis

Program Description

Visiting Nurse Service of Ithaca & Tompkins County Inc. currently serves Tompkins County from an address at 138 Cecil A Malone Drive, Ithaca, NY. 14850. There will be no changes to the counties served or services provided as a result of this project. The primary, but not exclusive, service population will continue to be adult persons in need of assistance to remain in their homes.

The Board of Directors of Visiting Nurse Service of Ithaca and Tompkins County, Inc. is comprised of the following individuals:

Tom Livigne - Chair, Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Paula EF Younger - Vice Chair, Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Gregory J Hartz - Treasurer, Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Suzanne Blowers - Secretary, Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

James Brown – Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Kenneth I Clarke Sr – Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Yvette N Conyers - Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

La Jerne Cornish – Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc., and Long-Term Care Unit (Hospital)

Cristine Donovan – Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

Robert Brook Hollis – Board of Directors
Cayuga Health System, Inc.

Affiliations

- Visiting Nurse Service of Ithaca & Tompkins County, Inc. (CHHA)
- Cayuga Medical Center at Itaca, Inc. (Hospital)
- Schuyler Hospital, Inc. (Hospital)
- Schuyler Hospital, Inc. and Long-Term Care Unit (Hospital)
- Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services (OASAS)

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

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 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.

The Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic and Treatment Centers and reports as follows:

- Cayuga Medical Center at Ithaca was fined twenty-six thousand dollars (\$26,000) pursuant to a stipulation and order (14-01H) dated December 15, 2013.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Analysis

Operating Budget

The applicant has submitted the projected first and third-year operating budgets in 2023 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicaid	\$1,757,256	\$3,170,712
Medicare	6,733,296	12,635,172
All Other	2,070,000	3,884,400
Bad Debt & Loss Revenue	<u>-294,624</u>	<u>-548,460</u>
Total Revenues	\$10,265,928	\$19,141,824
Expenses		
Operating	\$9,520,016	\$17,520,962
Capital	<u>119,000</u>	<u>99,750</u>
Total Expenses	\$9,639,016	17,620,712
Net Income or (Loss)	<u>\$626,912</u>	<u>\$1,521,112</u>
Patient	2,760	4,980
Visits	70,556	127,324
Average Revenue per Visit	\$145.50	\$150.34
Average Expense per Visit	\$136.62	\$138.39

The following is noted concerning the submitted CHHA budget:

- Medicaid revenue is based on an episodic payment of approximately \$3,183, which was derived from the 2022 New York State Medicaid – Episodic Payment System and adjusted for patients who do not complete an entire episode.
- Medicare revenue is based on an episodic payment of approximately \$4,167, which was derived from the based Federal 2023 rate of \$2,011 (for 30 days) adjusted for the NYS 60-day episode period, Tompkins County Federal Wage Equalization Factor of 1.10, and inclusion of an allowance for partial episodes.
- Other revenue includes special needs residents.
- Expense assumptions are based on historical experience adjusted for increased utilization.
- Charity care is expected to be approximately 2.2% of utilization and, at a minimum, equal to 2% of total operating costs.

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid	13,801	19.56%	24,905	19.56%
Medicare	41,401	58.68%	74,711	58.68%
All Other	13,801	19.56%	24,905	19.56%
Charity	<u>1,553</u>	<u>2.20%</u>	<u>2,803</u>	<u>2.20%</u>
Total	70,556	100%	127,324	100%

Affiliation Agreement

The applicant provided an executed Affiliation Agreement between CHS and VNS effective upon PHHPC approval. The agreement is summarized below:

Date:	December 2, 2022
Purpose:	CHS and VNS are affiliating to enhance the quality of and access to home care in the communities collectively served by them and to engage in innovative programs that will enhance the efficiency and effectiveness of home care services.
Governance of VNS:	CHS shall become the sole Member of VNS. VNS shall reserve to CHS the CHS Reserved Powers. Upon the Affiliation Date, the VNS Board of Directors will consist of (i) the individuals currently serving on the VNS Board of Directors and (ii) two designees of CHS.
Funding of Operations:	CHS acknowledges that VNS maintains \$1,057,149 in a Merrill Lynch account shall be defined as the "Current Investment Fund." CHS shall not require or direct the spending of the Current Investment Fund plus any investment gains earned thereon minus any investment losses minus any amounts spent between the Execution Date and the Affiliation Date. CHS shall ensure that VNS has at all times sufficient operating capital to cover all current liabilities when they become due. If operating capital is insufficient to cover all current liabilities when they become due, CHS shall cover the shortfall out of CHS's operating account.
Assets and Liabilities:	CNS and VNS acknowledge and agree that neither by operation of this Agreement shall transfer or be deemed to have transferred any of its assets or liabilities to the other Party, nor shall either Party have any obligation following the Affiliation Date to transfer any assets or liabilities to the other Party to satisfy any of the obligations of that other Party.

Capability and Feasibility

There is no purchase price and no project costs associated with Cayuga Health System, Inc. becoming the sole member and active parent of Visiting Nurse Service of Ithaca & Tompkins County, Inc. The change of sponsorship at the corporate member level will not affect working capital. VNS will provide working capital from ongoing operations. BFA Attachment B presents the pro forma balance sheet, which shows net assets of \$1,698,025.

VNS projects that the first and third years' operations will result in a net income of \$626,912 and \$1,521,112, respectively. BFA Attachment C presents Visiting Nurse Service of Ithaca & Tompkins County, Inc. 2021 Certified Financial Statement, which shows positive working capital, net assets without donor restrictions of \$1,995,083, and an increase in net assets of \$1,069,552. Their December 31, 2022, Internal Financial statement shows VNS maintained positive working capital and net assets and incurred a \$304,531 loss. The budget appears to be reasonable.

BFA Attachment D presents Cayuga Health System, Inc's 2022 Certified Financial Statements, showing positive working capital and net assets of \$224,060,512. There was a deficiency of revenue over expenses of \$21,507,548 due primarily to an unrealized loss on investments of \$20,579,756.

Conclusion

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

Attachments

BFA Attachment A	Organization charts before and after the change in sponsorship
BFA Attachment B	Pro Forma Balance Sheet, Visiting Nurse Service of Ithaca & Tompkins County, Inc.
BFA Attachment C	Visiting Nurse Service of Ithaca & Tompkins County, Inc's 2021 certified financial statements.
BFA Attachment D	Cayuga Health System, Inc's 2022 Certified Financial Statements



Project # 231044-E
Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Sullivan
Acknowledged: February 21, 2023

Executive Summary

Description

Sunset SNF Operations LLC, a Delaware limited liability company authorized to conduct business in New York State, requests approval to be established as the new operator of Sullivan County Adult Care Center (SCACC). SCACC is a 146-bed, not-for-profit corporation, Article 28 residential health care facility (RHCF) with a 17-registrant licensed adult day care health program (ADCHP). The RHCF and ADCHP programs occupy leased space at 256 Sunset Lake Road, Liberty (Sullivan County). Upon approval, the facility will be named Sunset Lake Center for Rehabilitation and Nursing.

On January 9, 2023, the County of Sullivan entered into a Facility Transition Agreement (FTA) with Sunset SNF Operations, LLC, for the sale and acquisition of the operations associated with the RHCF and ADCHP programs for the assumption of certain liabilities estimated at approximately \$1M. The applicant will lease the premises from Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant).

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

Table with 1 column: Current Operator, County of Sullivan, A Municipal Corporation

Table with 2 columns: Proposed Operator (Sunset SNF Operations, LLC) and Members (Sunset Operations Holdings, LLC 100%, Esther Klein 95%, Kathryn Perez 5%)

OALTC Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of June 28, 2023, was 67.8% for the facility and 83.8% for Sullivan County.

Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary
The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, to be paid off during the ordinary course of business. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues, Expenses, Net Income.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 5, 2022.

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

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 Consulting Agreement acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

September 7, 2023

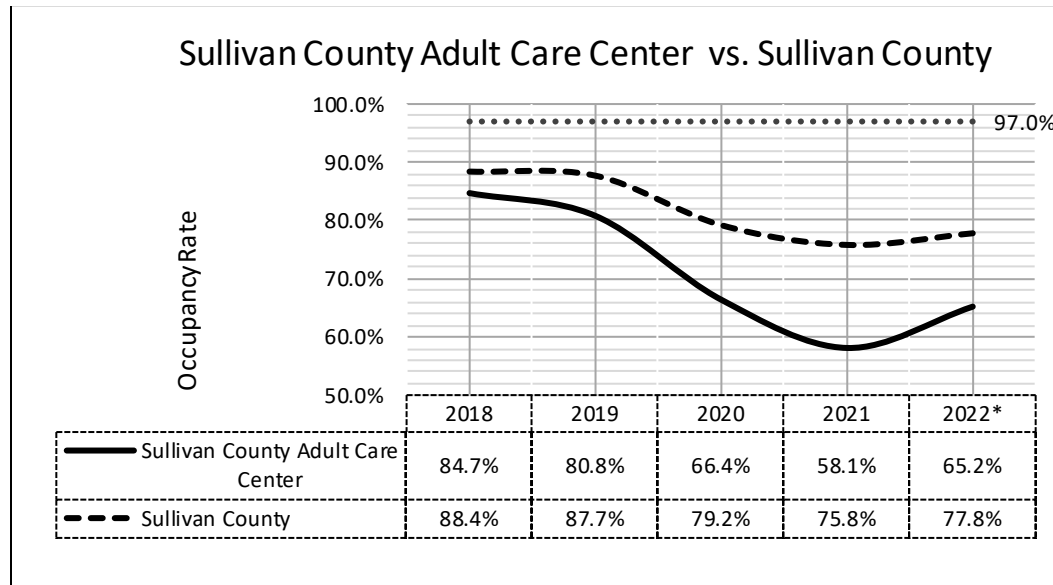
Need Analysis

Background and Analysis

The primary service area is Sullivan County, which has a population that is projected to decrease to 74,776 by 2028 based on Cornell Program of Applied Demographics estimates. Based upon the 2021 U.S. Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Sullivan County	New York State
Total Population (2021 Estimate)	78,230	20,114,745
Hispanic or Latino (of any race)	16.6%	19.2%
White (non-Hispanic)	70.2%	54.7%
Black or African American (non-Hispanic)	8.0%	13.9%
Asian (non-Hispanic)	1.8%	8.6%
Other (non-Hispanic)	3.4%	3.6%

Source: ACS 5-year Estimates Data Profiles



*2022 data is self-reported and not certified

As of June 28, 2023, occupancy was 67.8% for the facility and 83.8% for Sullivan County.

The applicant states that the low historical occupancy has been due to the fact that the facility has been voluntarily limiting the number of new resident admissions in order to comply with minimum staffing ratios and to ensure that the facility's current residents receive the best care possible. The facility has experienced difficulties with hiring and retaining qualified nursing staff over the past few years.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Sullivan County Adult Care Center.

Facility Name	CMS Overall Rating	Beds	Distance from other RCHFs Miles/Distance	Occupancy			
	As of 6/2023			2019	2020	2021	2022
Sullivan County Adult Care Center	1	146	0 miles/0 mins	80.8%	66.4%	58.1%	65.2%
Achieve Rehab	3	140	3.6miles/7 mins	91.5%	86.0%	90.9%	85.7%
Roscoe Rehab	4	85	20.8 miles/25 mins	94.7%	84.7%	81.2%	86.2%
St Joseph's Place (Orange)	5	42	36.0 miles/44 mins	93.6%	70.9%	69.7%	59.2%
Highland Rehab (Orange)	1	98	38.3 miles/41 mins	89.3%	92.6%	91.1%	92.0%
Middletown Park (Orange)	5	230	38.6 miles/55 mins	86.8%	81.5%	84.6%	83.2%
Mountainside Care (Delaware)	5	82	42.7 miles/57 mins	95.0%	96.0%	82.0%	65.4%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Sullivan County Adult Care Center	1.126	0.8282	1.0356	0.9206	1.029	0.923
Achieve Rehab	1.4137	1.0246	1.3333	1.345	1.311	1.156
Roscoe Rehab	1.261	1.2005	1.2545	1.3125	1.161	1.328
St Joseph's Place (Orange)	1.3164	0.8761	1.178	0.887	1.098	0.884
Highland Rehab (Orange)	1.5336	1.2385	1.4411	1.307	1.469	1.36
Middletown Park (Orange)	1.5242	1.2342	1.3783	1.2299	1.458	1.32
Mountainside Care (Delaware)	0.9741	0.8509	0.9163	0.9125	0.898	0.885

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The Sullivan County Adult Care Center Medicaid admissions rate was significantly above the threshold of 75% of the Sullivan County rate for the years 2019 through 2021.

Medicaid Access	2019	2020	2021
Sullivan County Total	33.9%	38.5%	27.5%
<i>Sullivan Threshold Value</i>	<i>25.4%</i>	<i>28.9%</i>	<i>20.6%</i>
Sullivan County Adult Care	57.1%	90.8%	65.0%

Conclusion

There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of June 28, 2023, was 67.8% for the facility and 83.8% for Sullivan County.

Program Analysis

Project Proposal

This application proposes to establish Sunset SNF Operations as the new operator of Sullivan County Adult Care Center, a 146-bed Residential Health Care Facility located at 256 Sunset Lake Road, Liberty.

	Existing	Proposed
Facility Name	Sullivan County Adult Care Center	Sunset Lake Center for Rehabilitation and Nursing
Address	256 Sunset Lake Road Liberty, NY 12754	Same
RHCF Capacity	146 beds	Same
ADHCP Capacity	17	Same
Type of Operator	Municipal Corporation (County)	Limited Liability Company
Class of Operator	Pubic	Proprietary
Operator	County of Sullivan	Sunset SNF Operations, LLC <u>Member:</u> Sunset SNF Operations Holdings, LLC 100% <u>Members:</u> Esther Klein 95% Kathryn Perez 5%

This application indicates that the proposed buyer will enter into a new CASA (consulting and services agreement) with Sunset Lakes Consulting LLC. The existing CASA between the County of Sullivan and Sunset Lakes Consulting will terminate once the ownership transaction described in this application is effectuated. There is a relationship between the parties in that the sole member of Sunset Lakes Consulting LLC is Esther Klein, who is also a 95% member of Sunset SNF Operations LLC, the proposed operating entity.

Upon approval of this Application, Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant) will lease the RHCF to Sunset Operations LLC for a term of 20 years.

Character and Competence

Esther Klein discloses employment at Catapult Learning Center, LLC as a teacher's coach and indicates self-employment as a Skilled Nursing Operator since October 2018. Esther indicates receipt of a high school diploma and discloses the following ownership interests:

Nursing Homes

Ten Broeck Center for Rehabilitation & Nursing (NY) (27.5%)	10/2018 to present
Westhampton Care Center (NY) (3%)	01/2018 to present
Valencia Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Seven Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Springs at Boca Ciega Bay (FL) (11.25%)	02/2022 to present
Springs at Lake Pointe Woods (FL) (11.25%)	02/2022 to present
Surrey Place Healthcare and Rehabilitation (FL) (11.25%)	02/2022 to present
Diamond Ridge Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Madison Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Tampa Lakes Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Scott Lake Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present

End-Dated Nursing Homes

Abbey Woods Center for Rehab and Healing (MO) (25%)	04/2017 to 06/2019
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Kathryn Perez holds New York State licenses as a Licensed Nursing Home Administrator (LNHA) and Certified Therapeutic Recreation Specialist. Kathryn's current employment is disclosed as the Regional Director of Operations at Infinite Care since November 2020, and her previous employment as a Licensed Nursing Home Administrator at Ten Broeck Commons. Kathryn also began working at TenBroeck Commons in 1993 as a therapeutic recreation specialist. They disclose the following end-dated healthcare facility ownership and currently do not own any health facilities.

End-Dated Nursing Homes

Ten Broeck Center for Rehabilitation & Nursing (NY) (5%)	05/2008 to 04/2016
Evergreen Commons (NY) (8.5%)	09/2004 to 09/2018

Quality Review

The proposed applicant has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio as per 10 NYCRR § 600.2(b)(5)(iv). For the proposed owner, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Esther Klein	11	9	11%	2	0%
Kathryn Perez	0	0	N/A	0	N/A

*Duration of Ownership as of 9/7/2023

Data date: 7/2023

New York. The proposed owner's portfolio includes ownership in two (2) New York facilities. Both of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher.

Florida. The proposed owner's portfolio includes ownership in nine (9) Florida facilities. Eight (8) of the Florida facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility, Diamond Ridge Health and Rehabilitation Center has a CMS overall quality rating of below average or lower. To improve the overall quality rating at Diamond Ridge Health and Rehabilitation Center, the applicant indicated the following:

Diamond Ridge Health and Rehabilitation Center has 2 stars overall and 3 stars for staffing. Regarding the overall rating of two (2) stars, this was the result of an Immediate Jeopardy (IJ) violation received by the facility during an annual survey that was conducted from October 21-24, 2019. It is important to note that this IJ was received by the facility prior to Ms. Klein's affiliation. The IJ related to a three (3)-minute delay in staff providing Cardio-Pulmonary Resuscitation (CPR) to a resident who was having a heart attack. The resident subsequently passed away. This IJ was subsequently removed on October 25, 2019, and the following actions have been implemented by the facility:

- *Regular audits are conducted to verify that all licensed nurses have current CPR certification;*
- *Re-education was provided to nursing staffing by the facility's Staff Development Office regarding the proper procedures to utilize when responding to emergency care issues;*
- *Mock drills are performed on a regular basis to assess staff response to emergency care; and*
- *Random weekly audits are conducted by the Director of Nursing to ensure the proper procedures for emergency care are performed. Results of these audits are presented to the Quality Assurance and Improvement Committee on a monthly basis. Diamond Ridge Health and Rehabilitation Center is waiting for its next annual survey to take place. Once the survey has been conducted, the facility expects to show three (3) stars in the Overall category.*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Sullivan County Adult Care Center	Subject Facility	*	*	***	**
Ten Broeck Center for Rehabilitation & Nursing	Current	****	***	*****	**
	10/2018	*****	****	*****	**
Westhampton Care Center	Current	****	***	*****	**
	1/2018	****	***	*****	***
Florida					
Valencia Hills Health and Rehabilitation Center	Current	***	***	***	***
	2/2022	*	**	****	*
Seven Hills Health and Rehabilitation Center	Current	****	****	****	***
	2/2022	****	***	**	****
Springs at Boca Ciega Bay	Current	****	***	*****	****
	2/2022	****	***	***	****
Springs at Lake Pointe Woods	Current	*****	****	*****	****
	2/2022	*****	*****	*****	***
Surrey Place Healthcare and Rehabilitation	Current	*****	*****	*****	****
	2/2022	*****	****	*****	****
Diamond Ridge Health and Rehabilitation Center	Current	**	*	*****	***
	2/2022	**	*	*****	***
Madison Health and Rehabilitation Center	Current	*****	*****	***	****
	2/2022	*****	*****	***	****
Tampa Lakes Health and Rehabilitation Center	Current	***	***	****	***
	2/2022	***	**	****	*****
Scott Lake Health and Rehabilitation Center	Current	***	***	****	***
	2/2022	****	***	****	****

Data date: 7/2023

End Dated Ownership					
New York					
Ten Broeck Center for Rehabilitation & Nursing	4/2016	*****	*****	*****	**
	05/2008	*	*	***	***
Evergreen Commons	9/2018	*	*	****	***
	9/2004 *	*	*	**	*
Missouri					
Abbey Woods Center for Rehab and Healing	6/2019	**	*	*****	**
	4/2017	***	**	**	****

*Data as of 01/2009

Enforcement History

New York

A review of the operations of Westhampton Care Center for the time period indicated above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-22-116 for surveillance findings on 1/18/2022. Deficiencies were found under 415.19(a)(1)(2) Infection Control - PPE: facility staff were observed exiting and entering the rooms of residents on droplet precautions without doffing and donning PPE.
- A federal CMP in the amount of \$7,036.25 was also assessed for the surveillance findings on 1/18/2022.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-003 for surveillance findings on 9/10/2018. Deficiencies were found under 415.4(b) abuse, verbal, sexual, physical, and mental, corporal punishment, and involuntary seclusion.
- A federal CMP in the amount of \$7,036.25 was also assessed for surveillance findings on 9/10/2018.

A review of the operations of Ten Broeck Center for Rehabilitation & Nursing for the time period indicated above reveals no enforcements.

A review of the operations of Evergreen Commons for the time period indicated above reveals the following:

- The facility was fined \$12,000 pursuant to Stipulation and Order NH-16-150 for surveillance findings on 9/8/2014. Deficiencies were found under 415.11(c)(3)(ii) Resident assessment services must meet professional standards and 415.12 Quality of care highest practicable potential.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-064 for surveillance findings on 5/13/2014. Deficiencies were found under 415.12(h)(1) Quality of Care accident-free environment.

Florida

A review of the operations of Valencia Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Seven Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Boca Ciega Bay for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Lake Pointe Woods for the time period indicated above reveals no enforcements.

A review of the operations of Surrey Place Healthcare and Rehabilitation for the time period indicated above reveals no enforcements.

A review of the operations of Diamond Ridge Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Madison Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Tampa Lakes Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Scott Lake Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

Missouri

Information provided by the State of Missouri for Abbey Woods during the time period indicated above revealed the following:

- Recertification survey 1/24/2019 continued noncompliance with uncorrected federal deficiency at 3/19/2019 revisit, continued noncompliance with new deficiencies at 4/1/2019 abbreviated survey. In compliance at 4/24/2019 second revisit.
- Recertification survey 3/20/2018 continued compliance with new deficiencies at 4/30/2018 abbreviated survey. In compliance at 6/13/2018 revisit.
- Abbreviated survey, continued noncompliance with new deficiencies at 12/18/2017 abbreviated survey, continued noncompliance with new federal deficiencies, and uncorrected state violation at 2/8/2018 revisit. State uncorrected Class II Notice of Noncompliance issued. In compliance at 3/7/2018 second revisit. Federal DPNA (denial of payment for new admissions.) removed.
- A Federal CMP was paid for surveillance findings on 7/18/2017. Findings were related to tag 684 Quality of Care cited at a G level (actual harm that is not immediate jeopardy). A revisit survey was completed on 8/23/2017, and the facility was found to be in compliance.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Analysis

Operating Budget

The applicant has provided the current year (2021) results and the first and third-year operating budgets after the change in ownership, in 2023 dollars, summarized as follows:

Revenues	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	\$283.55	\$6,209,273	\$283.56	\$9,934,837	\$283.55	\$10,232,882
Medicaid MC	\$283.55	1,249,057	\$269.38	1,898,566	\$269.39	1,955,523
Medicare FFS	\$584.74	1,017,440	\$600.00	1,670,400	\$674.89	1,935,576
Medicare MC	\$584.74	339,147	\$600.00	556,800	\$674.89	645,192
Private	\$453.04	1,056,033	\$452.99	1,689,653	\$453.10	1,740,342
Other-Assessment				689,469		710,154
ADCHP		<u>165,429</u>		<u>165,429</u>		<u>165,429</u>
Total Revenues		\$10,036,379		\$16,605,154		\$17,385,098
Expenses						
Operating	\$506.68	\$15,683,759	\$308.70	\$15,288,656	\$307.01	\$15,661,421
Capital	<u>\$60.01</u>	<u>1,857,677</u>	<u>\$17.79</u>	<u>881,182</u>	<u>\$17.91</u>	<u>913,502</u>
Total Expenses	\$566.69	\$17,541,436	\$326.49	\$16,169,838	\$324.92	\$16,574,923
Net Income (Loss)		<u>(\$7,505,057)</u>		<u>\$435,316</u>		<u>\$810,175</u>
Patient Days		30,954		49,526		51,012
Utilization %		58.09%		92.94%		95.73%

The following is noted concerning the submitted RHC operating budget:

- The current year reflects the facility's 2021 revenues and expenses.
- Medicaid revenue is based on the reimbursement methodology under the 2021 Nursing Home Medicaid Rate Sheet. The projected Medicaid Managed Care rate is based on 95% of the 2021 Medicaid Fee for Service rate.
- Medicare rates are based on the facility's forecast. Private pay rates are projected based on the current operator's average 2021 reimbursement rates.
- Current year staffing is based on 2021 staffing levels. Years one and three staffing is based on the applicant's plan to improve the facility's staffing ratios. The applicant plans to leverage its existing relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
- Expenses are based on 2021 operating expenses, which increased by 2% for most non-payroll items, and increased volume. Administrative expenses are reduced due to the planned elimination of operating expenses. Rent is projected to drop by over \$976,000.
 - The projected percentage of direct care staffing costs to projected facility revenues is 68.72% in year one and 65.65% in year three, exceeding the 40% requirement in Public Health Law 2808.
 - The percentage of direct resident care costs to projected facility revenue is 79.14% in year one and 72.19% in year three, exceeding the 70% requirement in Public Health Law 2808.
 - The facility's projected profit percentage is forecasted to be 2.74% in year one and 4.77% in year three, less than the 5% maximum outlined in Public Health Law 2808.
- The projected utilization for the facility is 92.94% in year one and 95.73% in year three. It was noted that the facility's annual occupancy averages for 2018, 2019, 2020, and 2021 were 84.7%, 80.8%, 66.4%, and 58.1%, respectively. Occupancy was at 63.7% for the week ended May 10, 2023 (self-reported information to the Department).
- The applicant states that the low historical occupancy has been due to the fact that the facility has been voluntarily limiting the number of new resident admissions to comply with minimum staffing ratios and ensure that the facility's current residents receive the best care possible. The facility has experienced difficulties hiring and retaining qualified nursing staff over the past few years.

- The applicant plans to improve occupancy by effectively marketing the facility to prospective residents and implementing the following:
 - The applicant intends to leverage its relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
 - Strengthen relationships with area doctors, hospital discharge planners, and residents' family members regarding improvements being made at the facility;
 - Updating and beautifying resident rooms and dining rooms

Utilization by the payor for the first and third years after the change in ownership is summarized below:

Payor	Current Year		Year One		Year Three	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	21,898	70.75%	35,036	70.75%	36,088	70.75%
Medicaid MC	4,405	14.23%	7,048	14.23%	7,259	14.23%
Medicare FFS	1,740	5.62%	2,784	5.62%	2,868	5.62%
Medicare MC	580	1.87%	928	1.87%	956	1.87%
Private Pay	<u>2,331</u>	<u>7.53%</u>	<u>3,730</u>	<u>7.53%</u>	<u>3,841</u>	<u>7.53%</u>
Total	30,954	100%	49,526	100%	51,012	100%

- The facility's Medicaid admissions of 90.8% in 2020 and 65.0% in 2021 were above Sullivan County's 75% threshold rate of 28.9% for 2020 and 20.6% for 2021.
- The breakeven utilization is projected at 91.41% in the first year.

Facility Transition Agreement (FTA)

The applicant submitted an executed FTA to acquire the operations associated with the RHC and ADHP, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	January 9, 2023
Seller:	County of Sullivan
Buyer:	Sunset SNF Operations, LLC
Asset Acquired:	Rights, title, and interest in the assets used in the operations. Includes furniture and equipment, inventory, computers, intellectual property, trade names, permits, personal property leases, assigned contracts, books, and records, patient and supplier data, plans, deposits (starting 10/1/21), accounts receivable, and cash
Excluded Assets:	Before 10/1/21, accounts receivable, retroactive adjustments, intercompany accounts, corporate records, tax refunds, domain names, email addresses, employee benefit plans, and accrued payroll taxes.
Assumption of Liabilities:	Expenses from the operations on and after October 1, 2021 (the Consulting Date) accrue by the Consulting Agreement dated January 9, 2023.
Excluded Liabilities:	Any liability before the closing date
Purchase Price:	Assumption of Certain Liabilities estimated at \$1 million
Payment of the Purchase Price:	Liabilities will be paid off during the ordinary course of business.

BFA Attachment A presents the net worth summary for Sunset SNF Operations, LLC members, which reveals sufficient resources to cover the assumed liabilities. 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 surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 19, 2023, the facility had no outstanding Medicaid liabilities.

Consulting Agreement

Sunset SNF Operations LLC entered a draft Consulting Services Agreement with Sunset Lakes Consulting LLC; terms are summarized below:

Facility Operator:	Sunset SNF Operations LLC
Service Provider:	Sunset Lake Consulting LLC
Term:	One year and renews for five (5) successive additional terms of one (1) year and then annually.
Services:	Provide or assist with resident relations, personnel, service contracts, maintenance and repair, collection, expenses, reports, records, legal proceedings, process insurance claims, maintenance of licenses, rate schedules, accounting and report supervision, cost reports and tax returns, and compliance with legal requirements.
Compensation:	\$400,000 per year

Sunset SNF Operations LLC has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

County of Sullivan d/b/a Sullivan County Adult Care Center currently has a Consulting Agreement with Sunset Lakes Consulting LLC, which will continue until the earlier of the CON Transition Date or July 31, 2027. Esther Klein (member of the proposed operator) is a 100% Sunset Lake Consulting LLC member.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Dated:	February 23, 2022
Premises:	A 146-bed RHCF is located at 256 Sunset Lake Road, Liberty, New York, 12754.
Landlord:	Sunset Lake Local Development Corporation
Lessee:	Sunset SNF Operations LLC
Term:	Twenty years
Rent:	\$800,000 increases by 2% per year
Provisions:	Triple Net

The applicant attested that the lease arrangement is an arm's length agreement. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rate.

Capability and Feasibility

The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, which will be paid off during the ordinary course of business. There are no project costs associated with this application. The working capital requirement is estimated at \$2,694,973 based on two months of first-year expenses funded from equity by the applicant members. A review of BFA Attachment A, members' net worth summary, reveals sufficient resources to meet the working capital.

The budget projects a net income of \$435,316 in the first year and \$810,175 by the third year. Total revenues in the first year are expected to increase by \$6,568,775 as projected utilization climbs from 58% to 93%. Overall expenses are projected to decrease by \$1,371,598 in the first year, primarily from a \$976,495 reduction in rent expenses and \$366,829 in other direct expenses. Salaries and wages are expected to increase by \$2,437,050, and employee benefits are projected to decline by \$2,434,985 (going 99.66% to 40% of salaries and wages). BFA Attachment B presents Sunset SNF Operations LLC's pro forma balance sheet, which shows the entity will start with \$2,729,449 in members' equity. The budget appears reasonable.

BFA Attachment C presents Sullivan County Adult Care Center's financial summary for 2019 through 2021. The RHCF had negative assets, negative working capital, and operating loss from 2019 through 2021.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. Based on the certified financial statements from 2019 through 2021, the facilities had average positive working capital of \$2,331,000, average net assets of \$3,714,500, and an average net income of \$1,412,500.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Members' Net Worth of Sunset SNF Operations LLC
BFA Attachment B	Pro Forma Balance Sheet, Sunset SNF Operations LLC
BFA Attachment C	Financial Summary Sullivan County Adult Care Center 2019-2021 and their 2021 Certified Financial Statement
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary



**Project # 222102-E
NAE Edison, LLC d/b/a
Edison Home Health Care/Concierge Living**

Program: LHCSA
Purpose: Establishment

County: Kings
Acknowledged: October 24, 2022

Executive Summary

Description

HAH Group Holding Company, LLC (Help at Home) requests approval to expand its current operations into New York by acquiring NAE Edison, LLC d/b/a Edison Home Health Care under Article 36 of the Public Health Law.

There will be no changes to the services or locations served as a result of this application.

The proposed post-closing organizational chart is provided in Attachment A to this exhibit.

An Affidavit of No Control was submitted on behalf of HAH Holdings, LLC stating that the affiant will refrain from exercising control over the agency's actions regulated by Article 36 of the New York Public Health Law.

OALTC Recommendation

Contingent Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Contingent Approval recommended

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of Application of Authority acceptable to the Department. [CSL]
2. Submission of a photocopy of the Articles of Organization (Certificate of Formation) acceptable to the Department. [CSL]
3. Submission of a photocopy of the Operating Agreement (Limited Liability Company Agreement) acceptable to the Department. [CSL]
4. Submission of a photocopy of the Management Agreement, acceptable to the Department. [CSL]

Council Action Date

September 7, 2023

Program Analysis

Program Description

NAE Edison, LLC d/b/a Edison Home Health Care became licensed as a licensed home care services agency in November 2009. The agency serves patients from the following sites:

946 McDonald Avenue, Brooklyn, NY 11218 (Active)

Geographic Service Area: Bronx, Kings, Nassau, New York, Queens, and Richmond

Healthcare Services: Home Health Aide, Homemaker, Medical Social Services, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy

Total Number of Patients Currently Served in approved counties: 1,699

2618 Main Street, Buffalo, NY 14214 (Active)

Geographic Service Area: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Monroe, Niagara, Orleans, and Wyoming

Healthcare Services: Home Health Aide, Homemaker, Medical Social Services, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy

Total Number of Patients Currently Served in approved counties: 14

75 North Main Street, Unit 7B, Spring Valley, NY 10977 (Active)

Geographic Service Area: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester

Healthcare Services: Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy

Total Number of Patients Currently Served in approved counties: 126

1005 Broadway, Woodmere, NY 11598 (Active)

Geographic Service Area: Nassau and Suffolk

Healthcare Services: Home Health Aide, Homemaker, Medical Social Services, Nursing, Nutritional, Personal Care, Occupational Therapy, Physical Therapy

Total Number of Patients Currently Served in approved counties: 67

Character and Competence Review

The Directors of NAE Edison, LLC and HAH Holdings LLC are comprised of the individuals listed below. The proposed new members in this application have an ownership interest in healthcare facilities in several states. The applicant provided out-of-state compliance reports; however, signed affidavits attesting facilities were in good standing were used in lieu of compliance reports for those state agencies that did not respond to the request to complete the report. Please refer to Attachment B for a list of the out-of-state healthcare facility interests.

Jeffrey H. Aronson, Esq. – Director, CCP III Cayman GP Ltd.
Centerbridge Partners, L.P., Co-Founder Managing Principal

Affiliations

- None

With over 20 years of experience in financial management, their focus has been on investing in various industries, including healthcare.

Joseph P. Bonaccorsi, Esq. – Chief Legal Officer and Secretary, HAH Group Holding Company, LLC
Help at Home, Chief Legal Officer

Affiliations

- None

Before joining Help at Home, they had more than thirty years of experience as a licensed lawyer and had served as a general counsel in regulated industries such as healthcare and pharmaceuticals at two companies.

Legal Action

Ackorn, Inc. – There were pending civil or administrative actions against them or a professional/business entity they were affiliated with. Ackorn, Inc. filed for Chapter 11 Bankruptcy on September 4, 2020.

Patrick Hugh Conway, MD – Director, HAH Holdings LLC

Optum United Health Group, CEO of Care Solutions

Affiliations

- 2020 to Present – Optum Care Solutions
- 2017 to 2019 – Blue Cross Shield of North Carolina

This individual holds multiple roles as a Director at Help at Home, Physician, and Health Care Executive.

Legal Action

On June 22, 2019, they received a Misdemeanor DUI, received a fine, and completed community service in Randolph County, North Carolina.

Jeremy Gelber, M.D - Director, HAH Holdings LLC

Centerbridge Partners, L.P., Partner

Affiliations

- March 2019 to Present – National Mentor Holdings
- November 2020 to Present – Community Psychiatry
- March 2019 to Present – Sevita Health
- September 2019 to Present – GoHealth
- January 2021 to Present – Help at Home
- September 2021 to Present – Medical Solutions
- February 2019 to Present – Remedi SeniorCare Holding Corp.
- May 2020 to March 2021 – American Renal Holdings

With nearly three decades of experience in executive leadership, operations, finance, and investments, this individual possesses extensive knowledge, especially in the healthcare sector.

Christopher J. Hocevar – Chief Executive Officer, HAH Group Holding Company, LLC

Help at Home, CEO

VNO Advisors LLC, Owner

Affiliations

- 2019 to Present – Sevita

With over twenty years of experience in financial management for healthcare entities and operations, they are well-equipped to handle the task at hand.

Christina Lee Jenkins, M.D. - Director, HAH Holdings LLC

Self-Employed, President, Worth Street Partners (Sole Proprietorship, LLC)

Phoenix Venture Partners (Independent Contractor Relationship), Venture Partner

Manatt Health (Division of Manatt Phelps & Phillips; Independent Contractor Relationship), National Advisor

Portfolia, Inc (Independent Contractor Relationship), Lead Investor (Venture Partner for Investment Funds)

Affiliations

- None

They have over 20 years of experience in healthcare, including as a practicing primary care physician in house call medicine, board directorship of a health system that included acute hospitals, SNFs, LTCs, and a CHHA, board chairmanship of quality performance for both health systems and health plans and healthcare consulting to local home care agencies.

Harreld N. Kirkpatrick III – Director, The Vistria Group, LLC
The Vistria Group, Co-CEO

Affiliations

- 06/21/2017 To 2/16/2021 – CareMetx, LLC
- 6/2014 to 10/2020 – Aviation West Charters, LLC
- 12/2016 to 12/2021 – Supplemental Health Care

With nearly three decades of experience in executive leadership, operations, finance, and investments, this individual possesses extensive knowledge, especially in the healthcare sector.

Ryan C. Kitchell - Director, HAH Holdings LLC
12/31/2019 – Retired
Old National Bancorp, Corporate Director
One America Financial Partners Inc., Corporate Director

Affiliations

- 2010 to 2019 – Indiana University Health
- 2019 to 2022- Cancer Treatment Centers of America

With over 20 years of experience in financial management, they specialize in the healthcare industry.

Legal Action

The U.S. Department of Justice served as the enforcer of the violation, and there was a settlement agreement that involved a monetary payment and a determination of liability.

Naishadh R. Lalwani - Director, HAH Holdings LLC
Wellspring Capital Management Group, Partner

Affiliations

- 2017 to Present – Help at Home
- 2017 to 2019 – Bellwether
- 2019 to Present – Rayus Radiology
- 2021 to Present – Healthpro Heritage
- 2021 to Present – Pentec Health
- 2021 – Present – Caring Brands Inc.

With nine years of experience, they have served on boards of companies in the post-acute healthcare sector, primarily in the home health industry.

Legal Action

Bellwether Health, NJ. - Between 2017 and 2019, went into receivership and ceased operations.

Kristen Hughes Lau - Director, HAH Holdings LLC
Centerbridge Partners, LP, Managing Director

Affiliations

- None

With a decade of experience in managing financial portfolio companies, they have worked extensively with businesses operating in the U.S. healthcare industry.

Ronald A. Malone - Director, HAH Holdings LLC
RTM Enterprises, LLC, Owner

Affiliations

- 1/2000 to 12/2008 – Gentiva Health Service, Inc

They possess extensive knowledge about home health, hospice, and other healthcare providers, as well as expertise in the regulatory landscape that impacts healthcare businesses.

Ryan B McGroarty – Chief Financial Officer, HAH Group Holding Company, LLC
Help at Home, Chief Financial Officer

Affiliations

- 1999 to 2021 – Cigna Healthcare

With over twenty years of financial management experience in the healthcare industry, they are well-versed in their field.

Eric C. Mollman – Director, NAE Edison, LLC
Pentec Health, CFO

Affiliations

- 3/2022 to Present – Pentec Health
- 1/19 to 12/21 – Help at Home
- 12/16 to 1/19 – Pinnacle Treatment Centers

Over the last 16 years, this individual has held the position of lead financial officer for multiple companies within the healthcare industry.

Legal Action

Pentec Health – Corporate Integrity Agreement as part of a settlement with the Office of Inspector General (OIG) within the U.S. Department of Health and Human Services. The Agreement entered in 2019 with the US Department of Justice to resolve a false claims act lawsuit brought by a former employee back in 2013. Corporate Integrity Agreement runs for five years through February 2024.

Martin H. Nesbitt - Director, The Vistria Group, LLC
The Vistria Group, Co-CEO

Affiliations

- Feb 2021 to Present – CareMetz LLC

With almost thirty years of experience in executive leadership, operations, finance, and investment, including healthcare and global public company board experience, they bring a wealth of knowledge to the table.

Timothy P. O'Rourke – President, HAH Holdings LLC
Help at Home LLC, President

Affiliations

- 2020 to 2021, Ascension Complete

They possess extensive experience in healthcare operations and specialize in financial matters.

Matthew L. Schulz - Secretary and Treasurer, TVG HAH Buyer, LLC
The Vistria Group, Partner

Affiliations

- 10/19 to Present – Alacura

With extensive experience in healthcare operations, their focus is primarily on financial matters.

David M. Schuppan - Director, HAH Holdings LLC
The Vistria Group, Senior Partner

Affiliations

- 3/22 to Present – Professional Health Care Network
- 6/21 to Present – HomeFree Pharmacy Services
- 6/21 to Present – Homecare Holdings
- 10/20 to Present – Mission Healthcare
- 9/20 to Present – Help at Home
- 3/19 to Present – Sevita
- 10/18 to Present – Rock Dental Brands
- 10/18 to 10/21 – Agape Care

Affiliations (continued)

- 10/17 to 10/20 – St. Croix Hospice
- 9/15 to 8/16 – RestorixHealth
- 5/15 to 8/16 – PurFoods
- 9/13 to 8/16 – QualDerm Partners
- 7/12 to 8/16 – US Renal Care

Has experience investing in healthcare providers and serving on boards in the past.

Linda A. Smith (Galipeau) - Director, HAH Holdings LLC

Self Employed, Independent Board Director – WSP Global, Inc.; Help at Home, Employbridge, Medical Solutions, Inc.

Affiliations

- None

With 25 years of experience, they have worked as an executive in operations and professional recruiting management.

Raymond E. Smithberger, Jr. – Chief Operating Officer, HAH Holdings, LLC

Help at Home LLC, Chief Operating Officer

Affiliations

- None

The individual has over 20 years of experience in managing healthcare and pharmacy operations on a large scale. They have experience in general management as well.

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

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

Need Review

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR Section 765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Workforce Review

The applicant’s response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment C.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Attachments

OALTC Attachment A	Organizational Chart
OALTC Attachment B	Health Facility Interests
OALTC Attachment C	Workforce Review



Project # 222195-E
Assistcare Home Health Services LLC d/b/a
Preferred Home Care of New York/Preferred Gold

Program: LHCSA
Purpose: Establishment

County: Kings
Acknowledged: December 9, 2022

Executive Summary

Description

HAH Group Holding Company, LLC (Help at Home) requests approval to expand its current operations into New York by acquiring Assistcare Home Health Services LLC d/b/a Preferred Home Care of NY/Preferred Gold under Article 36 of the Public Health Law.

There will be no changes to the services or locations served as a result of this application.

The proposed post-closing organizational chart is provided in Attachment A to this exhibit.

An affidavit of no control was submitted on behalf of HAH Holdings, LLC stating that the affiant will refrain from exercising control over the agency's actions regulated by Article 36 of the New York Public Health Law.

OALTC Recommendation

Contingent Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Contingent Approval Is recommended

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the amended and executed Operating Agreement acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended and executed Articles of Organization acceptable to the Department. [CSL]

Council Action Date

September 7, 2023

Program Analysis

Program Description

Assistcare Home Health Services LLC d/b/a Preferred Home Care of NY/Preferred Gold became licensed as a licensed home care services agency in September 2009. The office sites provide the following services:

2357 60th Street, Brooklyn, NY 11204 (Active)

Geographic Service Area: Westchester, Bronx, Kings, New York, Queens, and Richmond
Healthcare Services: Nursing, Home Health Aide, Personal Care Assistance, Physical Therapy, Occupational Therapy, Speech-Language Pathology, Medical Social Worker, Nutrition, and Homemaker
Total Number of Patients Currently Served in approved counties: 138,576

1 South Ocean Avenue, Suite 212, 214, 215, Patchogue, NY 11772 (Active)

Geographic Service Area: Nassau, Suffolk, Orange, and Rockland
Healthcare Services: Nursing, Home Health Aide, Personal Care Assistance, Physical Therapy, Occupational Therapy, Speech-Language Pathology, Medical Social Worker, Nutrition, and Homemaker
Total Number of Patients Currently Served in approved counties: 17,783

2 Perlman Drive, Second Floor, Suite 201-A, Spring Valley, NY 10977 (Active)

Geographic Service Area: Dutchess, Orange, Rockland, Sullivan, and Ulster
Healthcare Services: Nursing, Home Health Aide, Personal Care Assistance, Physical Therapy, Occupational Therapy, Medical Social Worker, Homemaker, and Housekeeper
Total Number of Patients Currently Served in approved counties: 7,571

Character and Competence Review

The Directors of Assistcare Home Health Services LLC d/b/a Preferred Home Care of NY/Preferred Gold are comprised of the individuals listed below. The proposed new members in this application have an ownership interest in healthcare facilities in several states. The applicant provided out-of-state compliance reports; however, signed affidavits attesting facilities were in good standing were used in lieu of compliance reports for those state agencies that did not respond to the request to complete the report. Please refer to Attachment B for a list of the out-of-state healthcare facility interests.

Jeffrey H. Aronson, Esq. – Director, CCP III Cayman GP Ltd.
Centerbridge Partners, L.P., Co-Founder Managing Principal

Affiliations

- None

With over 20 years of experience in financial management, their focus has been on investing in various industries, including healthcare.

Joseph P. Bonaccorsi, Esq. – Chief Legal Officer and Secretary, HAH Group Holding Company, LLC
Help at Home, Chief Legal Officer

Affiliations

- None

Before joining Help at Home, they had more than thirty years of experience as a licensed lawyer and had served as a general counsel in regulated industries such as healthcare and pharmaceuticals at two companies.

Legal Action

Ackorn, Inc. – There were pending civil or administrative actions against them or a professional/business entity they were affiliated with. Ackorn, Inc. filed for Chapter 11 Bankruptcy on September 4, 2020.

Patrick Hugh Conway, MD – Director, HAH Holdings LLC
Optum United Health Group, CEO of Care Solutions

Affiliations

- 2020 to Present – Optum Care Solutions
- 2017 to 2019 – Blue Cross Shield of North Carolina

This individual holds multiple roles as a Director at Help at Home, Physician, and Health Care Executive.

Legal Action

On June 22, 2019, they received a Misdemeanor DUI, received a fine, and completed community service in Randolph County, North Carolina.

Jeremy Gelber, M.D - Director, HAH Holdings LLC
Centerbridge Partners, L.P., Partner

Affiliations

- March 2019 to Present – National Mentor Holdings
- November 2020 to Present – Community Psychiatry
- March 2019 to Present – Sevita Health
- September 2019 to Present – GoHealth
- January 2021 to Present – Help at Home
- September 2021 to Present – Medical Solutions
- February 2019 to Present – Remedi SeniorCare Holding Corp.
- May 2020 to March 2021 – American Renal Holdings

With nearly three decades of experience in executive leadership, operations, finance, and investments, this individual possesses extensive knowledge, especially in the healthcare sector.

Christopher J. Hocevar – Chief Executive Officer, HAH Group Holding Company, LLC
Help at Home, CEO
VNO Advisors LLC, Owner

Affiliations

- 2019 to Present – Sevita

With over twenty years of experience in financial management for healthcare entities and operations, they are well-equipped to handle the task at hand.

Christina Lee Jenkins, M.D. - Director, HAH Holdings LLC
Self-Employed, President, Worth Street Partners (Sole Proprietorship, LLC)
Phoenix Venture Partners (Independent Contractor Relationship), Venture Partner
Manatt Health (Division of Manatt Phelps & Phillips; Independent Contractor Relationship), National Advisor
Portfolia, Inc (Independent Contractor Relationship), Lead Investor (Venture Partner for Investment Funds)

Affiliations

- None

They have over 20 years of experience in healthcare, including as a practicing primary care physician in house call medicine, board directorship of a health system that included acute hospitals, SNFs, LTCs, and a CHHA, board chairmanship of quality performance for both health systems and health plans and healthcare consulting to local home care agencies.

Harreld N. Kirkpatrick III – Director, The Vistria Group, LLC
The Vistria Group, Co-CEO

Affiliations

- 06/21/2017 To 2/16/2021 – CareMetx, LLC
- 6/2014 to 10/2020 – Aviation West Charters, LLC
- 12/2016 to 12/2021 – Supplemental Health Care

With nearly three decades of experience in executive leadership, operations, finance, and investments, this individual possesses extensive knowledge, especially in the healthcare sector.

Ryan C. Kitchell - Director, HAH Holdings LLC
12/31/2019 – Retired
Old National Bancorp, Corporate Director
One America Financial Partners Inc., Corporate Director

Affiliations

- 2010 to 2019 – Indiana University Health
- 2019 to 2022- Cancer Treatment Centers of America

With over 20 years of experience in financial management, they specialize in the healthcare industry.

Legal Action

The U.S. Department of Justice served as the enforcer of the violation, and there was a settlement agreement that involved a monetary payment and a determination of liability.

Naishadh R. Lalwani - Director, HAH Holdings LLC
Wellspring Capital Management Group, Partner

Affiliations

- 2017 to Present – Help at Home
- 2017 to 2019 – Bellwether
- 2019 to Present – Rayus Radiology
- 2021 to Present – Healthpro Heritage
- 2021 to Present – Pentec Health
- 2021 – Present – Caring Brands Inc.

With nine years of experience, they have served on boards of companies in the post-acute healthcare sector, primarily in the home health industry.

Legal Action

Bellwether Health, NJ. - Between 2017 and 2019, went into receivership and ceased operations.

Kristen Hughes Lau - Director, HAH Holdings LLC
Centerbridge Partners, LP, Managing Director

Affiliations

- None

With a decade of experience in managing financial portfolio companies, they have worked extensively with businesses operating in the U.S. healthcare industry.

Ronald A. Malone - Director, HAH Holdings LLC
RTM Enterprises, LLC, Owner

Affiliations

- 1/2000 to 12/2008 – Gentiva Health Service, Inc

They possess extensive knowledge about home health, hospice, and other healthcare providers, as well as expertise in the regulatory landscape that impacts healthcare businesses.

Ryan B McGroarty – Chief Financial Officer, HAH Group Holding Company, LLC
Help at Home, Chief Financial Officer

Affiliations

- 1999 to 2021 – Cigna Healthcare

With over twenty years of financial management experience in the healthcare industry, they are well-versed in their field.

Eric C. Mollman – Director, NAE Edison, LLC
Pentec Health, CFO

Affiliations

- 3/2022 to Present – Pentec Health
- 1/19 to 12/21 – Help at Home
- 12/16 to 1/19 – Pinnacle Treatment Centers

Over the last 16 years, this individual has held the position of lead financial officer for multiple companies within the healthcare industry.

Legal Action

Pentec Health – Corporate Integrity Agreement as part of a settlement with the Office of Inspector General (OIG) within the U.S. Department of Health and Human Services. The Agreement entered in 2019 with the US Department of Justice to resolve a false claims act lawsuit brought by a former employee back in 2013. Corporate Integrity Agreement runs for five years through February 2024.

Martin H. Nesbitt - Director, The Vistria Group, LLC
The Vistria Group, Co-CEO

Affiliations

- Feb 2021 to Present – CareMetz LLC

With almost thirty years of experience in executive leadership, operations, finance, and investment, including healthcare and global public company board experience, they bring a wealth of knowledge to the table.

Timothy P. O'Rourke – President, HAH Holdings LLC
Help at Home LLC, President

Affiliations

- 2020 to 2021, Ascension Complete

They possess extensive experience in healthcare operations and specialize in financial matters.

Matthew L. Schulz - Secretary and Treasurer, TVG HAH Buyer, LLC
The Vistria Group, Partner

Affiliations

- 10/19 to Present – Alacura

With extensive experience in healthcare operations, their focus is primarily on financial matters.

David M. Schuppan - Director, HAH Holdings LLC
The Vistria Group, Senior Partner

Affiliations

- 3/22 to Present – Professional Health Care Network
- 6/21 to Present – HomeFree Pharmacy Services
- 6/21 to Present – Homecare Holdings
- 10/20 to Present – Mission Healthcare
- 9/20 to Present – Help at Home
- 3/19 to Present – Sevita
- 10/18 to Present – Rock Dental Brands
- 10/18 to 10/21 – Agape Care

Affiliations (continued)

- 10/17 to 10/20 – St. Croix Hospice
- 9/15 to 8/16 – RestorixHealth
- 5/15 to 8/16 – PurFoods
- 9/13 to 8/16 – QualDerm Partners
- 7/12 to 8/16 – US Renal Care

Has experience investing in healthcare providers and serving on boards in the past.

Linda A. Smith (Galipeau) - Director, HAH Holdings LLC
Self Employed, Independent Board Director – WSP Global, Inc.; Help at Home, Employbridge, Medical Solutions, Inc.

Affiliations

- None

With 25 years of experience, they have worked as an executive in operations and professional recruiting management.

Raymond E. Smithberger, Jr. – Chief Operating Officer, HAH Holdings, LLC
Help at Home LLC, Chief Operating Officer

Affiliations

- None

The individual has over 20 years of experience in managing healthcare and pharmacy operations on a large scale. They have experience in general management as well.

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

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

Need Review

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR Section 765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment C.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Attachments

OALTC Attachment A	Organization Chart
OALTC Attachment B	Health Facility Interests
OALTC Attachment C	Workforce Review



**Project # 222263-E
Visiting Nurses Home Care**

Program: LHCSA
Purpose: Establishment

County: Albany
Acknowledged: January 13, 2023

Executive Summary

Description

Visiting Nurse Association of Albany Home Care Corporation d/b/a Visiting Nurses Home Care (VNHC) was established as a Licensed Home Care Services Agency (LHCSA) in 1988. It is a subsidiary of Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group), and an affiliate of Visiting Nurse Association of Albany, Inc. (VNA), a Certified Home Health Agency (CHHA), and Visiting Nurses Foundation, Inc. (VNF), which was established in 1984 to aid and assist the VNA.

This certificate of need application is to establish Albany Visiting Nurse Home Care Services Group, Inc. as the parent and Albany Medical Center Health System as the grandparent of Visiting Nurse Association of Albany Home Care Corporation.

OALTC Recommendation

Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended.

Council Action Date

September 7, 2023

Program Analysis

Program Description

Visiting Nurse Association of Albany Home Care Corporation currently serves the following counties:

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

The applicant proposes to provide the following healthcare services:

- Personal Care Aide
- Nursing

This corporate structure allows for shared services between VNHC and VNA, creating cost efficiencies and close collaboration in servicing the complex needs of individuals requiring care at home, from skilled intermittent services to long-term support. This collaboration is beneficial to the patient and to the healthcare system as it supports a key component of the New York State Delivery System Reform Incentive Payment (DSRIP) Program to reduce avoidable hospital use by 25% over five years and distinguishes VNHC from many other LHCSAs in the region.

Character and Competence Review

The Officers and Board of Directors for Albany Visiting Nurse Home Care Services Group, Inc.; Visiting Nurse Association of Albany, Inc.; Visiting Nurse Association of Albany Home Care Corporation; and Visiting Nurses Foundation, Inc. are as follows:

Anthony Durante - President

Real Estate Salesperson, Armida Rose Realty Group; 2019-Present

Affiliations

- The Capital Living Nursing and Rehabilitation (2003-2017)
- The Springs Nursing and Rehab Center (2003-2017)
- The Stanton Nursing and Rehab Center (2003-2017)
- The Crossings Nursing and Rehabilitative (2003- 2017)
- The Orchard Nursing and Rehab Center (2003-2017)
- The Country Manor Nursing and Rehab Center (2003-2017)
- The Mountain View Nursing and Rehab Center (2003-2017)
- Albany Medical Health System (2017-Present)

Joan Hart - Vice President

Chief Financial Officer, Saratoga Financial Systems; 1990 – 2019 (retired)

Affiliations

N/A

Theodore DeConno Jr. – Treasurer

Senior Commercial Relationship Manager/ Senior Vice President, Pioneer Bank; 2015 - Present

Affiliations

N/A

Amy Lee – Secretary

President/Chief Executive Officer, Coretactics Inc.; 2015 – Present

Affiliations

N/A

Nancy Michela - Board Member

Nursing Facility, Russell Sage College; 1991 - Present

Affiliations

N/A

Philip G. Scott – Board Member

Area Senior Vice President, Gallagher; 2007 – Present

Affiliations

N/A

Frederick Henrichsen - Board Member

Client Solutions Executive, ATOT Corporation; 2017- Present

Affiliations

N/A

Janine Mangione – Board Member

Partner, Bonadio, & Co. LLP; 2004- Present

Affiliations

N/A

Terry Griesmer, Esq. - Board Member

Partner, Rowlands Lebrou & Griesmer PLLC; 2014-Present

Affiliations

N/A

Peter Paige; M.D. – Albany Medical Center Health System Appointee

Executive Vice President and Hospital General Director, Albany Medical Center; 2022 – Present

Affiliations

N/A

Frances Albert – Albany Medical Center Health System Appointee

Executive Vice President, Chief Operating Officer, and Chief Financial Officer
Albany Med Health System; 2000- Present

Affiliations

- Saratoga Partners North, LLC (2019 - present)
- Healthcare Partners of Saratoga Ltd (2018-2022)

Samantha DiCicco – Ex-Officio

Chief Executive Officer, VNA of Albany Inc.; 2022-Present

Affiliations

N/A

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

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 respective surveillance teams at the Department of Health indicates that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

The applicant responded with the following regarding workforce initiatives:

Competing employers to this agency include Walmart, All Metro Health Care, Attentive Care, Belvedere Home Care, Maxim of New York, Interim Healthcare of the Capitol Region, Nurse Core, and Marquis Home Care. Visiting Nurse Association of Albany Home Care Corporation d/b/a Visiting Nurses Home Care (VNHC) has been successfully competing and will continue to do so by offering a quality program with competitive pay and benefits. They will provide training, annual competencies, retainment strategies, and some transportation as needed. The agency participates in the Department of Labor job fairs and advertises job openings on Department of Labor job boards. In addition, they partner with local schools, community colleges, and the Capital Region Workforce Development Board.

There is no substantial impact on the workforce or other health care providers because they currently provide service in the area and have an excellent working relationship with many physician offices as well as local state departments. They will minimize any adverse impacts by primarily functioning in the home and not in an acute setting.

Recruitment and retention are the primary focuses of Visiting Nurse Association of Albany Home Care Corporation d/b/a Visiting Nurses Home Care (VNHC), particularly in the challenging climate post-Covid. As the healthcare workforce faces unprecedented shortages. They offer a shift differential, extra trainings as needed or requested, and free personal care aide training. They also reimburse IRS standard mileage rates and offer a sign-on bonus, referral bonus, and flexible schedule.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).



Project # 231028-E
**Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor
Home Care**

Program: LHCSA
Purpose: Establishment

County: Monroe
Acknowledged: March 2, 2023

Executive Summary

Description

Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor Home Care, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of Monroe County from an office at 2515 Culver Road, Rochester, NY 14609.

The following health care services are proposed:

- Nursing
- Home Health Aide
- Personal Care Aide

OALTC Recommendation

Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended.

Council Action Date

September 7, 2023

Program Analysis

Program Description

Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor Home Care, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of Monroe County from an office located at 2515 Culver Road, Rochester, NY 14609.

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

The membership of Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor Home Care, is comprised of the following individuals:

Joseph Murabito - 37%

President, Elemental Management Group
President/Administrator, Morningstar Residential Care Center

Affiliations

- The Gardens by Morningstar, LLC (Licensed Home Care Services Agency) (2016-Present)
- The Gardens by Morningstar LLC d/b/a The Gardens by Morningstar (Assisted Living Program) (2016-Present)
- Harding Nursing Home, LLC d/b/a Waterville Residential Care Center (Skilled Nursing Facility) (2016-present)
- CPR Associates, LLC d/b/a Aaron Manor Rehabilitation and Nursing Center (Skilled Nursing Facility) (2018-Present)
- Morning star Care Center, Inc d/b/a Morningstar Residential care center (Skilled Nursing Facility) (2010-present)

Avi Lustig - 37%

Operator/Administrator, Mariner Residence, Inc
Administrator, Lakeside Manor Home for Adults, Inc

Affiliations

- Mariners Home Care, Inc. (Licensed Home Care Services Agency) (2019-Present)
- Mariner Residence, Inc. (Assisted Living Program) (2013-Present)
- Silver Lake Support Service, Inc. (Outpatient Clinic) (2001-Present)

Judith Harding-Staelens - 26%

Director of Staff Development, Elemental Management Group
Administrator/Owner, Harding Nursing Home, LLC d/b/a Waterville Residential Care Center
Registered Professional Nurse

Affiliations

- Harding Nursing Home, LLC d/b/a Waterville Residential Care Center (Senior Nursing Facility) (present)

A review of the personal qualifying information indicates that the applicant has the required character and competence to operate a licensed home care service agency.

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 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.

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

The Bureau of Quality and Surveillance reported that the affiliated Nursing Homes and Skilled Nursing Facilities have no history of enforcement action taken.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Current availability of professional/paraprofessional staff:

Since the application seeks to establish a new operator of an already existing facility and agency, the applicant intends to seamlessly transition into the owner and employer of record upon licensure approval.

Competing employers:

This application seeks to establish Cirrus Manor Residential Center, LLC as the owner/operator of the LHCSA that serves the ALP residents of an adult care facility (ACF). This application does not seek to establish a new agency within the county, nor does it seek to expand the scope of the agency currently operated by Shire Senior Living LLC. Instead, it seeks to establish Cirrus Manor Residential Center, LLC as a new operator with a new license. A related ACF application (#210087) has previously been submitted to the Department to establish Cirrus Manor Residential Center, LLC as the new owner/operator of the adult home/assisted living program currently operated by Shire Senior Living, LLC. Therefore, an adverse impact on the community is not anticipated. The applicant reports they will collaborate with other agencies within the community to be available as a resource and future home for residents who are eligible for services within the facility.

Training, recruitment, and workforce initiatives:

The goal would be to retain the workforce that is already in place while seeking out new hires based on the needs of the facility as such needs arise. The owners of the proposed applicant are connected within local and statewide associations. Recruitment for home care staff will commence once the applicant has a better idea of the timeline for licensure.

Measure to promote retention:

The applicant has been in communication with the current owner/operator of the facility to address ways in which the staff will remain engaged with the applicant as the new operator/employer upon licensure approval. The applicant has reviewed the compensation and working structure of the existing staff and will continue to review the same as it relates to the market rate for such services.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: June 16, 2023

Subject: Proposed Dissolution of Folts Home

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: June 16, 2023

Subject: Proposed Dissolution of Folts Home

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) A May 8, 2023, electronic letter to Vincent DiCocco requesting dissolution from Camille Hill, counsel to Folts Home;
- 3) A draft Verified Petition, to be signed by Dr. Anthony E Piana, Chair of the Board of the Directors of Folts Home after the Department of Health and PHHPC approval seeking the State Attorney General's approval for the filing of the Applicant's Certificate of Dissolution;
- 4) A proposed Plan of Dissolution of Folts Home;
- 5) The most recent Certificate of Amendment of the Certificate of Incorporation of Folts Home;
- 6) The Bylaws of Folts Home;
- 7) The April 26, 2023, Resolutions of the Board of Directors of Folts Home, to approve the dissolution;
- 8) The April 26, 2023, Resolutions of the Member of Folts Home, to approve the dissolution.

Attachments.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: June 16, 2023

Subject: Proposed Dissolution of Folts Home

Folts Home ('The Corporation') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Corporation is a New York not-for-profit corporation incorporated on November 21, 1892, under the name of The Folts Mission Institute. The stated purpose of the Corporation was to "[p]rovide a school in the Village and County of Herkimer in the State of New York, for educating home and foreign missionaries and deaconesses for the Methodist Episcopal Church" which evolved over time to include providing "on a not-for-profit basis, nursing home facilities and services for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care; where no adequate housing exists for such groups." On September 7, 2018, the Corporation sold substantially all of its assets to a third party pursuant to an Order entered by the United States Bankruptcy Court of the Northern District of New York.

On April 26, 2023, the Board of Directors of the Corporation and the Sole Member resolved that the Corporation be dissolved pursuant to Article 10 of the New York Not-For-Profit Corporation Law, and that the Corporation's remaining assets are intended to be distributed to The Community Foundation of Herkimer & Oneida Counties, Inc., another New York State not-for-profit corporation.

The Corporation will be following its Plan of Dissolution and Distribution of Assets as delineated in the exhibits to the Verified Petition to the Attorney General. The Corporation's assets are composed of approximately \$59,281.41 which it plans to use to pay professional fees and give the remainder away to The Community Foundation of Herkimer & Oneida Counties, Inc., another New York State not-for-profit corporation.

Attached is an electronic letter request from Camille Hill on behalf of the Corporation, a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, The Corporation's Certificate of Incorporation and subsequent amendments, Bylaws and Resolutions of the Board of Directors as well as the Member authorizing the dissolution.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution, and it is in legally acceptable form.

Attachments

CAMILLE W. HILL, ESQ.
chill@bsk.com
P: 315.218.8627
F: 315.218.8100

May 8, 2023

VIA ELECTRONIC MAIL

Vincent DiCocco
Public Health and Health Planning Council
NYS Department of Health

Re: *Voluntary Dissolution of Folts Home*

Dear Vince:

Our firm represents Folts Home, an entity which owned and operated a skilled nursing and long-term residential healthcare and rehabilitation facility located in Herkimer, New York (the "Nursing Home Facility"). I write to request that the Public Health and Health Planning Council ("PHHPC") approve the voluntary dissolution of Folts Home in accordance with 10 NYCRR § 650.1. The public need for the dissolution is discussed more fully below.

Folts Home was incorporated as a charitable not-for-profit corporation under the New York Not-for-Profit Corporation Law on November 21, 1892. During 2012-2013, Folts Home experienced extreme financial exigency, and in June 2013, Folts Home determined that it was in its best interest to seek the voluntary appointment of a receiver to operate the Nursing Home Facility and to ensure uninterrupted services to its residents. The NYS Department of Health thereafter appointed three successive receivers to operate Folts Home, the latest being FoltsCare, LLC.

On February 16, 2017, Folts Home filed a voluntary chapter 11 petition for relief with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Case") in order to effect the sale of its assets to a third party and to wind down its financial affairs. On September 7, 2018, Folts Home sold all of its operating assets to Cedarcare Holding, LLC and the sale proceeds were used to satisfy all creditor claims in accordance with the terms of Folts Home's Amended Chapter 11 Plan of Liquidation (the "Plan") confirmed by Order of the Bankruptcy Court dated May 21, 2019. The Bankruptcy Case has been fully administered and was closed on August 27, 2019. Most recently, on February 22, 2023, the PHHPC issued a letter conditionally approving the application of JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation to be the new operator of the Nursing Home Facility.

Vincent DiCocco
May 8, 2023
Page 2

At this point, Folts no longer owns or operates the Nursing Home Facility, all of its assets have been sold, and all of its liabilities have been paid. In order to properly wind up Folts' financial affairs, and because it is a not-for-profit corporation, Folts is required to petition the Office of the NYS Attorney General for permission to dissolve in accordance with Article 10 of the Not-for-Profit Corporation Law. We have prepared the enclosed proposed Verified Petition for Dissolution which will be submitted to the Attorney General. We understand that, prior to the submission of the Verified Petition to the Attorney General, Folts Home must obtain approval for the proposed dissolution from the PHHPC pursuant to 10 NYCRR § 650.1.

In accordance with this request, enclosed for the PHHPC's consideration are copies of the following documents:

1. the proposed Certificate of Dissolution;
2. the Plan of Dissolution and Distribution approved by Folts Home's Board of Directors and Sole Member on April 26, 2023;
3. the Amended Chapter 11 Plan of Liquidation dated May 21, 2019 and the Bankruptcy Court Order dated August 27, 2019 confirming the Plan. A complete description of the disposition of assets is also contained in the Folts Home Plan of Dissolution and Distribution of Assets (see paragraph 2 above); and
4. the proposed Verified Petition to be submitted to the Office of the Attorney General under Article 10 of the New York Not-for-Profit Corporation Law, as well as the accompanying exhibits.

Folts Home respectfully requests that the PHHPC consider Folts Home's application for voluntary dissolution at the PHHPC's June 15, 2023 Committee Meeting. In light of the amount of time that has expired since the September 2018 asset sale and the time it has taken to issue the conditional approval for the new operator, it is imperative that Folts Home's request for approval is its voluntary dissolution be considered as soon as possible.

Thank you for your consideration in this matter. Please do not hesitate to contact me at (315) 440-8209 or chill@bsk.com, or my colleague, Elizabeth Morgan, at (315) 218-8694 or emorgan@bsk.com, if you have any questions or need additional information.

Vincent DiCocco
May 8, 2023
Page 3

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Camille W. Hill

Enclosures

cc: Colleen Leonard (w/ encl. – via email)
Marthe Ngwashi (w/ encl. – via email)
Patricia Bordonaro, Esq. (w/ encl. – via certified mail, return receipt requested)

In the Matter of the Application of

FOLTS HOME,

Petitioner,

VERIFIED PETITION

For approval of Plan of Dissolution and Distribution of
Assets pursuant to Section 1002 of the Not-for-Profit
Corporation Law.

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK:
OFFICE OF THE ATTORNEY GENERAL
Utica Regional Office
207 Genesee Street
Utica, New York 13501

Petitioner Folts Home ("Petitioner"), by and through its counsel, Bond, Schoeneck & King, PLLC, for its Verified Petition seeking approval of its Plan of Dissolution and Distribution of Assets pursuant to Section 1002 of the New York Not-for-Profit Corporation Law ("N-PCL"), hereby alleges as follows:

1. The purpose of this Verified Petition is to seek approval of the Plan of Dissolution and Distribution of Assets adopted by Petitioner, as more fully described below.

2. Petitioner, whose principal office is located in the County of Herkimer, filed its Certificate of Incorporation with the New York State Department of State on November 21, 1892. Certified copies of Petitioner's Certificate of Incorporation and all amendments are attached hereto as **Exhibit "A"**, and the complete and current By-Laws are attached as **Exhibit "B"**.

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

<u>Name</u>	<u>Director/Title</u>	<u>Address</u>
Dr. Anthony E. Piana	Chairman, Board of Directors	1334 State Route 169 Little Falls, New York 13365
William Forster	Vice-Chairman & Secretary Board of Directors	847 Jordanville Road Ilion, New York 13357
Marietha Parks	Board Member	386 Fairview Circle West Winfield, New York 13491

4. As set forth in paragraph Second of Petitioner's Certificate of Incorporation, Petitioner's purposes are as follows:

Establish, maintain and operate a home for the Aged, to provide for and carry on such other charitable work in connection therewith as may be necessary or convenient in carrying out the purposes of the corporation by contract or otherwise, for its assignment.

Establish, maintain and operate, on a perpetual basis, day care centers in Herkimer County pursuant to and in accordance with applicable state law and the rules and regulations of the state regulatory agency responsible for the regulation of child day care centers.

To serve the aged, disabled and chronically impaired by establishing and operating a residential health care facility pursuant to Article 28 of the Public Health Law of the State of New York.

To do and perform all acts necessary to accomplish the purposes of the corporation; including the execution of the regulatory agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the national Housing Act. Such regulatory Agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assigns, as long as insured or held by the Secretary of Housing and Urban Development.

To provide, on a not-for-profit basis, nursing home facilities and services for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care; where no adequate housing exists for such groups pursuant to Section 232 of the National Housing Act, as amended.

See, Ex. A.

5. Petitioner is a charitable not-for-profit corporation, and the sole member of Petitioner is Folts Inc.

6. Petitioner submits this Petition in support of its application to wind-down its corporate affairs and dissolve its not-for-profit corporation in accordance with the Plan of Dissolution adopted by Petitioner's Board of Directors. Petitioner is dissolving because substantially all of Petitioner's assets (the "Assets") were sold to a third party on September 7, 2018 (the "Asset Sale") pursuant to an Order entered by the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court") in Petitioner's chapter 11 case no. 17-60139. The Asset Sale was also approved by the New York Supreme Court for Herkimer County (Merrill, J.), which issued an Order Approving Sale and Disposition of Assets under Sections 510 and 511 of the N-PCL on September 7, 2018. It is no longer in the Corporation's best interests to continue its existence.

7. The Petitioner is not aware of any ongoing or completed IRS audit or inquiry in the past three years.

8. The Petitioner plans to dissolve and distribute its assets and pay its liabilities in accordance with the Plan of Dissolution and Distribution of Assets attached hereto as **Exhibit "C"** (the "Plan of Dissolution").

9. At this time, all of the Assets have been liquidated and all of Petitioner's creditors have been paid under the supervision of the Bankruptcy Court. Since the closing of Petitioner's bankruptcy case, Petitioner incurred approximately \$18,790.70 in professional fees related to the wind-down of its corporation. Funds totaling approximately \$59,281.41 are currently deposited in escrow with Petitioner's counsel, which funds will be used to pay additional professional fees incurred. Such assets are not legally required to be used for any particular purpose. All surplus

funds will be paid to the Residual Distributee (as defined below) following approval of the Plan of Dissolution.

10. Petitioner now seeks permission to transfer any surplus funds to The Community Foundation of Herkimer & Oneida Counties, Inc. (the “Residual Distributee”) and to dissolve in accordance with its Plan of Dissolution. The Residual Distributee is a charitable New York Not-for-profit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986. The Residual Distributee’s (a) Certificate of Incorporation and all Amendments and By-Laws; (b) audited financial statements and Form 990 for its fiscal years ended December 31, 2019, December 31, 2020 and December 31, 2021; and (c) Agreement by and between the Residual Distributee and Petitioner pertaining to the transfer of Petitioner’s assets are all attached hereto as **Exhibit “D”**.

11. The Board of Directors met a duly called meeting on proper notice on April 26, 2023, at which a quorum of three (3) directors out of three (3) total directors was present, and unanimously approved adoption of the Plan of Dissolution, and authorized the filing of a Certificate of Dissolution. Such resolutions certified by the Secretary are attached hereto as **Exhibit “E”**.

12. After the Board of Directors approved the Plan of Dissolution, the sole member of the Petitioner received and reviewed it and by unanimous written consent voted in favor of adoption of the Plan of Dissolution. Such unanimous written consent is attached hereto as **Exhibit “F”**.

13. The approval of Petitioner’s Plan of Dissolution is also subject to the review and approval by the Public Health and Health Planning Council of the New York State Department

of Health (“PHHPC”). The PHHPC approval of Petitioner’s Plan of Dissolution is attached hereto as **Exhibit “G”**.

14. The Petitioner is registered with the Charities Bureau of the Office of the Attorney General and its registration number is: 02-07-09. The Petitioner is up to date with its filings and most recently filed its annual report with the Charities Bureau for its fiscal year ended 2021.

15. No previous application for approval of the Plan of Dissolution has been made.

WHEREFORE, Petitioner respectfully requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of Folts Home, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed

this ____ day of _____, 2023 by:

BOND, SCHOENECK & KING, PLLC

By: _____

Frank J. Patyi, Esq.

Stephen A. Donato, Esq.

Camille W. Hill, Esq.

Address and Post Office Address:

One Lincoln Center

Syracuse, New York 13202

Telephone: (315) 218-8000

Facsimile: (315) 218-8100

Email: fpaty@bsk.com

sdonato@bsk.com

chill@bsk.com

Attorneys for Petitioner Folts Home

VERIFICATION

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

Dr. Anthony E. Piana, being duly sworn, deposes and says:

I am the Chair of the Board of Directors of Folts Home, the corporation named in the above Petition, and make this Verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters, I believe them to be true.

Dr. Anthony E. Piana

Sworn to before me this
____ day of _____, 2023.

Notary Public

**For Brevity, the Verified Petition's Attachments are
Intentionally Omitted**

**PLAN OF DISSOLUTION
AND DISTRIBUTION OF ASSETS
OF FOLTS HOME**

The Board of Directors of Folts Home (the “Corporation”) having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Directors present at a meeting of the Board duly called and held on April 26, 2023, after duly considering the best interests of the Corporation and the advisability of voluntarily dissolving the Corporation, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the Corporation be dissolved pursuant to Article 10 of the New York Not-For-Profit Corporation Law, and that the Corporation’s assets be distributed, in accordance with the following plan (the “Plan”):

1. The Corporation has assets consisting solely of cash in the approximate amount of \$59,281.41. The Corporation does not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

2. The Corporation has no liabilities, with the exception of professional fees related to the wind-down of the corporation. Since the closing of Petitioner’s bankruptcy case, Petitioner has incurred approximately \$18,790.70 in professional fees, including fees incurred by its counsel Bond, Schoeneck & King PLLC, and fees insured by its accountant The Bonadio Group, of which is subject to update.

3. Upon resolution of the Board of Directors adopting this Plan, the Board shall submit it to a vote of the Corporation’s Member for approval.

4. After the adoption of this Plan by the Board of Directors and approval by the Corporation’s Member, the Corporation shall seek all necessary approvals of its Plan, which may include: (i) the Public Health and Health Planning Council of the New York State Department of Health (“PHHPC”) (and any other governmental agencies, as applicable); and (ii) the New York State Office of the Attorney General (the “Attorney General”), or the New York State Supreme Court of Herkimer County (the “Court”), on notice to the Attorney General, pursuant to Not-for-Profit Corporation Law Section 1002(d).

5. After obtaining the necessary approvals of the Plan, the outstanding professional fees shall be paid to the respective parties, and the remaining assets of the Corporation shall be distributed to The Community Foundation of Herkimer & Oneida Counties, Inc. (the “Residual Distributee”), a charitable New York Not-for-profit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is engaged in activities substantially similar to the Corporation’s activities, in accordance with New York Not-for-Profit Law Section 1001(d)(3).

6. All assets of the Corporation, if any, that shall exist or arise after the dissolution of the Corporation, shall be the sole and absolute property of the Residual Distributee.

7. Following execution of the Plan, the Certificate of Dissolution shall be submitted for (i) approval and endorsement by the Attorney General; and (ii) consent to dissolution of the Corporation from the New York State Department of Taxation and Finance.

8. Upon approval of the Certificate of Dissolution, the original Certificate of Dissolution, including all required approvals, shall be filed with the New York State Department of State.

[Signature on following page]

The Plan of Dissolution and Distribution of Assets of Folts Home is hereby dated as of the date indicated below.

Dated: April 26, 2023

Dr. Anthony E. Piana

Dr. Anthony Piana, Chairperson
Board of Directors

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FOLTS HOME

F 060 118000 677

Under Section 803 of the
Not-for-Profit Corporation Law

The undersigned, being the Chairperson of the Board of Directors of Folts Home does hereby certify:

1. The name of the corporation is Folts Home. The name under which the corporation was originally incorporated was Folts Mission Institute.

2. The Certificate of Incorporation of Folts Home filed by the Department of State on the 21st day of November, 1892, pursuant to Chapter 319 of the Laws of 1848.

3. Folts Home is a corporation as defined in subdivision (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law and following the filing of this Certificate of Amendment shall remain a Type B corporation under Section 201 of said law.

4. The Certificate of Incorporation of Folts Home is hereby amended by deleting from the third paragraph thereof the provision for the number of directors which, as last amended, provided:

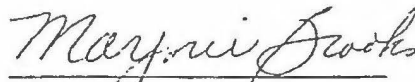
The number of directors shall be not less than twenty-four (24) and not more than thirty-six (36).

5. This amendment to the Certificate of Incorporation of Folts Home was authorized by the affirmative unanimous vote of the members entitled to vote thereon at a meeting of the members

at which a quorum was present.

6. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Folts Home, 104 North Washington Street, Herkimer, New York 13350.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate this 16th day of November, 2005.



Marjorie Brooks, Chairperson
Board of Directors

**BY-LAWS
OF
FOLTS HOME**

ARTICLE I

NAME AND LOCATION

Name The name of this corporation is Folts Home.

Location The principal place of the corporation shall be located in the County of Herkimer,
State of New York.

ARTICLE II

CORPORATE SEAL

Seal The corporation shall have a corporate seal and shall use such seal personally* but
the use of same shall be necessary only as required by law.

ARTICLE III

FISCAL YEAR

Fiscal
Year The fiscal year of this corporation shall end on the 31 st day of December of each
year.

ARTICLE IV

PURPOSE

Purpose The purposes for which the corporation is to be formed are as set forth in the
Certificate of Incorporation as same may be amended from time to time.

ARTICLE V

MEMBER

Member The sole member of this corporation shall be Folts, Inc. Folts, Inc. shall exercise
its powers and responsibilities as sole Member through its Board of Directors.

ARTICLE VI

BOARD OF DIRECTORS

General Management

The general management of the affairs of the corporation shall be vested in the Board of Directors, unless otherwise specifically provided for in these by-laws.

Number of Directors

The number of Directors constituting the entire Board shall be no less than five (5) and no more than fifteen (15). The number of Directors shall be set by the Member. The number of Directors may be increased or decreased by the Member at any regular or special meeting of the Member. The Chairperson of Folts, Inc., shall be a member of the Board of Directors of this corporation by virtue of office with full voting rights.

Terms of Directors

Except for the Director who serves by virtue of office, the term of office of the Directors shall be three (3) years. The Directors shall be divided as nearly as possible into three (3) equal classes, so that, approximately one-third (1/3) of the Board is appointed each year.

Appointment of Directors

Except for the Director who serves by virtue of office at each annual meeting of the Member, the Member shall appoint directors for the Class of Directors whose term is expiring at that annual meeting.

Vacancies

Except for the Director who serves by virtue of office, vacancies occurring in the Board of Directors for any reason shall be temporarily filled by the Member, at a special meeting of the Member called for such purpose, until the next annual meeting of the Member at which time the vacancy shall be filled by the Member and the Directors so appointed shall serve for the unexpired term of said vacancy.

Newly Created Directorships

Newly created Directorships resulting from an increase in the number of Directors shall be filled by the Member at any annual or special meeting of the Member.

Removal

Except for the Director who serves by virtue of office, any Director may be removed from office, with or without cause, by the Member at an annual meeting or a special meeting of the Member called for said purpose with due notice.

Special
Condition

No officer or employee of an agency contracting with this corporation or any of its subsidiaries may serve as a Director while he/she is affiliated with the contracting agency, without the approval of three fourths (3/4) of the Board of Directors.

Any member of the Board of Directors who misses three (3) successive Board meetings of this corporation shall be subject to dismissal from the Board and said vacancy shall be filled in accordance with these by-laws.

Except for the Director who serves by virtue of office, , Directors shall be eligible to serve two (2) consecutive three-year terms, excluding years served to fill unexpired terms. After a lapse of one year membership on the Board, persons shall again be eligible to serve two (2) consecutive three-year terms.

Telephonic
Partici-
pation

Any one or more Directors may participate in a meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence at the meeting.

Vote of
Interested
Directors

A Director who is a member, stockholder, director, officer, employee or agent of any firm or corporation with which this corporation contemplates contracting or transacting business shall disclose his/her relationship or interest to the other Directors acting upon or in reference to such contract or transaction. No Director so interested shall participate in the discussions and deliberations regarding such contract or transaction, or vote on such contract or transaction. The affirmative vote of the majority of the disinterested Directors shall be required before this corporation may enter into such contract or transaction. In case this corporation enters into a contract or transacts business with any firm, corporation or association of which one or more of its Directors is a member, stockholder, director, officer, employee or agent, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or Directors have or may have interests therein which are or might be adverse to the interests of this corporation as long as the provisions of this paragraph are complied with. No Director or Directors having such disclosed adverse interest shall be liable to this corporation or to any other person for any loss incurred by any of the foregoing under or by reason of any such contract or transaction, or shall any such Director or Directors be accountable for any gains or profits realized thereon.

Remuner-
ation

No member of the Board of Directors shall receive remuneration for services rendered. Expenses incidental to attendance at meetings of the Board of Directors,

Executive Committee meetings, and conferences and conventions designed to develop the skills of the Board of Directors in understanding and executing their task may be paid to the members of the Board with Board approval.

ARTICLE VII

OFFICERS

Officers The officers of this corporation shall be a Chairperson, Vice-Chairperson, Secretary, Treasurer and Chief Executive Officer. Except for the office of the Chief Executive Officer, only members of the Board of Directors in goodstanding shall be eligible to serve as an officer of this corporation. Notwithstanding, the Member may appoint one or more additional officers as it deems appropriate.

Election and Term of Office Except for the office of the Chief Executive Officer , the officers shall be elected by the Member at each annual meeting of the Member. Officers shall serve for terms of one (1) year. If the office of any officer is vacant, the Directors may elect from its membership a person to fill such vacancy who shall hold office for the unexpired term of his/her predecessor and until his/her successor is elected.

Chairperson The Chairperson shall preside at all meetings of the Directors, shall appoint all chairpersons and members of standing and special committees and shall be an ex-officio member of all committees except the Executive Committee. The Chairperson shall have all powers usually incident to the office of the Chairperson.

Vice-Chairperson The Vice-Chairperson shall perform the duties of the Chairperson in his/her absence or disability and shall perform such other duties as may be required or directed by the Board of Directors from time to time.

Secretary The Secretary shall be responsible to record and file or cause to be recorded and filed minutes of all meetings and shall perform such other duties as may be required or directed by the Board of Directors from time to time.

Treasurer The Treasurer shall provide general oversight of the finances of the corporation, shall submit or cause to be submitted a written report of current income and expenditures at each Board meeting, shall present or cause to be presented an annual financial report to the Board of Directors, shall have supervision of all funds, securities, evidence of indebtedness and other valuable documents of the corporation and shall perform such other duties as may be required or directed by the Board of Directors from time to time.

Removal

An officer of the corporation, with the exception of the Chief Executive Officer, may be removed from office with or without cause by the Member, at an annual or special meeting of the Member called for the purpose with due notice.

Chief
Executive
Officer

The Chief Executive Officer shall be appointed by the Member. The Chief Executive Officer shall be responsible for the day-to-day affairs of the corporation and shall carry out the policies and directives of the Board of Directors. The Chief Executive Officer shall attend, without vote, all meetings of the Board of Director and Executive Committee unless otherwise directed by the Chairperson and may attend, without vote, all meetings of standing and special committees unless otherwise directed by the Chairperson of the respective standing or special committee. The Chief Executive Officer may cause a designee to attend such standing and special committee meetings in the absence of the Chief Executive Officer.

ARTICLE VIII

MEETINGS

Place of
Meetings

Meetings of the Member and the Board of Directors shall be held at such place as may be designated by the Member.

Annual
Meeting
of Member

The annual meeting of the Member for the appointment of Directors and the transaction of such other business may properly come before it, shall be held immediately following the Annual Meeting of the Board of Directors of the Member. In the event the Annual Meeting is not held on such date, a special meeting in lieu of the Annual Meeting may be held with all the force and effect of the Annual Meeting.

Special
Meeting of
Member

Special meetings of the Member other than those regulated by statute may be called at anytime by the Chairperson, by the Member or by a majority of the Board of Directors, upon not less than ten (10) nor more than fifty (50) days notice to the Member, such notice to contain a statement of the time and place of the meeting and of the business to be transacted at such meeting to be served personally, or by first class mad, in the same manner as is required in the service of notice of an annual meeting. A special meeting of the Member may be held at anytime and at any place within the State of New York and any action may be taken thereat.

Meeting of
Directors

Regular meetings of the Board of Directors shall be held periodically as determined by the Board. Special meetings may be held upon call of the President or upon written request of one-third (1/3) of the Directors provided such written request is made to not less than one-half (1/2) of the entire Board. Upon the call of a special meeting, notice of the special meeting is to be provided to all Directors.

Annual
Meeting

The annual meeting of Directors shall be held immediately following the annual meeting of the Member or as soon thereafter as may be practical.

ARTICLE IX

QUORUM, ACTION WITHOUT MEETING AND VOTING

Quorum

The presence of a simple majority of the currently sitting members of the Board of Directors shall constitute a quorum. Except as otherwise required by law or by these by-laws, the act of a majority of the Directors present at a meeting in which a quorum is present shall be the act of the Directors.

Voting

Each Director shall be entitled to one (1) vote. There shall be no voting by proxy. Except as otherwise provided by law, or by these by-laws, all action shall be decided by a majority vote of the Directors present in person.

Written
Consent of
Directors
for Action
Without
a Meeting

Whenever, under the Not-for-Profit Corporation Law, Directors are required or permitted to take action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all of the Directors entitled to vote thereon.

ARTICLE X

EXECUTIVE COMMITTEE

Member-
ship

There shall exist an Executive Committee of the Board of Directors. The membership of the Executive Committee shall consist of the Chairperson Vice-Chairperson, Secretary and Treasurer of this corporation.

Chair-
person

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

- Function The Executive Committee may act on behalf of the corporation in any manner when the Board of Directors is not in session, except as prohibited by statute.
- Actions undertaken by the Executive Committee of the Board of Directors shall be reported to the Board of Directors at the next regular or special meeting of the Board.
- Quorum A majority of the Executive Committee shall constitute a quorum for the transaction of all business that may properly come before it. Except as otherwise required by law or by these by-laws, the act of a majority of the members of the Executive Committee present at a meeting at which a quorum is present shall be the act of the Executive Committee.
- Voting Each member of the Executive Committee shall be entitled to one (1) vote. There shall be no voting by proxy.
- Term of Office The term of office of each member of the Executive Committee shall be co-extensive with his/her term of office as an officer of the corporation.
- Vacancies Vacancies in the membership of the Executive Committee shall be filled by such officer's successor in office.

ARTICLE XI

STANDING COMMITTEES

- Standing Committee The standing committee of the Corporation is the Finance Committee.
- Finance Committee The Finance Committee shall consist of the Treasurer and other members appointed by the Chairperson of the Board and shall examine as often as necessary the securities, cash and insurance policies of the Corporation, shall consider any questions of financial policy which may be referred to it, or may do so on its own initiative, and shall report on all such matters to the Board of Directors. It shall be responsible for the method of handling the funds of the Corporation and for the system of accounting adopted in connection therewith. It shall be responsible for the preparation and presentation to the Board of Directors of an annual budget and the monitoring of budget performance.
- Chairperson The chairperson of the standing committee shall be appointed by the Chairperson of the Board from the membership of the Board of Directors.

- Membership The standing committee shall consist of not less than three (3) Directors.
- Quorum A majority of the standing committee shall constitute a quorum for the transaction of all business that may properly come before it. The act of the majority of the members of the standing committee present at a meeting at which a quorum is present shall be the act of the standing committee.
- Voting Each member of the standing committee shall be entitled to one (1) vote. There shall be no voting by proxy.
- Term of Office The term of office of each member of the standing committee shall be co-extensive with the term of his/her office as a Director, unless the Directors at the time of his/her designation shall affix a shorter period or term of office.
- Vacancies Vacancies in the membership of the standing committee shall be filled by the Chairperson.
- Special Committees The Board of Directors, by resolution adopted by a majority of the entire Board, may create such special committees that it deems advisable. Members of such special committees shall be appointed by the Chairperson of the Board. Any special committee created hereby shall have such purposes, functions, duties and authorities as the Directors so determine and none other. A special committee created hereby shall serve at the pleasure of the Board of Directors.

ARTICLE XII

DIRECTORS AND OFFICERS INSURANCE

- Insurance To the extent available, the corporation shall carry Directors' and Officers' liability insurance in such amounts and with such companies as are acceptable to the Board of Directors.

ARTICLE XIII

AMENDMENT OF BYLAWS

These by-laws may only be amended by the Member at an annual or special meeting of the Member, provided that at least ten (10) days written notice of the proposed amendment(s) is given.

June 2010

**BOARD OF DIRECTORS
OF FOLTS HOME**

**Resolution Approving the Dissolution and Adopting Plan of Dissolution and
Distribution of Assets of Folts Home**

WHEREAS, Folts Home (the “Corporation”) is a Not-For-Profit Corporation organized under the laws of the State of New York; and

WHEREAS, the Corporation owned certain real property and personal property which were used to operate a 163-bed long-term residential healthcare facility located at 100-122 North Washington Street, Herkimer, New York 13350 (the “Facility”); and

WHEREAS, on October 1, 2013, February 14, 2015 and June 8, 2018, receivers were appointed by the New York State Department of Health under New York Public Health Law § 2810(1) to operate the Facility; and

WHEREAS, on February 16, 2017, the Corporation filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of New York and began the process of liquidating its assets for the benefit of its creditors; and

WHEREAS, the Corporation has determined that, in light of the appointments of the receivers and the chapter 11 bankruptcy proceeding, it is in the Corporation’s best interests to sell the Facility, including all real property and personal property assets, distribute the asset sale proceeds and other available cash to creditors and to dissolve in accordance with Article 10 of the New York Not-For-Profit Corporation Law; and

WHEREAS, a Plan of Dissolution and Distribution of Assets of Folts Home dated as of April 26, 2023 and attached hereto as Exhibit A (the “Dissolution Plan”) has been prepared in accordance with Article 10 of the New York Not-For-Profit Corporation Law and reviewed by the Board of Directors.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF FOLTS HOME as follows:

Section 1. The Board of Directors hereby unanimously approves the dissolution of the Corporation.

Section 2. The Board of Directors hereby finds and determines that it is in the Corporation’s best interest to adopt the Dissolution Plan, and the Dissolution Plan is hereby adopted in its entirety. In accordance with the Dissolution Plan, the Board of Directors hereby approves the distribution of the remaining assets of the Corporation to The Community Foundation of Herkimer & Oneida Counties, Inc., a not-for-profit corporation (the “Residual Distributee”).

Section 3. In order to accomplish the dissolution of the Corporation and the distribution of assets as set forth in the Plan, the Corporation is hereby authorized to execute and

deliver to the United States Bankruptcy Court, the Office of the New York State Attorney General, the New York State Supreme Court, the Public Health and Health Planning Council of the New York State Department of Health, and all other appropriate parties, all documents and agreements, and perform all conditions that may be requested or required in connection therewith.

Section 4. Dr. Anthony E. Piana, who holds the title of Chairman of the Board of Directors and of the Corporation, be and hereby is authorized to execute and deliver on behalf of the Corporation all documents to be signed by the Corporation. Notwithstanding any other provision of these resolutions, Dr. Piana is authorized to assent to changes, insertions, omissions and modifications of the same. The execution of said documents by Dr. Piana shall be deemed to be complete with full approval of any such changes, insertions, omissions and modifications.

Section 5. Bond, Schoeneck & King PLLC, as counsel for the Corporation, and the agents of the Corporation do and hereby are authorized and directed to do or cause to be done all such other acts and things and to execute all such other documents, certificates and instruments as in their judgment may be necessary or advisable in carrying out the intents and purposes of all the resolutions adopted at this meeting, and all actions heretofore taken by the agents of the Corporation in connection with the subject matter of the resolutions adopted at this meeting are hereby approved, ratified and confirmed in all respects.

Section 6. All the foregoing resolutions are in furtherance of the lawful purposes of the Corporation.

Section 7. The resolutions adopted herein shall take effect immediately and third parties are authorized to rely upon such resolutions until written notice of any change in said resolutions, which shall not affect any actions taken prior to the receipt of such notice.

SECRETARY'S CERTIFICATION

I, the undersigned, Secretary of the Board of Directors of Folts Home (the "Corporation"), do hereby certify:

1. That I have compared the annexed resolution of the Board of Directors of the Corporation dated April 26, 2023 with the original thereof on file in my office and the same is a true a complete copy of the proceedings of the Board of Directors of the Corporation and of such resolutions set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolutions enacted by the Board of Directors of the Corporation have not been amended or repealed and are in full force and effect on and as of the date of this Certification.

IN WITNESS WHEREOF, I have hereunder set my hand on April 26, 2023.

William Forster

William Forster, Secretary

**WRITTEN CONSENT OF THE SOLE MEMBER
OF FOLTS HOME**

The undersigned, being the sole member of Folts Home, a New York Not-For-Profit Corporation (the “Corporation”), acting by written consent without a meeting pursuant to Section 614 of the Not-for-Profit Corporation Law of the State of New York, hereby consents to the adoption of the following resolutions:

WHEREAS, the Board of Directors of the Corporation have approved a Plan of Dissolution and Distribution of Assets, a form of which is attached hereto as Exhibit A, pursuant to which all the remaining assets owned by the Corporation shall be used to satisfy the Corporation’s outstanding liabilities and any remaining proceeds shall be transferred to The Community Foundation of Herkimer & Oneida Counties, Inc., a New York Not-For-Profit Corporation (the “Residual Distributee”); and

WHEREAS, it is in the best interest of the Corporation to dissolve under the New York Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

RESOLVED, that the dissolution of the Corporation is approved by the sole member of the Corporation; and

RESOLVED, that the Plan of Dissolution and Distribution of Assets, a form of which is attached hereto as Exhibit A, is approved in all respects and is adopted as the Plan of Dissolution of the Corporation; and

RESOLVED, that the Board of Directors of the Corporation are instructed and authorized make any necessary changes to the Plan of Dissolution and Distribution of Assets and to execute and deliver any and all documents necessary to effectuate the dissolution of the Corporation, including the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned, constituting the sole member of the Corporation, has executed this Written Consent as of the date written below.

Dated: April 26, 2023

FOLTS, INC.

By: Dr. Anthony E. Piana

Name: Dr. Anthony E. Piana

Title: Vice-Chairman

Exhibit A

Plan of Dissolution and Distribution of Assets of Folts Home

See attached.

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of Faxton-St.Luke's
Healthcare

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of Faxton-St. Luke's Healthcare

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) An April 6, 2023, electronic letter to the PHHPC requesting approval from Frank M. Cicero, Consultant to Faxton-St. Luke's Healthcare;
- 3) A copy of the proposed Certificate of Amendment of the Certificate of Incorporation of Faxton-St. Luke's Healthcare, along with the Restated Certificate of Incorporation;
- 4) A copy of the Bylaws of Faxton-St. Luke's Healthcare with proposed amendment;
- 5) The March 23, 2023 Resolution of the sole member, the Board of Directors of Mohawk Valley Health System, to approve the Amendment; and
- 6) The March 23, 2023 Resolution of the Board of Directors of Faxton-St. Luke's Healthcare to approve the Amendment.

Attachments.

cc: J. Corvino

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of Faxton-St.Luke's Healthcare

Faxton-St. Luke's Healthcare ('FSLH') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed Certificate of Amendment of the Certificate of Incorporation.

Through the proposed Amendment, FSLH will change its legal name to "MVHS, Inc." Mohawk Valley Health System is the sole member of FSLH and co-operator of both FSLH and St. Elizabeth Medical Center (SEMC). This request is being submitted in support of a Transformation Grant-funded CON Application (Project No. 172305-C).

Through that CON application, approval was given for the construction of a new hospital campus in downtown Utica and for the consolidation of services from the campuses of SEMC and FSLH. The Operating Certificate Number of FSLH (#3202003H) will be retained for that hospital.

Attached is an electronic letter request from Frank M. Cicero on behalf of FSLH, the proposed Certificate of Amendment of the Certificate of Incorporation along with the Restated Certificate of Incorporation, the proposed amended Bylaws and Resolutions of the Board of Directors of Mohawk Valley Health System as well as the Board of Directors of FSLH authorizing the amendment.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation, or the proposed amendment to the existing Bylaws.

Attachments

Cicero Consulting Associates VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Pofit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Pofit
Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

April 6, 2023

Ms. Colleen Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: Faxton-St. Luke's Healthcare St. Luke's Division (Operating Certificate #3202003H)

Dear Ms. Leonard:

On behalf of our client, Faxton-St. Luke's Healthcare St. Luke's Division (FSLH), we are writing to seek approval from the Public Health and Health Planning Council (PHHPC) for an Amendment to the Certificate of Incorporation of FSLH, a New York State, not-for-profit corporation that currently operates an Article 28 hospital in Utica of the same name. Through the proposed Amendment, FSLH will change its legal name to "MVHS, Inc.". Mohawk Valley Health System is the sole member and co-operator of both FSLH and St. Elizabeth Medical Center (SEMC).

This request is being submitted in support of a Transformation Grant-funded C.O.N. Application (Project No. 172305-C) that is nearly complete and through which FSLH was approved for the following:

- Construct a new hospital campus in downtown Utica for the consolidation of services from the campuses of SEMC and FSLH. The Operating Certificate Number of FSLH (#3202003H) will be retained for hospital.
- Transfer all inpatient beds and most outpatient services from SEMC to the new campus. The outpatient services that will remain on the SEMC campus will result in the site becoming an outpatient extension clinic of FSLH.
- Transfer most inpatient beds and most outpatient services from FSLH to the new campus. The FSLH campus will retain 24 inpatient physical medicine and rehabilitation beds, as well as some outpatient services.
- All extension clinics of SEMC will become extension clinics of FSLH, under Operating Certificate #3202003H.

Ms. Colleen Leonard
April 6, 2023
Page 2

Project No. 172305-C is currently nearing the end of construction, and the applicant believes it is important to implement the presently requested changes to the legal documents to occur concurrent with the opening of the new hospital campus on October 1, 2023. This request is being submitted as part of an agreement between the hospitals that memorializes the above-noted changes and also transfers operationally necessary assets from SEMC to FSLH, which will do business as Wynn Hospital. A separate request for the SEMC changes is being concurrently submitted to you under a separate cover letter. Mohawk Valley Health System will remain the sole member of MVHS, Inc.

In furtherance of this specific request, please find the following documents:

1. Attachment No. 1 – Proposed Certificate of Amendment of the Certificate of Incorporation of FSLH;
2. Attachment No. 2 – Proposed Amendment to Existing Bylaws – FSLH and Existing Bylaws – FSLH;
3. Attachment No. 3 – Board Resolution authorizing the name change – Mohawk Valley Health System; and
4. Attachment No. 4 – Board Resolution authorizing the name change – FSLH.

Please feel free to call me if you require other information. Thank you for your consideration in this matter.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Mr. Louis Aiello, Senior Vice President, Chief Financial Officer, Mohawk Valley Health System

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FAXTON-ST. LUKE'S HEALTHCARE**

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the Corporation is: Faxton-St. Luke's Healthcare.

SECOND: The Certificate of Incorporation was filed by the Department of State on December 23, 1999.

9. A Restated Certificate of Incorporation was filed by the Department of State on March 6, 2014.

FOURTH: The Corporation was formed under the Not-for-Profit Corporation Law.

FIFTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

SIXTH: The Certificate of Incorporation is amended as follows:

A. Paragraph 1 of the Certificate of Incorporation is hereby amended to change the Corporation's name. The full text of the amended Paragraph is:

"The name of the corporation is: MVHS, Inc. (herein, the "Corporation" or the "Hospital")."

B. Subparagraph (f) to Paragraph 3 of the Certificate of Incorporation, relating to the establishment of Mohawk Valley Heart Institute, Inc. is deleted in its entirety.

C. Subparagraph (p) to Paragraph 4 of the Certificate of Incorporation, relating to the reservation of powers to the sole corporate member, is amended to reflect the amended name of an affiliate. The full text of the amended Subparagraph is:

"p. To accept further delegations of authority on behalf of the Hospital pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Hospital and other Mohawk Valley Health System affiliates, the authority to accept, utilize, transfer and share in the assets, revenues and income of the affiliates and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of such affiliate(s) pursuant to any master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings. Notwithstanding the foregoing, any and all proceeds from services performed at the Hospital which are proscribed by the Ethical and Religious Directives for Catholic

Healthcare Services (herein, the "ERDs") shall not be transferred to or used for the benefit of Mohawk Valley Health System, St. Elizabeth Community Health Support ("SECHS"), *formerly known as* St. Elizabeth Medical Center, or any affiliate of SECHS and neither Mohawk Valley Health System nor SECHS shall provide or support such services maintained by the Hospital or any Affiliate or subsidiary of the Hospital.

For the purposes of the foregoing, Mohawk Valley Health System shall have: (i) the power to initiate and direct action by the Hospital without a prior recommendation of the Hospital's board of directors; and (ii) the power to accept, reject or modify the recommendation of the Hospital's board of directors and to direct action by the Hospital or to return the matter to the board of directors of the Hospital for reconsideration, with reasons for rejection and/or suggested change. The board of directors and officers of the Hospital shall not implement any action requiring the approval of Mohawk Valley Health System until Mohawk Valley Health System shall have exercised its reserve powers and communicated its determinations in writing to the Hospital's board of directors."

SIXTH: This Certificate of Amendment to the Corporation's Certificate of Incorporation was authorized by a vote of the sole member of the Corporation.

SEVENTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:

MVHS, Inc.
111 Hospital Drive
Utica, NY 13502

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Amendment this 23 day of March, 2023, and hereby affirms that the statements contained herein are true under penalties of perjury.



Darlene Stromstad
President & Chief Executive Officer

FILING RECEIPT

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ENTITY NAME: FAXTON-ST. LUKE'S HEALTHCARE

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROVISIONS RESTATED

COUNTY: ONEI

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FILED:03/06/2014 DURATION:***** CASH#:140306000869 FILM #:140306000802

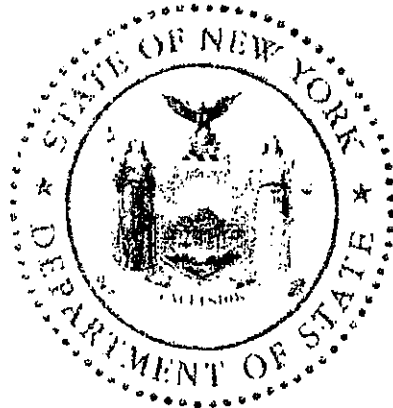
FILER:

HARRIS BEACH PLLC
99 GARNSEY ROAD

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

REGISTERED AGENT:



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**RESTATED CERTIFICATE OF INCORPORATION
OF
FAXTON-ST. LUKE'S HEALTHCARE**

Pursuant to Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the President of Faxton-St. Luke's Healthcare, certifies:

1. The name of the corporation is: **Faxton-St. Luke's Healthcare.**
2. The corporation's Certificate was filed by the Department of State on the 23rd day of December, 1999, pursuant to the New York Not-for-Profit Corporation Law.
3. The corporation's Certificate of Incorporation is hereby amended to effectuate the following:
 - A. To delegate and reserve to the Corporation's sole corporate member, Mohawk Valley Health System ("MVHS") certain rights and powers as set forth in Paragraph 4 of this Restated Certificate of Incorporation.
4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as herein set forth in full:

1. The name of the corporation is: **FAXTON-ST. LUKE'S HEALTHCARE** (herein, the "Corporation" or the "Hospital").
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
3. The purposes and objects of the Corporation shall be as follows:
 - a. to establish, operate and maintain a general hospital and comprehensive health care facilities and systems whose purposes may include, but not be limited to, a full range of inpatient services, outpatient services, emergency department services, medical and dental services, residential health care facility services, end stage renal dialysis services, and such other services, facilities and equipment as shall be desirable in meeting the health care needs of the community, to be located at one or more sites.
 - b. to carry on educational activities, scientific research and other health related activities and programs incident to the purposes set forth above.
 - c. to solicit funds for the above purposes.
 - d. to pursue, enhance and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be

established, operated and maintained in accordance with all approvals required by applicable law.

e. this Corporation is organized exclusively for charitable, scientific and educational purposes as a not-for-profit corporation. Upon dissolution of the Corporation, and after payment of all just debts and liabilities, all remaining assets shall be distributed to MVHS and/or the not-for-profit corporate affiliates of MVHS, provided that they shall then qualify under Code Section 501(c)(3) or corresponding provisions of any future United States Internal Revenue law. If neither MVHS nor any of its not-for-profit corporate affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organizations enjoying exempt status under Section 501(c)(3) of the Internal Revenue Code, of 1986, as amended, or successor provisions, pursuant to a plan of dissolution authorized in accordance with the laws of the State of New York. The Corporation shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise.

f. pursuant to the establishment of the Mohawk Valley Heart Institute, Inc. under Article 28 of the Public Health Law, the Corporation hereby delegates to Mohawk Valley Heart Institute, Inc.:

- i. Joint operational decision making authority and responsibility with Faxton-St. Luke's Healthcare over such services for which a joint operating certificate will be issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and Faxton-St. Luke's Healthcare.
- ii. Notwithstanding the foregoing, Faxton-St. Luke's Healthcare retains control over and does not delegate to Mohawk Valley Heart Institute, Inc. authority and responsibility for all other services, operations and clinical programs for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.

4. The Corporation does delegate and reserve to Mohawk Valley Health System ("MVHS") certain powers. Without limiting the foregoing, the following powers are reserved and delegated to the Board of Directors of MVHS:

- a. To approve and interpret the statement of mission and philosophy adopted by the Hospital, to require that the Hospital operate in conformance with its mission and philosophy and that the Hospital coordinate its mission, vision, activities and resources with the other Affiliates of MVHS in order to promote high quality, efficient and effective health care services in Oneida County, New York, and surrounding areas.

- b. To elect or appoint, fix the number of, and remove, with or without cause, the directors of the Hospital, and to appoint and remove, with or without cause, the President/Chief Executive Officer of the Hospital. Notwithstanding the foregoing, the Board of the Corporation shall be entitled to appoint and remove, with or without cause, one (1) additional director to the Board of the Corporation who does not currently serve on the MVHS Board.
- c. To amend or repeal the Certificate of Incorporation and Bylaws, and to adopt any new or restated Certificate of Incorporation, and Bylaws of the Hospital;
- d. To approve any plan of merger, consolidation, dissolution or liquidation of the Hospital;
- e. To approve the debt of the Hospital in excess of an amount to be fixed from time to time by MVHS;
- f. To approve the sale, acquisition, lease, transfer, mortgage, guarantee or pledge of real or personal property of the Hospital in excess of an amount to be fixed from time to time by MVHS.
- g. To approve the capital and operating budgets of the Hospital;
- h. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to the Hospital;
- i. To approve any corporate reorganization of the Hospital and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Hospital with the other MVHS Affiliates, including but not limited to subsidiary corporations, partnerships, or joint ventures of the Affiliates;
- j. To approve and coordinate the strategic plan of the Hospital;
- k. To approve all contracts of reimbursement for the Hospital from governmental or private third party insurers;
- l. To approve all applications of the Hospital to federal or state governmental agencies for establishment or operating licensure, including but not limited to Certificate of Need applications to the New York State Department of Health, as required;
- m. To approve management contracts for the Hospital subject to approval and/or regulation under the laws and regulations of the State of New York;

n. To approve any material change in the services offered by the Hospital;

o. To require the Hospital to participate in any and all programs and services, as determined by MVHS in its discretion, provided, however, that MVHS may not require the Hospital to participate in any program or service or take any action that would constitute a default or event of default under any mortgage, indenture or other material agreement or instrument to which the Hospital is a party and by which it is bound; and

p. To accept further delegations of authority on behalf of the Hospital pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Hospital and other MVHS affiliates, the authority to accept, utilize, transfer and share in the assets, revenues and income of the affiliates and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of such affiliate(s) pursuant to any master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings.

Notwithstanding the foregoing, any and all proceeds from services performed at the Hospital which are proscribed by the Ethical and Religious Directives for Catholic Healthcare Services (herein, the "ERDs") shall not be transferred to or used for the benefit of MVHS, St. Elizabeth Medical Center ("SEMC") or any affiliate of SEMC and neither MVHS nor SEMC shall provide or support such services maintained by the Hospital or any Affiliate or subsidiary of the Hospital.

For the purposes of the foregoing, MVHS shall have: (i) the power to initiate and direct action by the Hospital without a prior recommendation of the Hospital's board of directors; and (ii) the power to accept, reject or modify the recommendation of the Hospital's board of directors and to direct action by the Hospital or to return the matter to the board of directors of the Hospital for reconsideration, with reasons for rejection and/or suggested change. The board of directors and officers of the Hospital shall not implement any action requiring the approval of MVHS until MVHS shall have exercised its reserve powers and communicated its determinations in writing to the Hospital's board of directors.

5. The Corporation is not organized for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributable to, or inure to the benefit of its members, directors or officers, except to the extent permitted under the Not-for-Profit Corporation Law.

6. The Corporation shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

7. The office of the Corporation is to be in the County of Oneida, State of New York.

8. The duration of the Corporation is to be perpetual.

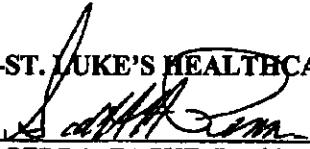
9. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is: *P.O. Box 479, Utica, NY 13503-0479.*

5. This Restated Certificate of Incorporation was authorized by a vote of the sole member of the Corporation.

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IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 20th day of January, 2014, and hereby affirms that the statements contained herein are true under the penalties of perjury.

FAXTON-ST. LUKE'S HEALTHCARE



SCOTT H. PERRA, FACHE, President

**AMENDMENT NUMBER 1
TO THE
BY-LAWS OF
FAXTON-ST. LUKE'S HEALTHCARE**

The Bylaws of Faxton-St. Luke's Healthcare (the "Bylaws"), as approved on April 26, 2018 and revised from time to time thereafter, are hereby amended as follows, effective _____, 2023:

1. Article One of the Bylaws ("Name"), Section 1.1 is amended in its entirety to read as follows:

"1.1 NAME

The name of the Corporation is MVHS, Inc. (herein the "Corporation" or the "Hospital")."

2. Subparagraph e of Section 2.2, Article Two of the Bylaws ("Offices, Purposes and Powers"), related to the establishment of the Mohawk Valley Heart Institute, Inc., is deleted in its entirety.

3. Effective the date of the filing by the Department of State of the Certificate of Amendment of the Certificate of Incorporation of Faxton-St. Luke's Healthcare changing its name to "MVHS, Inc.", all references in the Bylaws to "Faxton-St. Luke's Healthcare" and "FSLH" shall refer to "MVHS, Inc."

4. Effective the date of the filing by the Department of State of the Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center changing its name to "St. Elizabeth Community Health Support", all references in the Bylaws to "St. Elizabeth Medical Center" and "SEMC" shall refer to "St. Elizabeth Community Health Support" and "SECHS", respectively.

CERTIFICATION

IN WITNESS WHEREOF, the undersigned certifies that this Amendment Number 1 has been duly adopted by the sole member of the Board of Directors of the Corporation on the date reflected below.

Approved at a duly called meeting
of the Board of Directors held on:

_____, 2023

Secretary, [INSERT NAME]

Dated: _____

**BY-LAWS
of
FAXTON-ST. LUKE'S HEALTHCARE**

**ARTICLE ONE
NAME**

1.1 NAME

The name of the Corporation is Faxton-St. Luke's Healthcare (herein the Corporation or the Hospital).

**ARTICLE TWO
OFFICES, PURPOSES AND POWERS**

2.1 OFFICES

The principal office of the Corporation shall be located in New York State ("the State"). The Corporation shall have and continuously maintain in the State a registered office and a registered agent whose office shall be identical with the registered office, and may have such other offices as the Board may determine from time to time.

2.2 PURPOSES AND POWERS

The Corporation shall have the following purposes and powers:

- a. To establish, operate and maintain a general hospital and comprehensive health care facilities and systems at one or more sites, whose purposes may include, but not be limited to, the provision of a full range of inpatient and outpatient services, residential health care facilities, and other health related services and facilities. Each such service or facility shall be established and operated in accordance with all approvals required by the Public Health Law or other law of the State, and all approvals required from any other body having jurisdiction over the Corporation's activities.
- b. To carry on educational activities, scientific research and other health related activities or programs incident to the purposes set forth above.

-
- c. To solicit funds for the above purposes.
 - d. To pursue, enhance, and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be established, operated and maintained in accordance with all approvals required by applicable law.
 - e. Pursuant to the establishment of the Mohawk Valley Heart Institute, Inc., under Article 28 of the Public Health Law, the Corporation hereby delegates to the Mohawk Valley Heart Institute, Inc.:
 - i. Joint operational decision making authority and responsibility with the Corporation over such services for which a joint operating certificate is issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and the Corporation.
 - ii. Notwithstanding the foregoing, the Corporation retains control over and does not delegate to Mohawk Valley Heart Institute, Inc., authority and responsibility for all other services, operations, and clinical programs, for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.
 - f. Faxton-St. Luke`s Healthcare is the sole Member of the Faxton-St. Luke`s Healthcare Foundation.

ARTICLE THREE MEMBERSHIP

3.1 COMPOSITION

Mohawk Valley Health System (“MVHS” or “Member”) shall be the sole member of the Corporation.

3.2 RIGHTS OF MEMBER

MVHS shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York or the Certificate of Consolidation or By-laws of the Corporation. Certain additional powers have been delegated and reserved to MVHS in the MVHS organizational documents. Without limiting the foregoing, the following powers are reserved and delegated to the Board of Directors of MVHS:

- a. To approve and interpret the statement of mission and philosophy adopted by the Hospital, to require that the Hospital operate in conformance with its mission and philosophy and that the Hospital coordinate its mission, vision, activities and resources with the other Affiliates of MVHS in order to promote high quality, efficient and effective health care services in Oneida County, New York, and surrounding areas.
- b. To elect or appoint, fix the number of, and remove, with or without cause, the directors of the Hospital, and to appoint and remove, with or without cause, the President/Chief Executive Officer of the Hospital.
- c. To amend or repeal the Certificate of Consolidation and Bylaws, and to adopt any new or restated Certificate of Consolidation, and Bylaws of the Hospital;
- d. To approve any plan of merger, consolidation, dissolution or liquidation of the Hospital;
- e. To approve the debt of the Hospital in excess of an amount to be fixed from time to time by MVHS;
- f. To approve the sale, acquisition, lease, transfer, mortgage, guarantee or pledge of real or personal property of the Hospital in excess of an amount to be fixed from time to time by MVHS.
- g. To approve the capital and operating budgets of the Hospital;
- h. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to the Hospital;

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- i. To approve any corporate reorganization of the Hospital and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Hospital with the other MVHS Affiliates, including but not limited to subsidiary corporations, partnerships, or joint ventures of the Affiliates;
 - j. To approve and coordinate the strategic plan of the Hospital;
 - k. To approve all contracts of reimbursement for the Hospital from governmental or private third party insurers;
 - l. To approve all applications of the Hospital to federal or state governmental agencies for establishment or operating licensure, including but not limited to Certificate of Need applications to the New York State Department of Health, as required;
 - m. To approve management contracts for the Hospital subject to approval and/or regulation under the laws and regulations of the State of New York;
 - n. To approve any material change in the services offered by the Hospital;
 - o. To require the Hospital to participate in any and all programs and services, as determined by MVHS in its discretion, provided, however, that MVHS may not require the Hospital to participate in any program or service or take any action that would constitute a default or event of default under any mortgage, indenture or other material agreement or instrument to which the Hospital is a party and by which it is bound; and
 - p. To accept further delegations of authority on behalf of the Hospital pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Hospital and other MVHS Affiliates, the authority to accept, utilize, transfer and share in the assets, revenues and income of the Affiliates and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of such Affiliate(s) pursuant to any

master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings. Notwithstanding the foregoing, any and all proceeds from services performed at the Hospital which are proscribed by the Ethical and Religious Directives for Catholic Healthcare Services (herein, the “ERDs”) shall not be transferred to or used for the benefit of MVHS, St. Elizabeth Medical Center (“SEMC”) or any affiliate of SEMC and neither MVHS nor SEMC shall provide or support such services maintained by the Hospital or any Affiliate or subsidiary of the Hospital.

For the purposes of the foregoing, MVHS shall have: (i) the power to initiate and direct action by the Hospital without a prior recommendation of the Hospital’s board of directors; and (ii) the power to accept, reject or modify the recommendation of the Hospital’s board of directors and to direct action by the Hospital or to return the matter to the board of directors of the Hospital for reconsideration, with reasons for rejection and/or suggested change. The board of directors and officers of the Hospital shall not implement any action requiring the approval of MVHS until MVHS shall have exercised its reserve powers and communicated its determinations in writing to the Hospital’s board of directors.

3.3 ANNUAL MEETING

MVHS shall, in its capacity as the member of the Corporation, hold its annual meeting each year at a time and place determined by MVHS. At the annual meeting, MVHS shall elect Directors of the Corporation, receive the annual report of the Directors of the Corporation, and transact such other business as may properly come before the meeting. Nomination for seats on the Board of Directors of the Corporation shall be submitted to MVHS prior to MVHS’ annual meeting.

3.4 ANNUAL REPORT TO MEMBER

At the annual meeting of the member, the Chairperson or President, and the Treasurer of the Corporation shall present an Annual Report showing in appropriate detail the following information:

(a) a complete verified financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(b) a summary of the activities of the Corporation during the preceding year.

The Annual Report shall be filed with the minutes of the annual meeting.

3.5 ACTION BY MEMBER

Except as otherwise required by law, the Certificate of Consolidation or these By-laws, any action required or permitted to be taken by MVHS in its capacity as the sole member of the Corporation may be taken by MVHS without a meeting, without prior notice and without a vote, through written consent to such action. The written consent of MVHS shall be evidenced by a written resolution of the Board of Directors of MVHS signed by an officer of MVHS and adopted in accordance with the MVHS Certificate of Incorporation, By-laws, policies and/or procedures. An original signed copy of each executed written consent of MVHS shall be delivered to the Secretary of the Corporation and shall be maintained in the permanent records of the Corporation.

ARTICLE FOUR BOARD OF DIRECTORS

4.1 NUMBER

The Board of Directors shall consist of not less than nine (9) voting directors.

4.2 QUALIFICATION

Directors shall be selected for their experience, expertise and skills; their ability and willingness to devote time and effort to fulfilling the Board's responsibilities; their

commitment to the community and the health care needs of its residents; and their personal and professional ethics and values.

4.3 ELECTION AND TENURE

(a) Composition of Board of Directors. The board shall be comprised of no fewer than nine (9) Voting Directors. MVHS shall appoint all but two (2) voting directors (the “Elected Directors”). The remaining two (2) Directors shall be the president and vice president of the medical staff who shall serve ex-officio as Voting Directors.

(b) Election and Terms of Office.

Elected Directors of the Board shall be nominated by the Governance Affairs Committee of MVHS and shall be elected by a simple majority of the MVHS Board. The MVHS Board shall not be bound or limited to such nominees. An Elected Director shall serve for a term of four (4) years or until his or her successor shall have been elected. No Elected Director may serve more than three (3) consecutive, full, four year terms.

(c) Reappointment. Director reappointment is neither automatic nor guaranteed. The decision will be made on a case by case basis after a thorough assessment of the Director’s performance and contribution, his or her commitment to correct any deficiencies, and Board and organizational need.

(d) Non-Elected Directors. The president and vice president of the medical staff shall serve as Directors of the Corporation, coterminous with holding their respective positions. The President/CEO appointed by the Board shall serve as a Director of the Corporation, coterminous with holding his/her position.

4.4 VACANCIES

Vacancies on the Board due to the expiration of term, removal, resignation, death, or incapacity of a Director, or due to an increase in the number of Board seats, or any other cause, shall be filled by a simple majority vote of the Board of MVHS. Nominees shall be presented by the Governance Affairs Committee of MVHS, but the MVHS Board shall not be bound or limited to such nominees. Directors selected to fill vacancies shall serve the remainder of the term of the Director whose seat has been vacated or until a successor has been elected.

4.5 REMOVAL

Each member of the Board of Directors shall be required to attend at least 75% of all meetings of the Board, any Committees on which he or she serves, and Board Continuing Education Programs. Any Director who fails to maintain sufficient attendance, without good cause acceptable to the Board, may be dismissed from the Board of Directors by a vote of two-thirds of the MVHS Directors. In addition, the Board of MVHS may remove any Director, with or without cause, upon a two-thirds (2/3) vote of the Board.

4.6 RESIGNATION/LEAVE OF ABSENCE.

(a) Resignation. Any Director may resign at any time by giving written notice to the Chairperson or to the Secretary of the Corporation. Such resignation shall take effect on the date of receipt thereof or at such later time as may be specified therein.

(b) Leave of Absence. Any Director may request a Leave of Absence of up to three (3) months for medical reasons relating to the Director, or a member of the Director's immediate family ("Leave"). The request shall be made in writing to the Chairperson who may grant the Leave on such terms as determined by the Chairperson after consultation with the Director. If the Chairperson requests a Leave, the request shall be made to the Vice Chairperson who shall, for the duration of the Leave, exercise all powers of the Chairperson as set forth herein.

While on Leave, the Director shall be excused from any attendance requirements and all other obligations of a Director as set forth in these Bylaws. The Director's Board position shall remain vacant during the term of the Leave, and the Director's position shall not be counted in determining the presence of a quorum.

If the Director on Leave is a Board Officer other than the Chairperson, the Office shall be temporarily filled, for the duration of the Leave, by a majority vote of the MVHS Directors at the next regular meeting of MVHS, or at a special meeting called for such purpose. Any committee positions held by the Director may be temporarily filled for the duration of the Leave, at the discretion of the Chairperson.

As circumstances warrant, the Director may request an extension of the initial Leave for an additional period not to exceed three (3) months. Such request may be granted or denied by the Chairperson as set forth above.

4.7 ADDITIONAL ADVISORS

The Board or the Chairperson of the Board may invite additional individuals with expertise in a pertinent area to meet with and assist the Board. Such advisors shall not vote or be counted in determining the existence of a quorum and may be excluded from any session of the Board by majority vote of the Directors present.

4.8 MEETINGS OF DIRECTORS

(a) Annual Meeting The Board of Directors shall hold an annual meeting each year in the month of April or May for the purposes of organizing itself, selecting members of the Board Committees when appropriate, and conducting such other business as may come before the meeting. At each annual meeting, the Board shall assess its own performance and take such action or make such recommendations as are warranted.

(b) Regular Meetings The Board of Directors shall hold at least nine (9) regular meetings annually.

(c) Special Meetings Special meetings of the Board may be called by the Chairperson, the Chief Executive Officer or upon the written request of three (3) Directors. No business shall be conducted at a special meeting other than that stated in the notice of the meeting.

(d) Place All meetings of the Board shall be held at the principal office of the Corporation or at such other place within this State as the Notice of Meeting shall provide.

(e) Notice Written notice of the time and place of the annual and regular meetings of the Board shall be given to each Director personally by first class mail, by facsimile or, by e-mail or other communications device, not less than five (5) days before such meeting. Notice of the time, place and purposes of special meetings of the Board shall be served as set forth herein at least two (2) days before the date of such special meeting. In the case of a special meeting or when required by law or these Bylaws, the notice shall also state the purpose for which the meeting is called. Oral or written notice of the postponement of any scheduled regular meeting shall be given to each Director not less than one (1) day before the scheduled date of such meeting.

(f) Adjournment When a meeting is adjourned, it is not necessary to give any notice of the adjourned meeting or the business to be transacted at any adjourned

meeting other than by motion adopted at the meeting at which such adjournment is taken and included in the minutes.

(g) Quorum Unless a greater or lesser number is required by law, the Certificate of Consolidation or these By-laws, a majority of the Directors entitled to vote constitutes a quorum for the transaction of business at any meeting of the Board. If a quorum is not present at any meeting, a majority of the Directors present may adjourn the meeting to a new date. Notice of such date shall be provided to Board members as required in Section 4.8(e). Vacant Director positions, which shall include those temporarily vacant due to a granted Leave, will not count toward the number of Directors needed for purposes of a Quorum.

(h) Voting Subject to the Conflict of Interest provisions of these By-laws, and the Board's Conflict of Interest policies, each voting Director present is entitled to vote on any matter before the Board.

(i) Manner of Acting Unless otherwise required by law, the Certificate of Consolidation or these By-laws, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. Any action required or permitted to be taken by the Board may be taken without a meeting by the consent in writing of all Directors entitled to vote. Such written consent(s) shall be filed with the minutes of the Board.

(j) Meeting by Conference Telephone or Similar Device Personal attendance at meetings is encouraged. Nevertheless, in appropriate circumstances any one or more members of the Board may participate in a meeting of the Board by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

4.9 POWERS AND FIDUCIARY OBLIGATIONS

(a) Powers Except to the extent that powers have been delegated and reserved to MVHS under these Bylaws, the administrative powers of the Corporation shall be vested in the Board of Directors, which shall have: charge, control, and oversight of the property, funds, and affairs of the Corporation; the power to establish policies for the management and operation of the Corporation; and such other power and authority to do

and perform all acts and functions for the benefit of the Corporation, not inconsistent with these By-laws or the Certificate of Consolidation. The Board of Directors shall further have the power to appoint standing committees as hereinafter set forth and such other committees as from time to time shall be deemed advisable.

(b) Fiduciary Obligations The members of the Board of Directors shall at all times conduct the affairs of the Corporation in strict conformance with all applicable fiduciary and ethical standards. Each Director shall act in a manner consistent with the duty of undivided loyalty to the interests of the Corporation, the duty to maintain in confidence information concerning the affairs of the Corporation, the duty to avoid actual or apparent conflicts of interest, and the duty to maintain and advance the charitable purposes of the Corporation. The Board shall adopt such mechanisms as it deems appropriate to assist the Directors in fulfilling these obligations. Without limiting the foregoing, the Board shall adopt, review and amend as appropriate, a Board Conflicts of Interest Policy to provide a formal mechanism for identifying and treating actual and apparent conflicts; and mechanisms to ensure corporate compliance with laws, rules and regulations relating to the business of the Corporation.

ARTICLE FIVE OFFICERS

5.1 OFFICERS

The Corporation shall have a Chairperson and Vice-Chairperson of the Board, a Secretary, and a Treasurer, and such other officers as the Board of Directors may authorize. The Corporation shall also have a President/Chief Executive Officer, who shall be a voting member of the Board. All officers (with the exception of the President/CEO) shall be elected by MVHS at the annual meeting of MVHS and shall hold office until the corresponding meeting in the next year or until a successor shall have been duly elected and qualified. Any vacancy in any of the above offices shall be filled for the unexpired portion of the term by the Board of Directors of MVHS at any regular meeting or any special meeting called for such purpose.

5.2 CHAIRPERSON

The Chairperson shall preside at all meetings of the Board of Directors, shall appoint the members and Chairperson of each Committee in accordance with these By-laws and with the approval of the Board, and shall, except as otherwise stated herein, be an ex officio member of all Committees. The Chairperson may serve no more than two consecutive terms in that office, regardless of the length of such terms. The Chairperson shall be eligible for additional terms as Chairperson following his or her absence from such office for a period of at least one year.

5.3 VICE-CHAIRPERSON

In the absence or inability to act of the Chairperson, or if the office of Chairperson is vacant, the Vice-Chairperson may exercise all the powers of the Chairperson. The Vice-Chairperson shall have such further power and shall perform such other duties on behalf of the Corporation as may be authorized by order of the Board of Directors.

5.4 CHAIR EMERITUS.

Upon completion of her or his term as Chairperson of the Board, the Chairperson shall hold the office of Chair Emeritus. The Chair Emeritus shall serve as an advisor to the Chairperson and perform such other duties as set forth in these Bylaws. The Chair Emeritus shall serve in that office until the succeeding Chairperson leaves office and assumes the role of Chair Emeritus.

5.5 SECRETARY

The Secretary shall act as Secretary of both the Corporation and the Board of Directors and shall be responsible for maintaining, or causing to be maintained, copies of the Resolutions of the Corporation and keeping the minutes of the meetings of the Board of Directors. The Minutes shall reflect all business conducted, including the Board's findings, conclusions, and recommendations. The Secretary shall be responsible for the giving and serving of all notices of meetings of the Board and shall be the custodian of the Corporate records.

5.6 TREASURER

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Corporation except as expressly provided otherwise, and shall deposit the same or cause the same to be deposited in the name of the Corporation in such bank or

banks, trust company or trust companies, and in such safe deposit company or safe deposit companies as the Board of Directors, or any committee designated and vested with such power by the Board of Directors, may designate; shall keep or cause to be kept full and accurate accounts of all receipts and disbursements of the Corporation and, whenever required by the Board of Directors shall render, or cause to be rendered, financial statements of the Corporation. The Treasurer shall prepare, execute and file, or cause to be prepared, executed and filed, any annual report or statement which may be required by law.

5.7 PRESIDENT

MVHS shall appoint a qualified hospital administrator to serve as the President and as the Chief Executive Officer of the Corporation. The President/CEO shall be the Board's direct executive representative in the management of the Corporation. The President/CEO shall have the necessary authority and shall be responsible for management of the Corporation, subject only to the policies and directives of the Board and any of its committees to which the Board has delegated power for such action. The President/CEO shall be a voting member of the Board and all Board Committees. The President/CEO shall act as the duly authorized representative of the Board of Directors in all matters except those for which the Board has designated some other individual to act.

ARTICLE SIX COMMITTEES OF THE BOARD OF DIRECTORS

6.1 STRUCTURE

There shall be eight (8) Standing Committees of the Board: Executive Committee, Finance Committee, Quality and Patient Safety Committee, Governance Affairs Committee, Executive Compensation Committee, Investment Committee, Audit Compliance Committee and Pension Committee. The Board may, by resolution, create such other standing or ad hoc committees as it shall, from time to time, deem appropriate. Any ad hoc committees appointed by the Board shall be charged with such specific duties as determined by the Board and shall be disbanded upon completion of such duties.

6.2 PROCEDURE

The Standing Committees of the Board shall conduct their activities in accordance with the following general principles and procedures unless alternative principles or procedures are adopted for any individual committee in these By-Laws or in a Resolution of the Board of Directors.

6.3 POWERS

Each Board Committee shall have and exercise only such Board delegated powers and authority as are granted to it in these By-Laws, or in a Resolution adopted by the Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Board. Except as otherwise set forth herein, actions and recommendations of a Committee shall be subject to Board approval. Each Committee shall prepare a meeting calendar and an annual work plan setting forth its goals and objectives, which shall be submitted to the Board for its approval at its first meeting of each fiscal year. The performance of each Committee shall be reviewed annually at the last meeting of the Board prior to its annual meeting.

6.4 COMMITTEE MEMBERS

- (a) Appointment. Except to the extent that membership on a Committee is determined herein, the Chairperson of the Board shall recommend, for Board approval at its annual meeting, the appointment of all Committee members and Committee Chairpersons after consulting with the Governance Affairs Committee. To the extent practicable, and except for those Committee assignments which are coterminous by position, every effort will be made to have Committee appointments rotated at least every three (3) years among the members of the Board so as to promote experience and knowledge in all aspects of the operation of the Corporation.
- (b) Tenure. Each member of a Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected, unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.

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- (c) Resignation. Any member of a Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation takes effect on the date of receipt, or at such later time as may be specified therein.
- (d) Removal. Any member of a Board Committee may be removed at any time, with or without cause, by a resolution adopted by a majority of the Board of Directors. Any member of a Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.
- (e) Vacancies. Any vacancy on any Board Committee resulting from resignation, removal or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the Chairperson of the Board, subject to the approval of the Board.

6.5 ADVISORS TO BOARD COMMITTEES

The Chairperson of the Board, after consultation with the Chairperson of any Board Committee, may invite additional individuals with expertise in a pertinent area to meet with and assist the Board Committee as advisors to the Committee. Such advisors shall not vote or be counted in determining the existence of a quorum and may be excluded from any executive session of the Committee by a majority vote of the Committee members present. Advisors need not be Directors.

As deemed appropriate by the Committee Chair, members of the Corporation's administrative staff shall be required to attend Committee meetings to provide information and support to the members of the committee. Such administrative staff shall not vote or be counted in determining the existence of a quorum and may be excluded from any session of the Committee by the Chairperson of the Committee.

6.6 MANNER OF ACTION

(a) Meetings. Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Board Committee shall be called by the Chairperson of the Board, the Chairperson of the

Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Board Committee shall be given, except in an emergency, at least 72 hours prior to the meeting.

(b) Agenda/Minutes. There shall be an agenda prepared for Committee meetings and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Board of Directors when requested or as required.

(c) Quorum. A majority of the voting members of a Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

(d) Action. The act of a majority of the members of a Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members file written consents to a resolution authorizing the action.

(e) Meeting by Conference Telephone or Similar Device. Personal attendance at meetings is encouraged. Nevertheless, in appropriate circumstances, any one or more members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other. Participation by this means shall constitute actual presence at the meeting.

6.7 CONFLICT OF INTEREST

Any Committee exercising Board delegated power or authority shall comply with the Conflict of Interest policies and procedures established by the Board of Directors.

6.8 EXECUTIVE COMMITTEE

(a) Composition

The Executive Committee shall be composed of the Chairperson of the Board, the Vice Chairperson, Secretary, Treasurer, President and Vice President of the Medical Staff, the President/CEO and the Chairperson Emeritus.

(b) Functions

When the Board is not in session, the Executive Committee shall have and exercise the powers and authority of the Board to transact all regular business of the Corporation, subject to any prior limitations imposed by the Board, these By-Laws, or statute. In addition, the Executive Committee shall:

- (1) Oversee the development of labor relations and negotiation strategy and recommend to the Board approval of collective bargaining agreements.
- (2) Review and recommend to the Board, with the assistance of counsel, policies and guidelines for financial transactions with physicians, including physician recruitment, employment or other agreements with the Corporation.
- (3) Review and recommend to the Board, legislative and regulatory affairs initiatives.

(c) Meetings

The Executive Committee shall meet as necessary to conduct the business of the Corporation while the full Board is not in session.

6.9 FINANCE

(a) Composition

The Finance Committee shall consist of the Treasurer of the Corporation and at least five (5) voting Directors, at least one of whom shall have substantial accounting or financial management expertise.

(b) Functions

The Finance Committee shall have general oversight responsibility for the fiscal affairs of the Corporation and shall develop and recommend for Board approval, policies and procedures which will enable the Board to provide appropriate direction and oversight of the financial affairs of the Corporation and its subsidiaries. Its functions shall include:

- (1) Overseeing the President's development of a budget for the Corporation showing the expected receipts, income and expense for the ensuing year;

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- (2) Recommending for adoption by the Board a budget developed by the President for the ensuing year;
 - (3) Reviewing financial reports that report on the financial condition of the Corporation;
 - (4) Reviewing and making recommendations to the Board on any request by the President for the Corporation to enter into any substantial transaction or incur a significant increase in debt according to standards established by the Board;
 - (5) Retaining the Corporation's independent Certified Public Accountants to provide external financial auditing to the Corporation. This shall include, but not be limited to:
 - a. having unfettered communication with the firm, receiving reports directly from the firm regarding the audit, receiving observations from the firm regarding management and the firm's assessment of management's internal financial control system.
 - b. resolving any disputes between the firm and management and reviewing and responding to any major changes to critical accounting policies and practices.
 - c. reviewing all of the services provided by the firm, including reviewing who is principally leading the audit; what the character of the relationship is between the Corporation and the firm so that changes can be made if necessary; and assuring the firm's independence.
 - d. reviewing financial statements audited by the firm.

The duties enumerated above will be performed only by "independent directors", as defined in Section 102 of the New York State Not-for-Profit Corporation Law.

Committee Directors who are not "independent directors" may not participate in or vote on (other than to provide information or answer questions) any of the duties outlined in this Section 7.9(b)(5).

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- (6) Review and develop policies concerning insurance and managed care contracting for the Corporation and its subsidiaries.
 - (7) Provide oversight and develop policies to insure the sufficiency of the liability insurance programs of the Corporation and its subsidiaries.
 - (8) Review and make recommendations to the Board as to the Corporation's completion and filing of IRS Form 990 and such other reports or filings as may be required by the Internal Revenue Service.

(c) Meetings

The Finance Committee shall meet as needed, but not less than six (6) times per year.

6.10 QUALITY AND PATIENT SAFETY COMMITTEE

(a) Composition.

The Quality and Patient Safety Committee shall consist of not less than five (5) voting Directors, at least one of whom shall be a physician.

(b) Functions.

The Quality and Patient Safety Committee shall have general oversight responsibility for ensuring the maintenance of a coordinated program which integrates the review activities of the Hospital with the programs of the other MVHS Affiliates for the purpose of enhancing the quality of patient and resident care and identifying and implementing improvement programs as may be required by governmental, licensing or regulatory authorities. The Committee shall specifically:

- (1) Develop and recommend to the Board a policy framework to enable the Board to provide direction and exercise oversight of all quality and service performance at the Hospital, including:
 - (i) Establish the process and format by which quality and service are measured, reported and monitored by the Board and the Committee, including establishing

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- specific indicators of clinical quality and service performance;
- (ii) Develop and recommend policies which define the scope of management authority without specific determination by, or direction from, the Board;
 - (iii) Assess the role and establish mechanisms for the reporting and monitoring of the quality of service provided by the Corporation's subsidiaries and/or third parties providing services to the subsidiaries by contract, and coordinating the provision of services by the Corporation, its subsidiaries and third parties.
- (2) Recommend policies and provide direction for the system's quality improvement plan, including establishing performance improvement priorities based on the mission, vision and strategic goals of the Hospital and its subsidiaries.
 - (3) Oversee regulatory compliance, safety, infection control and such other programs as shall be required to insure continuous accreditation of the Hospital.
 - (4) Review and report to the Board on Department of Health, Office of Mental Health, and other regulatory surveys and findings and any required plans of correction.
 - (5) Review reports or information obtained from Customer Satisfaction Surveys, Performance Improvement Teams, Risk, Safety, Utilization and Case Management Programs, and other executive level data impacting organizational quality performance.
 - (6) Receive and review quality improvement plans and reports and recommendations from the Corporation's subsidiaries concerning quality and performance improvement activities, including reports from any required quality or advisory committees of the subsidiary boards.

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- (7) Assist in the development of Board educational processes regarding quality and service improvement with the assistance and participation of the medical staff and hospital management.

(c) Meetings

The Quality and Patient Safety Committee shall meet at least six (6) times annually, and at such other times as shall be necessary to discharge the obligations and duties of the Committee.

6.11. GOVERNANCE AFFAIRS COMMITTEE

(a) Composition

The Governance Affairs Committee shall consist of not less than five (5) voting Directors, at least one of whom shall be a Board Officer.

(b) Functions

The Governance Affairs Committee shall have general responsibility for developing and recommending policies concerning the organization, functioning and performance of the Boards of the Corporation and its subsidiaries; developing and monitoring a Board education plan; review and amendment of subsidiary Bylaws; and nomination of directors and officers of the Boards of the Corporation's subsidiaries. Its functions shall include:

- (1) Recommend new and/or changes to existing policies regarding Board organization, functioning and performance, including:
 - (i) Conflict of Interest;
 - (ii) Policy based governance;
 - (iii) Fiduciary obligation;
 - (iv) Committee structure and philosophy;
 - (v) Governance operations; and
 - (vi) Officer and committee chairperson position descriptions.
- (2) Review of potential and actual Board discipline issues, including adherence to attendance policy, conflicts of

interest policy, and information disclosure policy and, where appropriate, make recommendations to the Board on disciplinary action.

- (3) Design, initiate and oversee the Board Evaluation Process on an annual and long-term basis.
- (4) Make recommendations to the Board concerning the establishment of criteria and qualifications for service on the Board and/or Committees of the Corporation and its subsidiaries.
- (5) Nominate directors and officers of the Corporation's subsidiary boards.
- (6) Develop an orientation process for new Board and Committee members for the Corporation and its subsidiaries, with the assistance of the Chief Executive Officer.
- (7) Develop an annual Board Education Plan, including internal and external educational opportunities, and identify key healthcare issues to be included in the annual plan.
- (8) Periodically review, and recommend changes to the Bylaws of the Corporation and its subsidiaries to insure compliance with the mission, vision, purpose and structure of the Corporation and its subsidiaries.

(c) Meetings

The Governance Affairs Committee shall meet at least two (2) times per year, and at such other times as shall be necessary to discharge the obligations and duties of the Committee.

6.12 EXECUTIVE COMPENSATION COMMITTEE.

(a) Composition

The Executive Compensation Committee shall be composed of at least five (5) Directors recommended by the Chairperson and approved by the Board. All members of the Executive Compensation Committee shall be "Independent Directors" as that term is defined in Section 4958 of the Internal Revenue Code and supporting regulations. In the

event that the Chairperson is not an “Independent Director”, the Board shall appoint another Independent Director to serve in the place of the Chairperson. The President/CEO may serve as an advisor to the Committee as long as he or she is excused when the Committee is reviewing the CEO’s compensation package.

(b) Functions.

The Executive Compensation Committee is appointed to discharge the duty of the Board to fulfill its oversight responsibility in determining the adequacy and reasonableness of the compensation paid to the President/CEO and other employees or individuals that the Committee believes are in a position to exercise substantial influence over the affairs of the Corporation, or its Affiliates or subsidiaries, all as outlined in Section 4958 of the Internal Revenue Code and supporting Regulations (“Disqualified Persons”). Without limiting the foregoing, the Committee shall:

- (1) Establish, monitor, review and revise, at least annually, performance guidelines for the CEO;
- (2). Assist the board in assessing and evaluating the CEO's performance;
- (3). Review and recommend to the full Board the CEO's compensation, including salary, incentives, benefits and other perquisites;
- (4) Regularly establish, review and monitor succession plans (including emergency succession plans) for all key management personnel;
- (5) At least annually, review executive compensation to ensure that it is appropriate in view of Corporation’s tax-exempt status and take the required steps to establish a “rebuttable presumption of reasonableness” [under I.R.C. Section 4958] of the executive compensation, which may include evaluating:
 - a. the compensation paid by similar organizations, both exempt and taxable, for equivalent positions in the same or similar community or geographic area;
 - b. the uniqueness of the person’s background, education, training, experience, and responsibilities;
 - c. the size and complexity of the Corporation’s income and assets and the number of Corporations employees;
 - d. CEO’s job performance;

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- e. relationship of the CEO's compensation to the compensation paid to Corporation's other employees; and
 - f. the number of hours the CEO spends performing his or her job.

(6) Review and approve the compensation package of the Executive Vice Presidents and Senior Vice Presidents, as recommended by the CEO.

c. Resources of the Committee.

The Committee shall have such resources and authority as it deems appropriate to discharge its duties and responsibilities, including the authority to directly select, engage and supervise any consultant, accountant, legal counsel or other advisor hired by the Corporation to advise the Committee on executive compensation and related matters. In carrying out its responsibilities, the Committee may rely upon reasoned, written opinions of consultants and/or legal counsel.

d. Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

6.13 INVESTMENT COMMITTEE.

(a) Composition

The Investment Committee shall consist of at least at least three (3) Directors, at least one of whom shall have significant experience in financial and/or investment matters.

(b) Functions.

The function of the Investment Committee shall be to establish investment standards and expectations and review and monitor investment performance of the managers of the investments, endowments and other funds of the Corporation, and its subsidiaries. Without limiting the foregoing, the Committee shall:

1. Review and recommend to the Board, the investment policy of the Corporation and its subsidiaries;
2. Review the performance of the investment managers and, as required, recommend changes to the Board;

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3. At least semi-annually report to the Board on the investment activities and performance of the investments of the Corporation and its subsidiaries.

c. Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

6.14 AUDIT AND COMPLIANCE COMMITTEE.

(a) Composition

The Audit and Compliance Committee shall be composed of at least three (3) directors. At least a majority of the directors so appointed shall be “Independent Directors” as defined in Section 4958 of the Internal Revenue Code and supporting regulations.

(b) Functions.

The function of the Audit and Compliance Committee is to provide oversight and to assist the Board of Directors in its oversight responsibilities by overseeing management’s systems of internal auditing and internal controls, and in overseeing the Corporate Compliance activities of the Corporation. Without limiting the foregoing, the Committee shall:

- (1) Select and retain non-financial independent external auditors, as needed.
- (2) Provide input into the Finance Committee’s retention of independent external financial auditors.
- (3) Oversight of internal controls through evaluation of regular management reports.
- (4) Corporate Compliance matters:
 - a. Review the Corporate Compliance Plan on a periodic basis, to consider changes to the plan. Make recommendations to the Board on changes to the plan.
 - b. Serve as a resource to the Compliance Officer and management on compliance issues, and monitors the results of the Compliance Program.

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- c. Review and approve the audit schedule proposed by the Compliance Officer.
 - d. Report to the Board at least semi-annually, regarding the status of the Compliance Plan.

c. Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

6.15 PENSION COMMITTEE

(a) Composition

The Pension Committee shall consist of at least four (4) members.

(b) Functions

The Pension Committee shall perform the following functions:

- (1) Provide the Board of Directors level oversight and administration of the Corporation's employee pension and retirement plans.
- (2) Serve as the Administrator of the Faxton-St. Luke's Healthcare Employees' Retirement Plans.
- (3) Make recommendations to the Board of Directors to approve changes to the Faxton-St. Luke's Healthcare Employees' Retirement Plans Documents and operational systems.
- (4) Review quarterly the financial results of investment manager actions of the Faxton-St. Luke's Healthcare Employees' Retirement Plans. Meet at least annually to review the valuation of the Plans.
- (5) Make recommendations to the Board of Directors after receiving recommendations from management of the Corporation relative to continuation or changes in
 - a. investment managers,
 - b. Plan Trustee, and
 - c. investment policy for investments.
- (6) Review investment policy of Faxton-St. Luke's Healthcare Employees' Retirement Plans to be followed by the Plan Trustee and investment managers for the investments of Faxton-St. Luke's Healthcare Employees' Retirement Plan.

(7) Take all steps that are reasonably possible to advise management and the Board of Directors whenever the Faxton-St. Luke's Healthcare Employees' Retirement Plans fail to meet minimum funding and regulatory requirements as those requirements are applicable to a going concern.

(8) Perform such other duties as designated by the Board of Directors.

(c) Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

ARTICLE SEVEN ADMINISTRATION

7.1 PRESIDENT/CEO

The Board of Directors of MVHS shall select and appoint a competent hospital administrator who shall act as President of the Board, and Chief Executive Officer of the Corporation. The President/CEO shall have such qualifications as are prescribed by the New York State Hospital Code, as may be amended from time to time. The President/CEO shall be given the necessary authority and responsibility to operate the hospital in all its activities and departments, subject only to such policies as may be issued by the Board of Directors or by any of its Committees to which it has delegated power for such action. The President/CEO's performance shall be monitored in an ongoing manner by the Board of Directors and its Committees. The President/CEO shall act as the duly authorized representative of the Board in all matters in which the Board has not formally designated some other person to act.

The daily management and operational affairs of the hospital shall be the responsibility of the President/Chief Executive Officer. Without limiting the foregoing, the authority and responsibility of the President/Chief Executive Officer shall include:

- (a) Aid the Board in the formulation of policies and procedures and carrying out all policies established by the Board.

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- (b) Development of a plan of organization of hospital personnel and other persons concerned with the conduct of the hospital's operation and submission of the plan to the Board for approval.
 - (c) Preparation of an annual budget showing the expected receipts and expenditures of the hospital as required by the Board.
 - (d) Development, submission and implementation, in a timely manner, of all plans to correct operational deficiencies identified by regulatory agencies, and reporting to the Board progress in carrying out plans of correction.
 - (e) Assisting the Board in communication and cooperation with the hospital's Medical Staff.
 - (f) Assisting the hospital's Medical Staff with its organizational and medical administrative responsibilities.
 - (g) Responsibility for all management and operational affairs of the hospital as required under the New York State Hospital Code, the requirements of the Hospital's accrediting organization and the responsibilities and duties established by all other regulatory bodies having jurisdiction.
 - (h) Performance of such other duties as may be necessary in the best interests of the hospital.

7.2 MEDICAL DIRECTOR

The Board of Directors shall, after consultation with the Medical Staff, select and appoint a competent Medical Director who shall have administrative responsibility for the hospital's clinical departments and medical education programs. Responsibility for the organization and conduct of the Medical Staff shall be developed and defined in writing, in consultation with the Medical Staff, and assigned to the Medical Director. The Medical Director shall have such qualifications as may be required by the New York State Hospital Code, as amended from time to time. The Medical Director shall have such authority and responsibility as required to perform his or her duties, including:

- (a) Coordinating the appointment and re-appointment process of the members of the Medical Staff, including investigation and assurance

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- of qualifications for membership, as provided in the Medical Staff By-Laws.
- (b) Oversee the granting of clinical privileges consistent with the practitioner's training, experience and demonstrated competence.
 - (c) Monitor and ensure Medical Staff compliance with the hospital's Bylaws, the Medical Staff By-laws, the rules and regulations and policies of the Medical Staff, hospital policies and procedures, and all applicable laws, rules, regulations, and accrediting standards.
 - (d) Oversee the activities, findings and recommendations of all medical staff quality improvement programs and promptly initiate or recommend appropriate corrective measures, consistent with the Medical Staff Bylaws.
 - (e) Monitor the activities and performance of the hospital's clinical departments and Department Chairpersons and make such reports and recommendations to the Board as shall be appropriate.
 - (f) Perform such other duties as may be required under the New York State Hospital Code, as may be assigned by the Board and CEO, or as shall be appropriate and necessary in the best interests of the Hospital.

ARTICLE EIGHT QUALITY ASSURANCE

8.1 BOARD RESPONSIBILITY

The Board shall establish, maintain, support and exercise oversight of an ongoing quality assurance program that includes specific and effective review, evaluation and monitoring mechanisms to assist, preserve and improve the overall quality and efficiency of patient care in the hospital, and to insure that each patient's rights are protected and promoted.

8.2 DELEGATION TO ADMINISTRATION AND TO THE MEDICAL STAFF

(a) TO ADMINISTRATION

Except as may be set forth in any policy adopted by the Board from time to time, the Board delegates to the administration and holds it accountable for providing the administrative assistance reasonably necessary to support and facilitate the implementation of an on-going operation of the hospital's quality assurance program, for implementing the quality assurance program as it concerns non-medical professional personnel and technical staffs and patient care units, for establishing and maintaining a policy and process to protect and promote patient's rights and promptly resolve patient grievances, and for analyzing information and acting upon problems involving technical, administrative and support services and hospital policy. Without limiting the foregoing, the Board of Directors specifically delegates the obligation to review and resolve patient grievances to the individual responsible for quality management or such other person as designated by the President/CEO. The process for reviewing and resolving patient grievances shall be monitored by the Quality and Patient Safety Committee which shall provide periodic reports to the full Board.

(b) TO MEDICAL STAFF

The Board delegates to the Medical Staff and holds it accountable for conducting specific activities that contribute to the preservation and improvement of the quality and efficiency of patient care provided in the hospital. These activities include:

- (1) Systematic evaluation of practitioner performance against explicit, predetermined objective criteria.
- (2) On-going monitoring of critical aspects of care including, but not limited to, antibiotic and drug usage, transfusion practices, infections, mortalities, monitoring of unexpected clinical

occurrences, and such other aspects of clinical care as shall be determined by the Board.

(3) Review utilization of the hospital's resources to provide for their proper and timely allocation to patients in need of them.

(4) Provision of continuing professional education, fashioned in part on the needs identified through the review, evaluation and monitoring activities and on new state-of-the art developments.

(5) Definition of the clinical privileges which may be appropriately granted within the hospital and within each department, delineation of clinical privileges for members of the Medical Staff commensurate with individual credentials and demonstrated ability and judgment, and participation in assigning patient care responsibilities to other health care professionals consistent with individual qualifications and demonstrated ability.

(6) Management of clinical affairs, including enforcement of clinical policies and consultation requirements, initiation of disciplinary actions, surveillance over requirements for performance monitoring and for the exercise of newly-acquired clinical privileges, and other clinically-oriented activities.

(7) Such other measures as the Board may, after considering the advice of the Medical Staff, the other professional services and the hospital management, deem necessary for the preservation and improvement of the quality and efficiency of patient care.

ARTICLE NINE MEDICAL STAFF

9.1. ORGANIZATION.

The Board has caused to be created a Medical Staff organization, to be known as the Medical Staff of Faxton-St. Luke's Healthcare, whose membership shall be comprised of all practitioners who are privileged to attend patients of the Corporation. Membership in this

Medical Staff organization shall be a prerequisite to the exercise of clinical privileges in the Corporation, except as otherwise specifically provided in the Medical Staff Bylaws.

9.2 MEDICAL STAFF BYLAWS, POLICIES AND RULES AND REGULATIONS.

(a). Purpose

The Medical Staff organization shall propose and adopt by vote bylaws, policies and rules and regulations for its internal governance, which shall be effective when approved by the Board. The bylaws shall create an effective administrative unit to discharge the functions and responsibilities assigned to the Medical Staff by the Board. The Medical Staff bylaws, policies and rules and regulations shall state the purpose, functions and organization of the Medical Staff and shall set forth the policies by which the Medical Staff exercises and accounts for its delegated authority and responsibilities.

(b) Procedure

The Medical Staff shall have the initial responsibility to formulate, adopt, and recommend to the Board, Medical Staff by-laws and amendments thereto, which shall be effective when approved by the Board. If the Medical Staff fails to exercise this responsibility in good faith and in a reasonable timely and responsible manner, the Board may formulate or amend Medical Staff by-laws, at its own initiative. In such event, recommendations and views of the Medical Staff shall be carefully considered by the Board during its deliberations and in its actions.

9.3 MEDICAL STAFF MEMBERSHIP AND CLINICAL PRIVILEGES

(a) Duties of the Medical Staff

The Medical Staff shall have the responsibility and authority to investigate and evaluate all matters relating to initial staff appointments, reappointments, the assignment or curtailment of clinical privileges and corrective action. The Board shall require the Medical Staff to adopt and forward to it specific written recommendations concerning staff appointments, reappointments, the assignment or curtailment of clinical privileges and corrective action, with appropriate supporting documentation that will allow the Board to take informed action.

The Medical Staff shall have the responsibility and authority to investigate and evaluate each allied health professional's application for specified services, department

affiliation, and modification in the services such allied health professional may perform, and shall require that the Medical Staff make recommendations to the Board on such applications.

The Board has overall responsibility for making available high quality patient care. Therefore, the Medical Staff shall conduct an ongoing review and appraisal of the quality of professional care rendered in the Hospital and shall report such activities and their results to the Board.

(b) Action by the Board

Final action on all matters relating to Medical Staff membership status, clinical privileges and corrective action shall be taken by the Board after considering the recommendations of the Medical Staff, provided that the Board shall act in any event if the Medical Staff fails to adopt and submit any such recommendation within a reasonable time. Such Board action without a Medical Staff recommendation shall be based on the same kind of documented investigation and evaluation as is required for Medical Staff recommendations.

(c) Criteria for Board Action

In acting on matters of Medical Staff membership status, the Board shall consider the Medical Staff's recommendations, the Corporation's and the community's needs, and such additional criteria as are set forth in the Medical Staff bylaws. In granting and defining the scope of clinical privileges to be exercised by each practitioner, the Board shall consider the Medical Staff's recommendations, the supporting information on which they are based, and such criteria as are set forth in the Medical Staff bylaws. No aspect of membership status or specific clinical privileges shall be limited or denied to a practitioner on the basis of sex, race, age, creed, color, sexual preference or national origin, or on the basis of any other non-professional qualifications, or for reasons unrelated to the Corporation's purposes, needs and capabilities, or to community needs.

(d) Conflict Resolution

In accordance with the Medical Staff's policies and procedures as set out in the Medical Staff Bylaws, the Board will resolve any differences in recommendations concerning Medical Staff appointments, reappointments, terminations of appointments and the granting or revision of clinical privileges within a reasonable time.

9.4 TERMS AND CONDITIONS OF MEDICAL STAFF MEMBERSHIP
AND CLINICAL PRIVILEGES

(a) The Board shall require that the Medical Staff establish controls that are designed to ensure the achievement and maintenance of high standards of professional and ethical practice.

(b) The Board may determine the total numbers and types of practitioners on the medical or affiliate staffs, based on the physical capabilities of the Corporation, utilization of the Corporation by its staff members, and requirements for efficient use of Corporation facilities and personnel.

(c) Practitioners applying for Medical Staff membership, or for clinical privileges, must sign an agreement to abide by these Bylaws and by the Medical Staff bylaws, policies and rules and regulations.

9.5 DUE PROCESS

(a) Practitioners

In holding the Medical Staff responsible for making recommendations to it, the Board shall require that the Medical Staff bylaws provide for review of any adverse recommendation made to the Board with respect to a practitioner's Medical Staff appointment, reappointment, department affiliation, staff category, admitting prerogatives, clinical privileges or corrective action. The review shall be conducted in accordance with the Board approved Medical Staff fair hearing plan then in effect. Such plan shall provide procedures to assure fair treatment of all practitioners and to afford opportunity for the presentation of all pertinent information, including the right to be heard, when requested by the practitioner.

(b) Medical Staff-Administrative Staff

Any physician who is also an administrative officer shall be entitled to procedural due process under the Board approved fair hearing plan then in effect. The Medical Staff-administrative officer shall be entitled to hearings by review committees of both the Medical Staff and the Board.

(c) Medical Staff

If the Board declines to follow any Medical Staff recommendation concerning Medical Staff appointments, reappointments, the assignment or curtailment of clinical privileges, or corrective action, then the Medical Staff shall be entitled to have the adverse decision of the Board reviewed by the Board in accordance with the provisions of the Medical Staff Bylaws then in effect.

9.6 METHODS FOR MEDICAL ADMINISTRATIVE LIAISON

The Board may establish medical administrative liaison by the following methods:

- (a) Appointment of Directors to attend Medical Executive Committee meetings of the Medical Staff.
- (b) Appointment of members of the Medical Staff to Committees of the Board.
- (c) Appointment of the President of the Medical Staff as a member of the Board as set forth herein.

9.7 OFFICERS AND CHAIRPERSONS

All elections and appointments of Medical Staff officers or chairpersons of Medical Staff committees shall be approved by the Board after consideration of the recommendation of the President of the Medical Staff. The duties and responsibilities of such officers and committee chairpersons shall be set forth in the Medical Staff bylaws.

**ARTICLE TEN
INDEMNIFICATION AND INSURANCE**

10.1 INDEMNIFICATION AND INSURANCE:

It is expressly provided that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of this Corporation, will be completely indemnified by the Corporation to the full extent permitted by law. If permitted by law, this indemnification shall include, but not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement,

and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

10.2 INSURANCE.

It is the policy of the Corporation that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of the Corporation, will be completely and fully indemnified by this Corporation to the full extent permitted by the law. The Corporation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Corporation has the power to indemnify him or her against such liability under the laws of this or any other state.

ARTICLE ELEVEN CONFLICT OF INTEREST

11.1 POLICY

Any Director, officer, key employee, medical staff member or committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Corporation's interest.

11.2 EFFECT

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in the Board approved Conflicts of Interest Policy must be observed. If so, such person shall not vote on, nor use his or her personal influence on, nor participate (other than to present factual information or to respond to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction

is under discussion or is being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

11.3 FORMAL POLICY AND PROCEDURE

The Board shall adopt a formal Conflict of Interest Policy requiring disclosure of existing and potential conflicts of interest, mechanisms for addressing actual and potential conflicts of interest and corrective and disciplinary action with respect to transgressions of such policies.

ARTICLE TWELVE VOLUNTEER ORGANIZATIONS

12.1 The Board may organize a volunteer organization, or such other associated organizations as it deems appropriate, consisting of individuals who are interested in rendering services as volunteers to the Hospital or its subsidiaries and in assisting in the fulfillment of the mission of the Corporation. There shall be By-laws, rules and regulations for such organizations, setting forth their organization and governance. Proposed By-laws may be recommended, but only those approved by the Board of Directors shall become effective.

ARTICLE THIRTEEN AMENDMENT TO BY-LAWS

13.1 PROCEDURE

These Bylaws may be amended or repealed, or new Bylaws may be adopted, only by MVHS in its capacity as the sole member of the Corporation. For this purpose, a two thirds (2/3) vote of the Directors of MVHS shall be required. The Board of Directors of the Corporation may also propose amendments for approval by MVHS or MVHS may adopt, amend or repeal Bylaws on its own initiative following the procedures herein noted. The Governance Affairs and Ethics Committee shall conduct an annual review of these Bylaws and make recommendations for such amendments as may be necessary to assure

compliance with all applicable laws, rules and regulations and the requirement of the Hospital's accrediting authority.

**ARTICLE FOURTEEN
GENERAL**

14.1 PROCEDURE

The Board and any Board Committee may adopt rules or procedures which shall be consistent with these By-laws.

14.2 EQUAL OPPORTUNITY

The Board shall, in all matters, act without regard to discrimination as to sex, race, age, creed, handicap, sexual preference, marital status or national origin.

14.3 CONSTRUCTION OF TERMS AND HEADINGS

Words used in these By-laws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these By-laws are for convenience only and are not intended to limit or define the scope or effect of any provision of these By-laws.

**RESOLUTION OF
THE BOARD OF DIRECTORS OF
MOHAWK VALLEY HEALTH SYSTEM**

(as Sole Member of Faxton-St. Luke's Healthcare)

THE UNDERSIGNED, being the Secretary of Mohawk Valley Health System, a corporation organized and existing pursuant to New York Not-for-Profit Corporation Law (the "Corporation"), hereby certify that the following is a true and complete copy of the resolutions adopted by the vote of a majority of the Directors present at a duly called meeting of the Board of Directors held on March 23, 2023, at which a quorum was present, and such resolution remains in full force and effect.

WHEREAS, the Corporation is the sole member of Faxton-St. Luke's Healthcare ("FSLH"); and

WHEREAS, the Corporation is a party to a certain Realignment and Asset Transfer Agreement (the "Agreement") by and among the Corporation, FSLH, St. Elizabeth Medical Center, St. Elizabeth College of Nursing (the "College") and Mohawk Valley Heart Institute, pursuant to which, *inter alia* FSLH has agreed to amend its Certificate of Incorporation in the form attached to the Agreement and Exhibit 5; and

WHEREAS, it is in the best interests of the Corporation, in its capacity as sole member of FSLH, to approve the proposed amendment to the Corporation's Certificate of Incorporation as provided in the Agreement; and

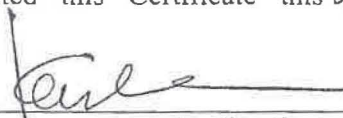
WHEREAS, it is in the best interests of the Corporation to amend FSLH's Bylaws to reflect the change in FSLH's name, as provided in the proposed amendment to the FSLH Bylaws presented to the directors;

NOW, THEREFORE, be it

RESOLVED: That the Corporation hereby consents to the amendment to FSLH's Certificate of Incorporation substantially in the form set forth in Exhibit 5 of the Agreement be, and hereby is, approved; and be it further

RESOLVED: That the Corporation hereby approves the Amendment to FSLH's Bylaws, substantially in the form presented to the Directors.

IN WITNESS WHEREOF, I have executed this Certificate this 23rd day of March, 2023.



KAREN L. LEACH, Secretary



**Department
of Health**

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: August 8, 2023

Subject: Long Island FQHC, Inc.: Corporate Name Change

The attached package was prepared by Mark Schweitzer, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.



MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark A. Schweitzer, Associate Attorney
Division of Legal Affairs, Bureau of Program Counsel

Date: August 8, 2023

Subject: Long Island FQHC, Inc.: Corporate Name Change

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of a letter from Legal Counsel for Long Island FQHC, Inc., Jennifer Stacchini, Esq., dated July 14, 2023;
- 3) An executed photocopy of the proposed Certificate of Amendment of the Certificate of Incorporation of Long Island FQHC, Inc., signed by Frank Piscetelli as Chairman, dated November 1, 2022;
- 4) A photocopy of the Certificate of Incorporation of Long Island FQHC, Inc., dated April 22, 2009, and filed May 14, 2009, with DOS certification;
- 5) A photocopy of a Restated Certificate of Incorporation of Long Island FQHC, Inc., dated December 13, 2010, and approved by the State Supreme Court on January 5, 2011, and approved by the State Attorney General on February 4, 2011, and filed on February 8, 2011, with approvals and DOS certification;
- 6) Meeting Minutes and Resolution of Board of Directors of Long Island FQHC, Inc., dated November 21, 2022, authorizing the change of corporate name and amendment of Certificate of Incorporation;
- 7) Amended and Restated Bylaws of for Long Island FQHC, Inc., dated July 1, 2017;
- 8) Consent to File Letters of the Public Health Council for Long Island FQHC, Inc. dated September 21, 2009 and June 30, 2010, and Public Health Council approval letter for Long Island FQHC, Inc., dated September 28, 2009;
- 9) Operating Certificates of the licensed entities – 1. Hempstead Community Health Center, 2. LIFQC – Mobile Van (Operator - Nassau Health Care Corporation, co-operator - Long Island FQHC, Inc.);
- 10) Certificate of Assumed Name and Division of Legal Affairs approval letter dated June 1, 2023 and May 31, 2023.



MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Kathy Marks *KSM*
General Counsel

Date: August 8, 2023

Subject: Long Island FQHC, Inc.: Corporate Name Change

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Long Island FQHC, Inc. This not-for-profit corporation is the co-operator with Nassau Health Care Corporation of a Diagnostic and Treatment Center and a Mobile Diagnostic and Treatment Center Extension Clinic pursuant to Article 28 of the Public Health Law, and seeks approval to change its name to "Harmony Health Care Long Island" for rebranding purposes. According to the applicant, the name change is sought "to build awareness about access to comprehensive health care services and to enable local residents to recognize the services which are available to them. This proposed name change reflects LIFQHC's dedication to the individuals to whom it provides services, supported by its concept of working together in harmony with those it serves."

Public Health and Health Planning Council approval is required for this change of corporate name under 10 NYCRR §600.11(a)(4), because PHHPC previously approved of the entity and filing of the entity's Certificate of Incorporation. Two current Operating Certificates where the entity is a co-operator are attached. The Corporation's Board of Directors has approved of the name change, and the approval is attached.

Attached is a letter dated July 14, 2023 from Jennifer Stacchini, attorney for the Corporation, which requests the name change and explains the intent and meaning of the proposed name change. Also attached is the existing Certificate of Incorporation and amendments thereto, and other associated corporate documents.

The Department has no objection to the proposed name change and the proposed Certificate of Amendment is in legally acceptable form, and Attorney General Approval will be obtained after PHHPC approval. Additionally, no initial assumed name was approved by PHHPC, however, an assumed name (Harmony Health Care Long Island) was administratively approved by the Division of Legal affairs, pursuant to 10 NYCRR 600.11, on May 31, 2023.

Attachments

2

Jennifer T. Stacchini
Counsel

Direct Dial: 516.227.0686
Direct Fax: 516.336.2786
jstacchini@farrellfritz.com

400 RXR Plaza
Uniondale, NY 11556
www.farrellfritz.com

Our File No. 29520-100

Via Email to Mark.Schweitzer@health.ny.gov
NYS Public Health and Health Planning Council
Empire State Plaza
Corning Tower
Albany, New York 12237
Attn: Colleen Leonard, Executive Secretary

July 14, 2023

Re: LONG ISLAND FQHC, INC. Proposed Name Change

Dear Ms. Leonard:

We are the attorneys for Long Island FQHC, Inc. ("LIFQHC"), a New York not-for-profit corporation, which is dedicated to providing expanded preventive and primary health care services, community and social services to underserved communities in the State of New York. We are writing to you in accordance with Section 600.11 of the New York Codes, Rules and Regulations to provide additional information to you in connection with our request for approval from the Public Health and Health Planning Council to LIFQHC's proposed name change.

In connection with LIFQHC's rebranding to further promote its services and make them more accessible in underserved communities, LIFQHC proposes to change its name to "Harmony Health Care Long Island". The purpose of this name change is to build awareness about access to comprehensive health care services and to enable local residents to recognize the services which are available to them. This proposed name change reflects LIFQHC's dedication to the individuals to whom it provides services, supported by its concept of working together in harmony with those it serves. We note that LIFQHC previously issued a "no approval needed" letter to enable LIFQHC to file an assumed name certificate with the NYS Division of Corporations.

LIFQHC's Board of Directors has approved this name change. A copy of the executed Certificate of Amendment to LIFQHC's Certificate of Incorporation is attached.

In connection with this request, the following documents are also attached:

- 1) Current Operating Certificate;
- 2) Current Certificate of Incorporation with amendments (which contains prior approvals from PHHPC and the AG's office);
- 3) Current Bylaws; and
- 4) Filed Certificate of Assumed Name.

In addition, summarized below is a history of the LIFQH's corporate changes since formation:

- 1) Certificate of Incorporation filed May 14, 2009;
- 2) Restated Certificate of Incorporation filed February 8, 2011, amending Article Third (the purposes clause) to expand the description of the nature of the services to be provided by LIFQHC (i.e., services related to the provision of preventive and primary health care services, related enabling and ancillary services and other critical community and social services relating to health education, community outreach, environmental health services, nutritional services, oral health services and behavioral services) and amending Article Fifth (which addresses certain disclaimers regarding authorization pursuant to Section 404 of the Not-For-Profit Corporation Law) to permit LIFQHC to engage in certain activities listed in Section 404(a) through (n) and (p) through (w) of the Not-For-Profit Corporation Law after obtaining the necessary approval or consents set forth in such subsections.
- 3) Certificate of Assumed Name to use the name "Harmony Health Care" filed June 1, 2023.

We note that once the approval of the Public Health and Health Planning Council is obtained, we will then seek to obtain the necessary approval from the AG's office.

Thank you for your assistance. Please feel free to contact me with any questions or if you require any additional information.

Sincerely,



Jennifer T. Stacchini

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**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND FQHC, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairperson of LONG ISLAND FQHC, INC. (hereinafter, the "Corporation"), a not-for-profit corporation organized and existing under the laws of the State of New York, does hereby certify:

1. The name of the Corporation is "LONG ISLAND FQHC, INC."
2. The Certificate of Incorporation of the Corporation was filed with the Department of State of the State of New York on May 14, 2009. A Restated Certificate of Incorporation of the Corporation was filed with the Department of State of the State of New York on February 8, 2011. The Certificate of Incorporation of the Corporation, as amended by the Restated Certificate of Incorporation of the Corporation, is hereinafter referred to as the "Certificate of Incorporation."
3. The Corporation was formed under the New York Not-For-Profit Corporation Law.
4. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the New York Not-For-Profit Corporation Law.
5. Paragraph FIRST of the Certificate of Incorporation, relating to the name of the Corporation, is hereby amended, and shall read in its entirety as follows:

The name of the Corporation is

"HARMONY HEALTH CARE LONG ISLAND"

6. Paragraph ELEVENTH of the Certificate of Incorporation, relating to the address to which the Secretary of State shall mail a copy of service of process against the Corporation, is hereby amended, and shall read in its entirety as follows:

The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary of State is: Harmony Health Care Long Island, 1600 Stewart Avenue, Suite 300, Westbury, New York 11590.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND FQHC, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Farrell Fritz, P.C.
400 RXR Plaza
Uniondale, NY 11556

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CERTIFICATE OF INCORPORATION

OF

LONG ISLAND FQHC, INC.

Under Section 402 of the Not-for-Profit Corporation Law.

The Undersigned, for the purposes of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law State of New York, as permitted by Article 28 of the Public Health Law of the State of New York, does hereby certify and set forth:

FIRST: The name of the corporation is Long Island FQHC, Inc. and is hereinafter referred to as the "Corporation."

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

THIRD: The purposes of the Corporation are to support medically underserved communities in Nassau County and to facilitate the provision of health care services regardless of the ability to pay by:

Researching and planning for the establishment, maintenance, and operation in conjunction with Nassau Health Care Corporation ("NHCC"), a public benefit corporation created by the State of New York, of diagnostic and treatment centers, as defined by Section 751.1 of Title 10 of the New York Code, Rules and Regulations; provided however, that the Corporation shall not establish, maintain, or operate such diagnostic and treatment centers without receipt of the requisite licenses and approvals, if any are required by law; and

In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law, together with the

power to solicit grants and contributions for the corporate purposes.

FOURTH: Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law, or to provide hospital service or health related service, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

FIFTH: Nothing herein contained shall authorized the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities set forth in subsection (a) through (w) of Section 404 of the Not-For-Profit Corporation Law without having first obtained the approvals or consents required in such subsections.

SIXTH: The Corporation shall be a Type B corporation pursuant to Section 201 of the Not-For-Profit Corporation Law.

The names of the initial directors, until the first annual meeting are:

<u>Name:</u>	<u>Address:</u>
Diana Coleman	101 Whitehouse Avenue Roosevelt, New York 11575
Lance W. Elder	6204 Northern Boulevard East Norwich, New York 11732
James Harnett	41-07 249th Street Little Neck, New York 11363

SEVENTH: The Corporation is organized exclusively for charitable, educational or scientific purposes, including, research and planning related to the provision of preventive and primary health care services, related enabling and ancillary services and other critical community and social services including but not limited to health education, community

outreach, environmental health services, nutritional services, oral health services, and behavioral services, regardless of a patient's insurance status or ability to pay.

EIGHTH: No part of the assets, income, or profit of the Corporation shall be distributable to, or shall inure to the benefit of its members, directors, or officers, except to the extent permitted under the Not-For-Profit Corporation Law.

NINTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

TENTH: Notwithstanding any other provision of this document, the Corporation shall not engage in any activities that cannot be legally performed by: (a) an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future, federal, tax code; or (b) any organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

ELEVENTH: The office of the Corporation is to be located in the County of Nassau, New York.

TWELFTH: Upon the dissolution of the Corporation, assets shall be, distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue code, or the corresponding section of any future federal tax code, or shall be

distributed to the federal government, or to a state or local government, for public purposes. Any such assets not so disposed shall be disposed of by a court of competent jurisdiction, situated in the county in which the principal office of the Corporation is then located, exclusively for such purposes or conferred to organization(s) that are organized and operated exclusively for such purposes, as said Court shall determine.

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

Long Island FQHC, Inc.
c/o Nassau Health Care Corporation
2201 Hempstead Turnpike
East Meadow, New York 11554

IN WITNESS WHEREOF, this certificate has been subscribed to this 22ND day of APRIL, 2009 by the undersigned who affirms that the statements made herein are true under penalties of perjury.



Name: Arthur A. Gianelli, INCORPORATOR

Address: 2201 Hempstead Turnpike
East Meadow, New York 11554

STATE OF NEW YORK)
) : ss.
COUNTY OF NASSAU)

On this 22ND day of APRIL, 2009, before me personally came
Arthur A. Gianelli, to me known to be the person described in and who
executed the foregoing Certificate of Incorporation and he/she duly acknowledged to me
that he/she executed the same.

Linda E. Rugolo
Notary Public

LINDA E. RUGOLO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01RU6042479
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 5/30/2010

80445168.1

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FILED

2009 MAY 14 AM 10: 27

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

LONG ISLAND FQHC, INC.

CERTIFICATE OF INCORPORATION

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

MANATT, PHELPS & PHILLIPS, LLP
7 TIMES SQUARE
NEW YORK, NY 10036

(212) 790-4500

nr-type B

icc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 14 2009

TAX \$ _____

BY: *MMR*

Nassau

107

-6-

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LONG ISLAND FQHC, INC., File Number 090514000098 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 16, 2022.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

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RESTATED CERTIFICATE OF INCORPORATION
OF
LONG ISLAND FQHC, INC.

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

I, the undersigned, being President and Chairperson of Long Island FQHC, Inc. (hereinafter the "Corporation") do hereby certify:

1. The name of the Corporation is Long Island FQHC, Inc.
2. The Corporation's Certificate of Incorporation was filed with the New York State Department of State on the 14th day of May, 2009.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under paragraph (b) of Section 201 of said law. The Corporation shall continue to be a Type B Corporation under paragraph (b) of Section 201 of the Not-For-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the Not-For-Profit Corporation Law:
 - (a) The third Article of the Certificate of Incorporation, the subject matter of which addresses the Corporation's purposes, is hereby deleted and replaced with a new Article THIRD providing for the Corporation's purposes.
 - (b) The fourth Article of the Certificate of Incorporation, the subject matter of which addresses certain disclaimers regarding authority to establish, operate or maintain a hospital, health maintenance organization, comprehensive health services plan, or to provide hospital service or health related service, or to solicit funds, contributions or grants for the establishment or operation of any hospital, is hereby deleted.

(c) The fifth Article of the Certificate of Incorporation, the subject matter of which addresses certain disclaimers regarding authorization pursuant to Section 404 of the Not-For-Profit Corporation Law, is hereby deleted and replaced with a new Article FOURTH, as renumbered hereinbelow.

(d) The seventh Article of the Certificate of Incorporation, the subject matter of which addresses the Corporation's purposes, is hereby deleted because its contents are included in the herein amended Article THIRD, which article's subject matter also addresses the Corporation's purposes.

5. As a result of the amendments provided for herein, the articles of the Certificate of Incorporation are hereby renumbered, and the text of the Certificate of Incorporation is thus hereby restated, as amended, to read as set forth in full as follows:

FIRST: The name of the corporation is Long Island FQHC, Inc. and is hereinafter referred to as the "Corporation."

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

THIRD: The Corporation is organized exclusively for charitable, educational or scientific purposes in that it will provide expanded health care services to medically underserved communities in the State of New York regardless of a patient's insurance status or ability to pay by:

Establishing, maintaining, and operating, in conjunction with Nassau Health Care Corporation ("NHCC"), a public benefit corporation created by the State of New York, diagnostic and treatment centers, as defined by Section 751.1 of Title 10 of the New York Code, Rules and Regulations, related to the provision of preventive and primary health care services, related enabling and ancillary services and other critical community and social services relating to health education, community outreach, environmental health services, nutritional services, oral health services, and behavioral services; provided however, that the Corporation shall not establish, maintain, or operate such diagnostic and treatment centers without the prior receipt of the requisite licenses and approvals, if any are required by law; and

In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law, together with the power to solicit grants and contributions for the corporate purposes.

FOURTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities set forth in subsection (a) through (n) or (p) through (w) of Section 404 of the Not-For-Profit Corporation Law without having first obtained the approvals or consents required in such subsections. The required consent of the public health and health planning council, as required by subsection (o) of Section 404 of the Not-For-Profit Corporation Law is annexed hereto. Nothing herein contained shall authorize or empower the Corporation to perform or engage in any act or practice prohibited by the General Business Law, Section 340, or other antimonopoly or antitrust statute of the State of New York.

FIFTH: The Corporation shall be a Type B corporation pursuant to Section 201 of the Not-For-Profit Corporation Law.

The names of the initial directors, until the first annual meeting are:

Name:
Diane Coleman

Address:
101 Whitehouse Avenue
Roosevelt, New York 11575

Lance W. Elder

6204 Northern Boulevard
East Norwich, New York 11732

James Harnett

41-07 249th Street
Little Neck, New York 11363

SIXTH: No part of the assets, income, or profit of the Corporation shall be distributable to, or shall inure to the benefit of its members, directors, or officers, except to the extent permitted under the Not-For-Profit Corporation Law.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding any other provision of this document, the Corporation shall not engage in any activities that cannot be legally performed by: (a) an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future, federal, tax code; or (b) any organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

NINTH: The office of the Corporation is to be located in the County of Nassau, New York.

TENTH: Upon the dissolution of the Corporation, assets shall be, distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for public purposes. Any such assets not so disposed shall be disposed of by a court of competent jurisdiction, situated in the county in which the principal office of the Corporation is then located, exclusively for such purposes or conferred to organization(s) that are organized and operated exclusively for such purposes, as said Court shall determine.

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

Long Island FQHC, Inc.
c/o Nassau Health Care Corporation
2201 Hempstead Turnpike
East Meadow, New York 11554

6. Long Island FQHC, Inc. having no members entitled to vote thereon, this Restated Certificate of Incorporation was authorized by a vote of a majority of the entire board of directors of the Corporation, as provided in Section 802(a)(2) of the Not-For-Profit Corporation Law of the State of New York.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has signed this certificate and affirmed the statements made herein as true under penalties of perjury this 13th day of December, 2010.

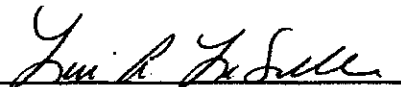


Name: Diane Coleman, Chairperson

Address: 2201 Hempstead Turnpike
East Meadow, New York 11554

STATE OF New York)
) ss.:
COUNTY OF Nassau)

On the 13th day of December in the year 2010 before me, the undersigned, personally appeared Diana Coleman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public (affix stamp or seal)

LORI A LASALLE
Notary Public, State of New York
No. 02LA5011768
Qualified in Nassau County
Commission Expires June 15, 2011

Long Island F&H, Inc.
(NAME OF CORPORATION)

CERTIFICATE OF AMENDMENT

DATED _____

The Attorney General has no objection to the granting of Judicial approval hereon, acknowledges receipt of statutory notice and demands service of the filed certificate. Said objection is conditioned on submission of the matter to the Court within 30 days hereafter.

Eric Schneiderman
Attorney General
State of New York

By:

↳ see attached letter

Assistant Attorney General

I, Angela G. Iannacei a Justice of the Supreme Court of the Supreme Court of the State of New York for the 10th Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of _____

Long Island F&H, Inc.

and consent that the same be filed.

Date 1/25/11

Angela G. Iannacei
J.S.C.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

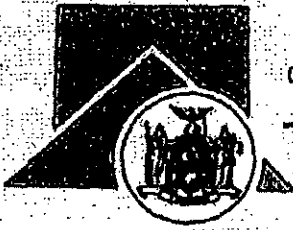
ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
ANTITRUST BUREAU

Re: Long Island FQHC, Inc.

Pursuant to Section 804(a)(ii) of the Not-for-Profit Corporation Law consent is hereby given to the filing of this Restated Certificate of Incorporation. This consent, however, shall not be construed as approval by the Attorney General of the purposes or objects of such corporation.

John A. Doan
Assistant Attorney General 2/4/11
Date



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 21, 2009

Mr. Paul Rowland
Chief Operating Officer
Nassau Health Care Corporation
2201 Hempstead Turnpike
East Meadow, New York 11554

Re: Application No. 091060 - Long Island FQHC, Inc. (Nassau County)

Dear Mr. Rowland:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Long Island FQHC, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of July 17, 2009.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 90 Church Street, New York, New York 10007 or (212) 417-5990, within 30 days of receipt of this letter.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Central Islip Field Office
Courthouse Corporate Center
320 Carleton Avenue, Suite 5000 Central Islip, New York 11722 (631) 851-3080

Richard F. Dalnas, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

September 28, 2009

Paul J. Rowland
Sr. VP & Chief Operating Officer
Nassau Health Care Corporation
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, NY 11554-1854

Re: CON # 091060
Hempstead Community Health Center
(Nassau County)
Transfer of Ownership
One (1) Diagnostic and Treatment Center (D&TC)
135 Main Street, Hempstead
Three (3) D&TC Extension Clinics
161 Hempstead Turnpike, Elmont
480 Main Street, Freeport
682 Union Avenue, New Cassel
One (1) School Based D&TC Extension Clinic
1 Wagner Avenue, Roosevelt
One (1) Part Time Clinic
229 Seventh Street, Garden City

Dear Mr. Rowland:

This letter is to inform you that approval is granted for the above noted project. The approval for the transfer of ownership of the above noted facilities from Nassau Health Care Corporation to Long Island FQHC, Inc. is effective September 24, 2009.

Although an on-site visit will not be made to verify compliance with the applicable requirements of 10 NYCRR, the facility has attested to compliance, and DOH reserves the right to require correction of any item that is non-compliant.

If you have any questions regarding this letter, please contact Chris Romano at (631) 851-3654, cmr04@health.state.ny.us.

Sincerely,

Jeffrey Spitz, LCSW
Regional Program Director
Division of Primary and Acute Care Services



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clynne, Jr.
Executive Deputy Commissioner

June 30, 2010

Mr. Jeffrey Thorpe
Foley & Larder, LLP
90 Park Avenue
New York, New York 10016

Re: Restated Certificate of Incorporation of Long Island FQHC, Inc.

Dear Mr. Thorpe:

The above referenced Restated Certificate of Incorporation, dated June 16, 2010, and signed by Diane Coleman may be filed pursuant to the Public Health Council approval letter dated September 21, 2009.

Sincerely,

Suzanne Sullivan
Senior Attorney
Bureau of House Counsel

Enclosure

UNI-37

110208000369

RESTATED CERTIFICATE OF INCORPORATION

OF

LONG ISLAND FQHC, INC.

Under and Pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York

2011 FEB -8 AM 9:10

Foley & Lardner LLP
90 Park Avenue
37th Floor
New York, NY 10016

100
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

FEB -8 2011

TAX \$ _____

BY: *[Signature]* *NASS*

Customer Ref. #: LONGI16960

2011 FEB -2 PM 2:17

2011 FEB -8 AM 11:44

FILED

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DRAWDOWN

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LONG ISLAND FQHC, INC., File Number 110208000369 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 16, 2022.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

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- ❖ Other ways that Westbury has grown is Vaccine for Adults (VFA) a free vaccine program for uninsured sponsored by NYS Department of Health. Documentation and claims review by coder, 340B Training, Unlocked Encounters and Pediatric Increased Visits.
- ❖ Westbury provides specialty services including behavioral health. Also, their outreach efforts/services included vaccines for Covid-19 and Monkeypox. Community outreach efforts included the hosting of pediatric back to school event in August, National Night Out, and Community events (staffing representation, optometry, and nutrition).
- ❖ Some ways that Westbury has been improving safety is by doing staff training on HIPAA, Fire Drills, and Code Silver). Westbury has also done an employee flu vaccine and health assessment, hired a new cleaning vendor, maintaining of Covid-19 protocols of patient and employee safety, and facility painting of employee lounge.
- ❖ In terms of staffing, Westbury said good-bye to 2 providers, hired 6 new employees and has 2 vacancies of medical assistants to fill.
- ❖ Westbury had its annual BBQ in July, did the breast cancer walk, and light the night foundation in honor of Dr. Joyce, completed a movement challenge, and employee engagement.

September Financials, Snow Bids, Vesting Period 2 – Savi Pestano

- ❖ Savi Pestano, CFO presented the September Financials, Snow Removal Bids and Healthcare Worker Bonus.

Approval to accept September Financials, Snow Bids, Vesting Period 2

Motion to approve September Financials, Snow Bids, Vesting Period 2

Jessica Sparrow

Seconded

Ann Hickson

- Unanimously approved

24945 LIFQHC-DASNY Grant Disbursement Agreement - Presented by David Nemiroff

- ❖ David spoke of the DASNY Grant in the amount of \$175,000 which will provide funding within the scope of work for the renovations to the dental Suite at 161 Hempstead Turnpike.

Approval to accept DASNY Grant

- Motion to approve Financial Packet Report
- Seconded

Sr. Evelyn

Jessica Sparrow

- Unanimously approved

Quality Improvement Program- Dr. Tarika James

- ❖ Dr. James presented the Annual Quality Improvement Plan to the board. This is how we describe our quality program and projects we do/roles everyone in the organization plays. This includes requirements and what we need to do to meet those measures. This updated plan shows a few changes, including some titles changes, adding quality

program indicators for the dental program, and added new dashboard measures. This was reviewed at the CQI committee which approved this.

❖ **Approval to accept Annual Quality Improvement Program/Plan**

- Motion to approve Quality Improvement Program/Plan Bob Detor
- Seconded Sr. Evelyn Lamoreux
- Unanimously approved

Chief Medical Officer's Report- Presented by Dr. James

- ❖ CMO Report highlighted a few special monthly recognitions including #GivingTuesday, Native American Heritage Month, and National homeless and hunger awareness month.
- ❖ In the providers only meeting, they spoke of some updates including more Covid-19 testing, RSV, and FLU, ordering Rx through eCW and tracking (kicking off in December).
- ❖ Care coordination joined the meeting as well and it was extremely helpful and informative.
- ❖ Neurology at NUMC- Chairman of Neurology Dr. Wintaub and spoke to our provider about services and patient care and his work to bring on new providers to services our patients.
- ❖ Pediatric templates and how to properly use them
- ❖ Dr. James thanked everyone for their participation for the provider's wellbeing survey. There was a lot of feedback on providers loving the company and our mission.
- ❖ Providers gave feedback on getting more time during patient visits. Possibly hiring scribes and doing less click-time on eCW.
- ❖ Coming up next month is the 2023 incentive plan, depression and anxiety updated, as well as billing updates.
- ❖ Some new initiatives in Quality for LIFQHC are transforming oral health for families by increasing oral health/screenings, the American health association to lower the blood pressure cohort as well as Cologuard Colorectal Cancer screenings.
- ❖ There were no providers for credentialing/approval month.
- ❖ Patient Experience: Patient satisfaction comparing 2021 to Q3 and Q4. We are slightly below the Q3 numbers for Q4. There were improvements in telehealth so far.

Elmont Dental Ribbon Cutting- Stacey Harley

- ❖ Stacey spoke of the Elmont Dental Ribbon Cutting on November 15th. It was a 9-month project and she thanks Julie, David, Savi, the entire dental staff to show thanks. Assemblywoman Solages was in attendance too. Dental at Elmont is up and running.

Rebranding Updates – David Nemiroff, President/CEO

- ❖ David showed the new template for HHCLI and shows PowerPoint, zoom templates, signage, website is being re-done with the new colors. Brochures, various emails, letters to constituents, greetings etc.
- ❖ December 8th @ 12pm will be the internal town hall unveiling to our staff and we would love for our board members to be there as well.
- ❖ December 13th @12pm will be the public unveiling at the Roosevelt Health Center. This will be moved to zoom if weather is an issue. Board Members are also invited to this event.

Harmony Healthcare Log Island Name Change Resolution (Majority Vote)- David Nemiroff

- ❖ Because we haven't been able to contact Stafford Byers, we need to have a majority vote on the Name Change.

Approval of the Harmony Healthcare Log Island Name Change Resolution (Majority Vote)

- *Motion made to approve* Harmony Healthcare Long Island Name Change Resolution (Majority Vote) Jessica Sparrow
- Seconded Ann Hickson
- Unanimously approved

Motion to adjourn 6:30 P.M

- Motion to adjourn Ann Hickson
- Seconded Elizabeth Rouse
- Unanimously approved

All staff excused

Minutes approved by: Ann S. Hickson, Secretary

Date

Minutes recorded by Felicia Rambarran

RESOLVED, that the Corporation be, and hereby is, authorized, empowered and directed to prepare, execute and file the Certificate of Amendment to the Corporation's Certificate of Incorporation, substantially in the form annexed hereto as Exhibit A, with the Secretary of State of the State of New York; and be it further

RESOLVED, that the Chairperson of the Board of Directors be, and hereby is, authorized and directed to execute for, on behalf of, and in the name of the Corporation, the Certificate of Amendment, and any and all other documents with respect thereto, including, without limitation, any letters or applications for approval of the Certificate of Amendment by any governmental or public health entities as may be required in connection with the filing of the Certificate of Amendment with the Secretary of State of the State of New York; and be it further

RESOLVED, that the Corporation hereby approves the Grant Disbursement Agreement between the Corporation and the Dormitory Authority of the State of New York (the "Grant Agreement") substantially in the form annexed hereto as Exhibit B; and be it further

RESOLVED, that the Corporation be, and hereby is, authorized, empowered and directed to execute, deliver and perform its obligations under, the Grant Agreement and any and all other documents required with respect thereto; and be it further

RESOLVED, that David Nemiroff, as the President and CEO of the Corporation, be, and hereby is, authorized and directed to execute and deliver for, on behalf of, and in the name of the Corporation, the Grant Agreement, and any and all other documents required with respect thereto; and be it further

RESOLVED, that all actions taken by the Corporation in connection with any matter referred to in these resolutions are hereby approved, ratified and confirmed in all respects.

EXHIBIT A

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND FQHC, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairperson of LONG ISLAND FQHC, INC. (hereinafter, the "Corporation"), a not-for-profit corporation organized and existing under the laws of the State of New York, does hereby certify:

1. The name of the Corporation is "LONG ISLAND FQHC, INC."
2. The Certificate of Incorporation of the Corporation was filed with the Department of State of the State of New York on May 14, 2009. A Restated Certificate of Incorporation of the Corporation was filed with the Department of State of the State of New York on February 8, 2011. The Certificate of Incorporation of the Corporation, as amended by the Restated Certificate of Incorporation of the Corporation, is hereinafter referred to as the "Certificate of Incorporation."
3. The Corporation was formed under the New York Not-For-Profit Corporation Law.
4. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the New York Not-For-Profit Corporation Law.
5. Paragraph FIRST of the Certificate of Incorporation, relating to the name of the Corporation, is hereby amended, and shall read in its entirety as follows:

The name of the Corporation is

"HARMONY HEALTH CARE LONG ISLAND"

6. Paragraph ELEVENTH of the Certificate of Incorporation, relating to the address to which the Secretary of State shall mail a copy of service of process against the Corporation, is hereby amended, and shall read in its entirety as follows:

The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary of State is: Harmony Health Care Long Island, 1600 Stewart Avenue, Suite 300, Westbury, New York 11590.

7. The Corporation, having no members entitled to vote thereon, authorized this Amendment of the Certificate of Incorporation of the Corporation and the specific amendments described in Paragraphs 5 and 6 above by the affirmative vote of a majority of the directors of the Board of Directors of the Corporation, as provided in Section 802(a)(2) of the Not-For-Profit Corporation Law of the State of New York.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirms it as true under the penalties of perjury this ____ day of ____, 2022.

By: _____

Name:

Title: Chairperson

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On _____, 2022 before me, _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary
My commission expires:

Public

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND FQHC, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Farrell Fritz, P.C.
400 RXR Plaza
Uniondale, NY 11556

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**AMENDED AND RESTATED BYLAWS
OF
LONG ISLAND FQHC, INC.**

Amended as of July 1, 2017

**ARTICLE 1
NAME AND OFFICES**

Section 1.1 Name. The name of the corporation shall be Long Island FQHC, Inc. (the "Corporation"), a New York not-for-profit corporation.

Section 1.2 Offices. The principal office of the Corporation shall be located at 1600 Stewart Avenue, Suite 300, Westbury, New York 11590. The Corporation may have such, other offices as the Board of Directors (the "Board") may designate. The Corporation's books and records shall be maintained at the Corporation's principal office.

**ARTICLE 2
PURPOSES**

The purposes for which the Corporation has been formed are as follows:

(a) To establish and implement federally qualified health center ("FQHC") status, pursuant to the Public Health Service Act, for community health centers (the "Health Centers"), each licensed as a diagnostic and treatment center under Article 28 of the New York Public Health Law, to provide preventive and primary health care services, related enabling and ancillary services and other critical community and social services including but not limited to health education, community outreach, environmental health services, nutritional services, oral health services, and behavioral services, regardless of a patient's insurance status or ability to pay; and

(b) To establish and maintain the Community Board of the Corporation in satisfaction of the community based governance requirements of the Public Health Service Act as amended by the Balanced Budget Act of 1997; and

(c) To be operated, at all times, exclusively for charitable, scientific, and educational purposes within the meaning of Internal Revenue Code of 1986, as amended ("the Code"), and as more specifically set forth the Corporation's Certificate of Incorporation.

**ARTICLE 3
MEMBERSHIP**

The Corporation shall have no members. The term "member" as used in these Bylaws shall refer solely to members of the Board or members of Board Committees.

ARTICLE 4
FUNCTIONS AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

Section 4.1 General Powers. All property, funds, affairs and business of the Corporation shall be managed by the Board. The Board shall have and is vested with all corporate power and authority, except as may be otherwise expressly limited by applicable Federal or State laws, the Certificate of Incorporation, or by these Bylaws.

ARTICLE 5
BOARD OF DIRECTORS

Section 5.1 Size. The Board shall consist of no fewer than nine (9) and no more than twenty-five (25) Directors. Each Director shall hold office until his/her successor has been elected and qualified.

Section 5.2 Classes of Directors. Directors shall be categorized into one of the following three (3) categories:

- (a) **Consumer Directors:** Consumer Directors are all Directors who are served by the Corporation and who, as a group, represent the individuals being served in terms of demographic factors, such as race, ethnic background, and sex.
- (b) **Provider Directors:** Provider Directors are all Directors except Consumer and Community Directors, who derive more than ten percent (10%) of their annual income from the health care industry; and
- (c) **Community Directors:** Community Directors shall be all Directors, except Consumer or Provider Directors, who are representatives of the community and shall be selected for their expertise in relevant subject areas, such as community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns or social services within the community.

Section 5.3 Composition of Board. A majority of the Directors shall be Consumer Directors. Additionally, no more than one-half (1/2) of the non-Consumer Directors shall be Provider Directors.

Section 5.4 Additional Qualifications. All Directors shall meet the following additional qualifications:

- (a) Directors shall be at least eighteen (18) years old; and
- (b) No Director shall be an employee of the Corporation, or spouse or child, parent, brother or sister by blood or marriage of such an employee.

Section 5.5 Election of Directors. At each annual meeting of the Corporation, the Board shall elect Directors, as necessitated by the expiration of Directors' terms in office, by majority

vote. The terms of the newly elected Directors shall commence as of the day immediately following the annual meeting. Unless terminated earlier in accordance with Section 5.8 or Section 5.9, each Director shall hold office until the expiration of the term for which he/she is elected and qualified.

Section 5.6 Terms of Office.

(a) The Directors shall be divided by the Board into three (3) classes of approximately equal size, for the purpose of staggering their terms in office. One class of Directors shall serve an initial term of one (1) year; one class of Directors shall serve an initial term of two (2) years; and one class of Directors shall serve an initial term of three (3) years.

(b) Following the expiration of the initial term of appointment and upon election to a subsequent term of appointment, Directors, regardless of class, shall have staggered terms of three (3) years each.

Section 5.7 Vacancies and Newly Created Directorships.

When a Board seat is vacated before a Director's term has expired (or a new Board seat is created), a new Director shall be elected by a majority vote of the Directors then in office and present and voting at any regular meeting of the Board or any special meeting called for such purpose. The new Director shall serve only for the duration of the unexpired term of the seat filled.

Section 5.8 Resignation.

A Director may resign at any time, by giving written notice to the Chairperson. Unless otherwise specified, such resignation shall be effective immediately upon notification. Resignation of a Director shall create a vacancy, and a new Director shall be elected in accordance with Section 5.7 hereof.

Section 5.9 Removal.

(a) Any Director may be removed by the Board of Directors by a majority vote of the remaining Directors present and voting at any special meeting called for such purpose, for conduct detrimental to the interests of the Corporation, for conduct inconsistent with the Corporation's purposes or for refusing to render reasonable assistance in carrying out the Corporation's purposes, or whenever it is determined that the best interest of the Corporation would be served by such removal. Allegations made in support of a proposal to remove a Director shall be presented in writing, by mail, to the Director in question at least five (5) calendar days in advance of the meeting. The allegation(s) shall be noted on the agenda of the meeting. The Director in question shall be entitled to appear before the Board and be heard at such meeting. Removal of a Director shall create a vacancy, and a new Director shall be elected in accordance with Section 5.7 hereof.

(b) The absence of any Director from three (3) consecutive Board meetings without due cause as determined by the Board shall result in the automatic and

immediate removal from the Board, in accordance with Section 5.9(a) hereof.

Section 5.10 Rights. The right of a Director to vote and all of his/her other rights, titles and/or interests in the Corporation shall cease upon the termination of his/her membership on the Board.

Section 5.11 Conflicts of Interest.

(a) Directors as Fiduciaries. Each Director shall have a fiduciary duty to the Corporation and must give it his/her loyalty.

(b) Conflict of Interest Policy.

(i) The Board shall at all times, on behalf of the Corporation, maintain the Conflict of Interest Policy, attached hereto as Exhibit A, as amended and updated from time to time as deemed necessary or advisable by the Board or as required by any applicable law.

(ii) Prior to a Director's initial election to the Board, or an Officer or Key Employee's employment at the Corporation, and thereafter on an annual basis, all Directors, Officers, and Key Employees shall disclose in writing to the Secretary of the Corporation:

(1) Any entity of which such person or a Relative of such person is an officer, director, trustee, member, owner, or employee and with which the Corporation has a relationship,

(2) Any Financial Interest such person may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to Corporation for a fee or other compensation, and

(3) Any position or other material relationship such Director, Officer, Key Employee, or Relative of such person, may have with any not-for-profit corporation with which the Corporation has a business relationship.

A copy of each disclosure statement shall be kept in Corporation's files and made available to any Director, Officer, or Key Employee upon request.

(iii) Each Director, Officer, and Key Employee shall annually sign and submit to the Secretary of the Corporation a statement which affirms such person: (a) has received a copy of this Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

Capitalized terms used but not defined in this Section 5.11(b) shall have their meaning as set forth in the Conflict of Interest Policy.

Section 5.12 Compensation. No Director of the Corporation shall receive, directly or indirectly, any salary or compensation from the Corporation in his or her role as Director; provided, however, that Directors may be reimbursed for reasonable expenses incurred in the performance of Corporation duties in the discretion of the Board.

Section 5.13 Powers of Individual Directors. No individual Director shall act for the Board of Directors except as may be specifically authorized by the Board. No individual Director shall speak for the Board of the Corporation except as may be specifically authorized by the Board.

ARTICLE 6 OFFICERS

Section 6.1 Officers. The officers of the Corporation shall consist of a Chairperson, Vice Chairperson, Secretary and Treasurer, and such other officers as the Board shall, from time to time, deem necessary. All officers must be Directors, and shall be elected by the Board of Directors. No employee of the Corporation shall serve as Chair or Vice Chair of the Board or hold any other title with similar responsibilities.

Section 6.2 Election and Term of Office. The Directors shall elect the officers at the annual Board meeting. All officers' terms shall commence as of the day immediately following the annual meeting. The term of office of each officer shall be coterminous with the officer's then current term of appointment as a Director.

Section 6.3 Chairperson. The Chairperson shall preside at all meetings of the Board of Directors and all meetings of the Executive Committee at which he or she is present, and shall perform such other duties as may be required of him or her by the Board of Directors. The Chairperson, or another officer designated by the Chairperson, may sign any document or instrument requiring the signature of an officer of the Corporation which is necessary and incident to the purposes of the Corporation, except where the signing of such document or instrument is expressly delegated by the Board of Directors to another officer or agent of the Corporation or as otherwise required by law.

Section 6.4 Vice Chairperson. The Vice Chairperson of the Board shall perform the duties of the Chairperson during the absence of the Chairperson and, when so acting, shall have all of the powers of, and be subject to all the restrictions upon, the Chairperson. The Vice Chairperson shall also perform such other duties as may be assigned to him or her by the Board of Directors.

Section 6.5 Secretary. The Secretary shall: (i) keep and oversee an accurate record of the proceedings of all meetings of the Board of Directors; (ii) present such record to the Board of Directors for approval and adoption; (iii) give or cause to be given all notices in accordance with these Bylaws or as required by law; (iv) be responsible for such other actions of the Corporation as the Board of Directors shall direct; and (v) in general, perform all duties customary of the office. The secretary shall be the sole person permitted to seal and certify official Board approval of matters brought before the Board.

Section 6.6 Treasurer. The Treasurer shall: (i) oversee the fiscal affairs of the Corporation; (ii) report on the financial condition of the Corporation to the Board of Directors at its regular meetings, the annual meeting and at such other times as the Board may require or request; and (iii) function as chairperson of the Finance Committee. The Treasurer shall ensure that all funds of the Corporation are deposited to the credit of the Corporation in such banks and depositories and under such terms and conditions as may be determined by the full Board.

Section 6.7 Vacancies. Any vacancy (whether as a result of removal, resignation, or otherwise) occurring in any office shall be filled by an affirmative vote of the majority of the Directors then in office. The new officer shall serve only for the duration of the unexpired term of the office filled.

Section 6.8 Removal. An officer may be removed at any time, with or without cause, by the Board of Directors by at least a majority vote of the Directors present and voting at any regular meeting or special meeting called for such purpose. Removal as an officer does not constitute automatic resignation from the Board.

Section 6.9 Resignation. An officer may resign at any time by giving written notice to the Chairperson. If the Chairperson is the resigning officer, the written notice shall be given to the Secretary. Resignation as an officer does not constitute automatic resignation from the Board.

ARTICLE 7 COMMITTEES OF THE BOARD

Section 7.1 Appointment of Committees.

(a) The Committees of the Board shall include: Executive Committee, Finance Committee, Nominating Committee, Audit Committee and such others as the Board may create. Except as otherwise provided in these Bylaws, each Committee shall consist of at least three (3) Directors and the members and the chair of each Committee shall be appointed annually by the Board, as soon as practicable after the appointment of officers. All Committees shall operate in a manner which is consistent with the policies of the Board.

(b) Subcommittees consisting of three (3) or more Directors may be appointed by the Chairperson of a Committee for such special tasks as circumstances warrant, subject to the approval of the Board. A Subcommittee shall limit its activities to the accomplishment of the task for which it is appointed and shall have no power to *act* except as specifically conferred by action of the Board. Upon completion of the task for which appointed, such Subcommittee shall stand discharged. Subcommittees may include members who are not on the Board but to the extent any such member is included in the composition of a Subcommittee, the Subcommittee shall not have the authority to bind the Corporation.

(c) Each committee shall serve at the pleasure of the Board, and the Board, subject to the applicable provisions of these Bylaws, shall have the authority at any time to change the membership of any committee, to fill vacancies in it, or to dissolve it. All committees shall report to the Board whenever requested by the Board to do so.

Section 7.2 Executive Committee. The Executive Committee will be comprised of the

Chairperson, the Vice Chairperson, the Secretary and the Treasurer. The Executive Committee shall convene as necessary and, under the direction of the full Board, shall act for the Corporation in all matters during the interim, periods between meetings of the Board of Directors. The Executive Committee shall perform duties as may be requested from time to time by the full Board. Only the Executive Committee shall be authorized to act on behalf of the Board.

Section 7.3 Finance Committee. The Finance Committee will be responsible for monitoring and making regular reports and recommendations to the Board regarding the financial status and policies of the Corporation, including fiscal planning, budgeting, and policy development.

Section 7.4 Nominating Committee. The Nominating Committee shall be comprised of Directors nominated by the Board and will be responsible for recruiting and nominating all individuals for consideration for membership on the Board of Directors. The Nominating Committee shall review candidates' qualifications, and make nominations in a manner that assures compliance with Article 5 hereof.

Section 7.5 Audit Committee.

(a) **Role of Committee.** A designated audit committee of the Board comprised solely of Independent Directors (as defined in the New York Not-For-Profit Corporation Law ("N-PCL")) (the "Audit Committee") shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

(b) **Annual Report.** The Audit Committee shall, in any year the Corporation is required to file an independent Certified Public Accountant's audit report with the Attorney General pursuant to the N-PCL and that in the prior fiscal year had, or in the current fiscal year expects to have, annual revenue in excess of one million dollars (\$1,000,000) shall, in addition to those duties set forth Section 7.5(a) hereof, (a) review with the independent auditor the scope and planning of the audit prior to the audit's commencement; (b) upon completion of the audit, review and discuss with the independent auditor (1) any material risks and weaknesses in internal controls identified by the auditor; (2) any restrictions on the scope of the auditor's activities or access to requested information; (3) any significant disagreements between the auditor and management; and (4) the adequacy of the Corporation's accounting and financial reporting processes; (c) annually consider the performance and independence of the independent auditor; and (d) report on the Audit Committee's activities to the Board.

(c) **Policy Oversight.** The Audit Committee shall oversee the adoption, implementation of, and compliance with the conflict of interest policy and, if applicable, the whistleblower policy (which shall be required at any time that the Corporation has twenty (20) or more employees and, in the prior fiscal year, had annual revenue in excess of one million dollars (\$1,000,000)) adopted by the Corporation.

(d) Participation. Only Independent Directors (as defined in the N-PCL) may participate in any Board or Committee deliberations or voting relating to matters set forth in this Section.

ARTICLE 8 MEETINGS

Section 8.1 Annual Meetings.

(a) The Board shall hold an annual meeting during the month of June, at such time and place as is established by the Board upon proper notice, for election of new Directors and transaction of such other businesses as may properly come before the Board. The annual meeting shall serve as the regular meeting for that month.

(b) The Nominating Committee shall present to the Executive Committee a slate of Director nominees, in time for review and discussion before the scheduled election. The full Board shall be notified of the Nominating Committee's recommendations at least ten (10) days before the annual meeting (or, in the case of a vacant or new Board seat, before any meeting at which a vote on Board membership occurs). All nominations shall be subject to the consent of the nominee.

Section 8.2 Regular Meetings. The Board of Directors shall hold regular meetings not less than quarterly such time and place as is established by the Board, for the transaction of such business as may properly come before the Board.

Section 8.3 Special Meetings.

(a) Special meetings of the Board of Directors may be called by the Executive Committee or by any three (3) Directors. Special meetings shall abide by all the rules of a regularly scheduled meeting.

(b) Special meetings shall not be used to replace the regularly scheduled monthly Board of Director meetings.

Section 8.4 Executive Session. The Board of Directors may hold an Executive Session during any meeting whenever called by the Chairperson or by any three (3) Directors of the Board for such purposes as (s)he/they deem necessary, including but not limited to discussion of litigation (actual or threatened). Attendance at such a session shall be limited to members of the Board of Directors only, provided that the Board may invite such other persons as it deems appropriate to attend an Executive Session.

Section 8.5 Notice; Waiver. (i) Written notice of annual meetings shall be provided by the Secretary of the Corporation at least thirty (30) but not more than sixty (60) calendar days in advance, (ii) written notice of regular meetings shall be provided by the Secretary of the Corporation at least five (5) but not more than twenty one (21) calendar days in advance, and (iii) written notice of special meetings shall be provided by the Secretary of the Corporation at least three (3) calendar days in advance. Notice may be in writing and sent by mail, addressed

to such Director at his or her address as it appears on the records of the Corporation. Such notice shall be deemed to have been given when it is deposited in the United States mail. Notice may also be given by telephone or sent by facsimile transmission, telegraph, telex, or electronic mail, and shall be deemed to have been given on the date of such call or transmittal, or by courier service or hand-delivery and shall be deemed to have been given on the date of such delivery. Notice of a meeting of the Board need not be given to a Director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Waiver of notice may be written or electronic. If written, the waiver must be executed by the Director or by causing his signature to be affixed to such waiver by any reasonable means, including, but not limited to, facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the member

Section 8.6 Quorum. A simple majority of the Directors in office shall constitute a quorum for the transaction of business at any meeting. If a quorum is not present at a meeting, or a quorum is not present at the time business is to be transacted, a majority of the Directors present may adjourn the meeting to another time and shall give absent Directors reasonable notice of the time and place of such adjourned meeting, or the Directors present may submit any proposed action or resolution to the full Board of Directors without a meeting pursuant to Section 8.8 hereof.

Section 8.7 Voting. Except as otherwise provided by these Bylaws or as may be required by applicable law, all matters before the Board of Directors shall be decided by an affirmative vote of the majority of the Directors present and voting at a meeting at which a quorum exists. Each Director shall be entitled to one (1) vote.

Section 8.8 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or a committee of the Board of Directors may be taken without a meeting if the text of the action or resolution agreed upon is sent to all Directors then in office or all committee members, as applicable, provided that all Directors then in office or all committee members, as applicable, consent to such action or resolution. Such consent may be written or electronic. If written, the consent must be executed by a Director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the written consents thereto by the members of the Board of Directors or committee shall be filed with the minutes of the proceedings of the Board of Directors or committee.

Section 8.9 Telephonic or Electronic Meeting. One (1) or more members of the Board, or any committee thereof, may participate in a meeting of the Board, or any committee thereof, by means of a conference telephone or similar communications equipment, or by electronic video screen communication. Participating by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Trustee can participate in all matters before the Board, including, without limitation,

the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee. A Trustee's participation by such means shall constitute presence at a meeting and shall count towards a quorum.

ARTICLE 9 FISCAL POLICIES

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall be January 1 to December 31 of each year.

Section 9.2 Financial Statement. An annual statement and independent audit will be presented to the Board at the annual meeting.

ARTICLE 10 BYLAWS

Section 10.1 Adoption and Effective Date. These Bylaws shall become effective immediately upon their adoption. Amendments shall become effective immediately upon their adoption, unless the Board in adopting them as hereinafter provided, states that they are to become effective at a later date.

Section 10.2 Amendment and Repeal. The Board of Directors may add to, delete, amend, or repeal these Bylaws by a two-thirds (2/3) affirmative vote of the Directors of the Board present and voting at any regular or special meeting, provided that a written notice has been given to Directors at least thirty (30) days prior to the meeting at which the vote is to be taken. No amendment may be made so as to avoid limitations imposed by the Certificate of Incorporation. In no event shall the amendment or repeal of the Bylaws, or adoption of new Bylaws, require approval of any other party.

ARTICLE 11 MISCELLANEOUS

Section 11.1 Books and Records. The Corporation shall keep at the principal office of the Corporation correct and complete books and records of account and minutes of the proceedings of its Board of Directors and its committees and a list of the names and addresses of its Directors and officers. Any of the foregoing books, minutes, and records may be in written form or in any other, form capable of being converted into written form within a reasonable time.

Section 11.2 Exempt Activities. No Director, officer, employee, consultant, or agent of the Corporation shall take any action or carry on any activity, by or on behalf of the Corporation, not permitted to be taken or carried on by an organization exempt from Federal income taxation as described in Code Section 501(c)(3).

Section 11.3 Sharing in Corporate Earnings. Subject to Section 5.12, no Director, officer, or employee of, or any other person connected with, the Corporation or any Health Center, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation and/or any Health Center, provided that this prohibition shall

not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation and/or any Health Center or the reimbursement of expenses incurred by any such person on behalf of the Corporation and/or any Health Center, in connection with effecting any of the purposes of the Corporation.

Section 11.4 Dissolution. No Director, officer or employee shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction upon the application of the Board, exclusively to any charitable, religious, scientific, literary or educational organization(s) (i) which then qualifies for exemption from Federal income taxation under the provisions of Code Section 501(c)(3) and the Treasury Regulations thereunder (as they now exist or as they may hereafter be amended) and (ii) contributions to which are deductible under Code Section 170(c)(2) and the Treasury Regulations thereunder (as they now exist or as they hereafter may be amended).

Section 11.5 Prohibition Against Political Activities and Limitations on Lobbying. The Corporation shall not participate, or intervene, in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence, legislation, except to the extent permitted by law for nonprofit, tax-exempt organizations.

EXHIBIT A

LONG ISLAND FOHC, INC.
CONFLICT OF INTEREST POLICY

ARTICLE I
PURPOSE

The purpose of this policy (the "Policy") is to protect the interests of Long Island FQHC, Inc. (the "Corporation") when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Director, Officer, or Key Employee of the Corporation. The Corporation will not enter into any such transaction or arrangement unless it is determined by the Board of Directors of the Corporation (the "Board") in the manner described below to be fair, reasonable and in the best interests of the Corporation at the time of such determination.

This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.

ARTICLE 2
RELATED PARTY TRANSACTIONS AND DUTY TO DISCLOSE

A Related Party Transaction is not necessarily a prohibited transaction. Under this Policy, if the Corporation contemplates entering into a Related Party Transaction, the Board must determine if the transaction is fair, reasonable, and in the best interests of the Corporation at the time of such determination.

If at any time during his or her term of service a Related Party acquires any Financial Interest or when any matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest or potential Related Party Transaction must be promptly disclosed in writing to each member of the Board, the President, and to the Chair of the appropriate Board Committee, together with all material facts. The Board will then follow the procedures in Article 4 of this Policy.

Failure to disclose to the Board a known Financial Interest or a known potential Related Party Transaction may be grounds for removal from the Board or termination from the Corporation.

ARTICLE 3
DISCLOSURE AND VOTING

Disclosure. Any Related Party shall disclose in good faith all material facts of his or her Financial Interest to the Board.

Non-Participation and Review. All transactions, agreements or any other arrangements between the Corporation and a Related Party, and any other transactions which may involve a potential conflict of interest, shall be reviewed by the Board. All Related Parties with a Financial Interest shall leave the room in which such deliberations are conducted. The Board will then determine

whether the contemplated Related Party Transaction is fair, reasonable, and in the best interests of the Corporation at the time of such determination. The Corporation will not enter into any Related Party Transaction unless it is determined to be fair, reasonable and in the best interest of the Corporation at the time of such determination.

Consideration of Alternate Transactions and Comparability Data.

If the contemplated Related Party Transaction pertains to compensation for services or the transfer of property or other economic benefit to a Related Party, the Board must determine that the value of the economic benefit provided by the Corporation to the Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data prior to entering the transaction.

In those instances where the contemplated Related Party Transaction does not involve compensation, transfer of property or benefits to a Related Party, the Board must consider alternative transactions to the extent possible, prior to entering into such transaction.

Comparability Data. When considering the comparability of compensation, for example, the types of relevant Comparability Data which the Board may consider include, but are not limited to (1) compensation levels paid by similarly situated organizations, both exempt and non-exempt; (2) the availability of similar services within the same geographic area; (3) current compensation surveys compiled by independent firms; and (4) written offers from similar institutions competing for the same person's services. When the transaction involves the transfer of real property as consideration, the relevant factors include, but are not limited to (i) current independent appraisals of the property, and (ii) offers received in a competitive bidding process.

Voting. The Board or applicable Board committee shall, after considering alternate transactions and/or comparability data, determine in good faith by vote of the Board whether the transaction or arrangement is fair, reasonable, and in the best interest of the Corporation at the time of such decision. The transaction shall be approved by not less than a majority vote of the Directors or Committee members present at the meeting. In conformity with the above criteria, the Board shall make its decision as to whether to enter into the transaction or arrangement and shall document the meeting contemporaneously under Article 6 of this Policy.

All Related Parties with a Financial Interest must not be present for deliberations and voting on the transaction or arrangement in which he or she has a Financial Interest. However, Related Parties are not prohibited from providing information regarding the transaction to the Board prior to the Board's deliberations. No Director or Officer shall vote, act, or attempt to influence improperly the deliberations on any matter in which he or she has been determined by the Board to have a Financial Interest. Any attempt to vote, act, or improperly influence deliberations by a Related Party on any matter with which such person has a Financial Interest may be grounds for removal from the Board or termination from the Corporation.

Compensation.

A voting member of the Board or an Officer who receives compensation directly or indirectly from the Corporation for services or a Director serving as a voting member of any Committee whose jurisdiction includes compensation matters is precluded from voting or acting on matters

pertaining to that Director's or Officer's compensation.

No voting member of the Board or any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any Committee regarding compensation.

ARTICLE 4 AUDIT COMMITTEE REVIEW

The Board may delegate to the Audit Committee, which shall be composed solely of Independent Directors, the adoption, implementation of and compliance with this Policy. The Board may delegate to the Audit Committee review and approval of any Related Party Transaction involving a Related Party and the Corporation, as contained in this Policy; provided that if the Related Party Transaction is of a magnitude that would otherwise require full Board approval, the Committee shall submit the Related Party Transaction to the Board for consideration, providing its recommendation as to whether or not to approve it.

In the event the Board delegates the review and approval of Related Party transactions to a committee, all references to Board in this Policy shall be deemed to refer to such Committee and all references to a majority of the Board shall be deemed to refer to a majority of such Committee.

ARTICLE 5 RECORDS OF PROCEEDINGS

The minutes of all meetings of the Board and all Committee meetings at which a Related Party Transaction is considered shall contain:

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or conflict of interest, the nature of the potential or actual Financial Interest and/or conflict of interest, any action taken to determine whether a Financial Interest or conflict of interest exists, and the Board's decision as to whether a Financial Interest and/or conflict of interest exists.
- The names of the persons who were present for discussions and votes relating to any determinations under Article 6(a) above, including whether the Related Party left the room during any such discussions, the content of such discussions, including discussion of alternative transactions, and whether or not the transaction with the Related Party was approved by the Board.
- The minutes shall be documented contemporaneously to the decision and discussion regarding the Financial Interest or conflict of interest.

ARTICLE 6
INITIAL AND ANNUAL WRITTEN DISCLOSURES

Prior to a Director's initial election to the Board, or an Officer or Key Employee's employment at the Corporation, and thereafter on an annual basis, all Directors, Officers, and Key Employees shall disclose in writing to the Secretary of the Corporation:

(i) Any entity of which such person or a Relative of such person is an officer, director, trustee, member, owner, or employee and with which the Corporation has a relationship,

(ii) Any Financial Interest such person may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to Corporation for a fee or other compensation, and

(iii) Any position or other material relationship such Director, Officer, Key Employee, or Relative of such person, may have with any not-for-profit corporation with which the Corporation has a business relationship.

A copy of each disclosure statement shall be kept in Corporation's files and made available to any Director, Officer, or Key Employee upon request.

ARTICLE 7
ANNUAL STATEMENTS

Each Director, Officer, and Key Employee shall annually sign and submit to the Secretary of the Corporation a statement which affirms such person: (a) has received a copy of this Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

ARTICLE 8
DEFINITIONS

- Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.
- Director. Any voting or non-voting member of the governing board of a corporation, whether designated as a director, trustee, manager, governor, or by any other title.
- Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial or other arrangement involving the Corporation.
- Independent Director. A member of the Board who:

- Has not been an employee of the Corporation or an Affiliate of the Corporation within the last three years;
 - Does not have a Relative who has been a Key Employee of the Corporation or an Affiliate of the Corporation within the last three years;
 - Has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation or reimbursement for services as a Director, as set by the Corporation);
 - Does not have a substantial Financial Interest in and has not been an employee of, and does not have a Relative who has a substantial Financial Interest in or was an Officer of, any entity that has made payments to or received payments from, the Corporation or an Affiliate of the Corporation in excess of the lesser of: (a) \$25,000 or (b) 2% of the Corporation's consolidated gross revenue over the last three years (payment does not include charitable contribution);
 - Is not in an employment relationship under control or direction of any Related Party and does not receive payments subject to approval of a Related Party; and
 - Does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.
- Key Employee. A Key Employee is a person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation. This includes, but is not limited to:
 - Voting members of the Board;
 - Presidents, chief executive officers, chief operating officers or employee of any other title with similar responsibilities;
 - Treasurers and chief financial officers or employee of any other title with similar responsibilities; or
 - A "highly compensated" employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of the Corporation.
- Officer. A person who has the authority to bind the Corporation as designated in the bylaws of the Corporation.
- Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Policy include:
 - Directors, Officers, or Key Employees of the Corporation or an Affiliate of the Corporation;
 - Relatives of Directors, Officers, or Key Employees;

- any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
 - Founders of the Corporation;
 - Substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);
 - Persons owning a controlling interest (through votes or value) in the Corporation;
 - Any non-stock entity controlled by one or more Key Employees.
- Related Party Transaction. Any transaction, agreement or any other arrangement with the Corporation or an Affiliate of the Corporation in which a Related Party has a Financial Interest. Any Related Party Transaction will be considered a conflict of interest for purposes of this Policy.
 - Relative. A Relative is a spouse, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half-blood), or spouse of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half-blood), or a domestic partner as defined in section 2994-A of the New York Public Health Law.

8



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 21, 2009

Mr. Paul Rowland
Chief Operating Officer
Nassau Health Care Corporation
2201 Hempstead Turnpike
East Meadow, New York 11554

Re: Application No. 091060 --Long Island FQHC, Inc. (Nassau County)

Dear Mr. Rowland:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Long Island FQHC, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of July 17, 2009.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 90 Church Street, New York, New York 10007 or (212) 417-5990, within 30 days of receipt of this letter.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Central Islip Field Office
Courthouse Corporate Center
320 Carleton Avenue, Suite 5000 Central Islip, New York 11722 (631) 851-3080

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

September 28, 2009

Paul J. Rowland
Sr. VP & Chief Operating Officer
Nassau Health Care Corporation
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, NY 11554-1854

Re: CON # 091060
Hempstead Community Health Center
(Nassau County)
Transfer of Ownership
One (1) Diagnostic and Treatment Center (D&TC)
135 Main Street, Hempstead
Three (3) D&TC Extension Clinics
161 Hempstead Turnpike, Elmont
480 Main Street, Freeport
682 Union Avenue, New Cassel
One (1) School Based D&TC Extension Clinic
1 Wagner Avenue, Roosevelt
One (1) Part Time Clinic
229 Seventh Street, Garden City

Dear Mr. Rowland:

This letter is to inform you that approval is granted for the above noted project. The approval for the transfer of ownership of the above noted facilities from Nassau Health Care Corporation to Long Island FQHC, Inc. is effective September 24, 2009.

Although an on-site visit will not be made to verify compliance with the applicable requirements of 10 NYCRR, the facility has attested to compliance, and DOH reserves the right to require correction of any item that is non-compliant.

If you have any questions regarding this letter, please contact Chris Romano at (631) 851-3654, cmr04@health.state.ny.us.

Sincerely,

Jeffrey Spitz, LCSW
Regional Program Director
Division of Primary and Acute Care Services



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clynne, Jr.
Executive Deputy Commissioner

June 30, 2010

Mr. Jeffrey Thorpe
Foley & Larder, LLP
90 Park Avenue
New York, New York 10016

Re: Restated Certificate of Incorporation of Long Island FQHC, Inc.

Dear Mr. Thorpe:

The above referenced Restated Certificate of Incorporation, dated June 16, 2010, and signed by Diane Coleman may be filed pursuant to the Public Health Council approval letter dated September 21, 2009.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Sullivan".

Suzanne Sullivan
Senior Attorney
Bureau of House Counsel

Enclosure

9

Facility Id. 4419
Certificate No. 2908201R

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Effective Date: 06/17/2022
Expiration Date: NONE

Diagnostic and Treatment Center
Hempstead Community Health Center
135 Main Street
Hempstead, New York 11550

Operator: Nassau Health Care Corporation
Co-Operator: Long Island FQHC, Inc.
Operator Class: Public Public Benefit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified:

- Audiology O/P
- Medical Services - Other Medical Specialties
- Therapy - Physical O/P
- CT Scanner
- Medical Services - Primary Care
- Therapy - Respiratory O/P
- Chemical Dependence - Rehabilitation O/P
- Optometry O/P
- Therapy - Speech Language Pathology O/P
- Clinic Part Time Services
- Podiatry O/P
- Therapy - Vocational Rehabilitation O/P
- Dental O/P
- Therapy - Occupational O/P

Other Authorized Locations

Diagnostic and Treatment Center Extension Clinic

- Elmont Health Center
Facility ID 531
161 Hempstead Turnpike
Elmont, New York 11003
- Oceanside Family Health Center
Facility ID 10145
3227 Long Beach Road, Suite 2
Oceanside, New York 11572
- Roosevelt/Freeport Family Health Center
Facility ID 9171
380 Nassau Road
Roosevelt, New York 11575
- South Ocean Care Family Health Center
Facility ID 6423
101 South Bergen Place
Freeport, New York 11520
- Westbury/New Cassel Family Health Center
Facility ID 7020
682 Union Avenue
New Cassel, New York 11590

School Based Diagnostic and Treatment Center Extension Clinic

- Freeport High School
Facility ID 13953
50 South Brookside Avenue
Freeport, New York 11520
- Roosevelt High School
Facility ID 7648
1 Wagner Avenue
Roosevelt, New York 11575
- Westbury High School
Facility ID 10402
1 Post Road
Old Westbury, New York 11568

Mobile Diagnostic and Treatment Center Extension Clinic

- LIFQHC - Mobile Van
Facility ID 15322
135 Main Street
Hempstead, New York 11550

20220803
Deputy Commissioner, Office of Primary Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

Facility Id. 4419
Certificate No. 2908201R

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

**Diagnostic and Treatment Center
Hempstead Community Health Center
135 Main Street
Hempstead, New York 11550**

Effective Date: 06/17/2022
Expiration Date: NONE

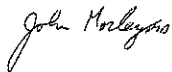
Operator: Nassau Health Care Corporation
Co-Operator: Long Island FQHC, Inc.
Operator Class: Public Public Benefit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified:

Other Authorized Locations

Mobile Diagnostic and Treatment Center Extension Clinic

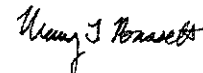
LIFQHC - Mobile Van
Facility ID 15322
135 Main Street
Hempstead, New York 11550



20220803

Deputy Commissioner, Office of Primary
Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.



Commissioner

Facility Id. 15322
Certificate No. 2908201R

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Effective Date: 06/17/2022
Expiration Date: NONE

Mobile Diagnostic and Treatment Center Extension Clinic

LIFQHC - Mobile Van

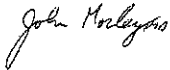
135 Main Street

Hempstead, New York 11550

Operator: Nassau Health Care Corporation
Co-Operator: Long Island FQHC, Inc.
Operator Class: Public Public Benefit Corporation

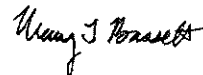
Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Primary Care



20220803
Deputy Commissioner, Office of Primary
Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.



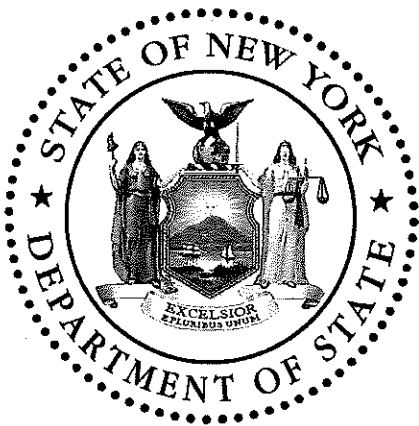
Commissioner

10

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for HARMONY HEALTH CARE LONG ISLAND, File Number 230601003144 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on June 01, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



Division of Corporations, State Records and Uniform Commercial Code

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

Certificate of Assumed Name

(Pursuant to General Business Law §130)

1. REAL NAME OF ENTITY:

LONG ISLAND FQHC, INC.

1a. FICTITIOUS NAME, IF ANY, OF FOREIGN ENTITY (Not Assumed Name):

2. THE ENTITY WAS FORMED OR AUTHORIZED UNDER THE FOLLOWING NEW YORK LAW (Check one):

- Business Corporation Law, Limited Liability Company Law, Religious Corporations Law, Education Law, Not-for-Profit Corporation Law, Revised Limited Partnership Act, Other (specify law):

3. ASSUMED NAME OF ENTITY:

HARMONY HEALTH CARE LONG ISLAND

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST INCLUDE NUMBER AND STREET), IF NONE, CHECK THIS BOX AND PROVIDE OUT-OF- STATE ADDRESS:

1600 Stewart Avenue, Suite 300, Westbury, NY 11590

5. COUNTY(IES) IN WHICH ENTITY DOES OR INTENDS TO DO BUSINESS:

- ALL COUNTIES (or check applicable county(ies) below), Albany, Cattaraugus, Chenango, Delaware, Franklin, Hamilton, Lewis, Montgomery, Allegany, Cayuga, Clinton, Dutchess, Fulton, Herkimer, Livingston, Nassau, Bronx, Chautauqua, Columbia, Erie, Genesee, Jefferson, Madison, New York, Broome, Chemung, Cortland, Essex, Greene, Kings, Monroe, Niagara, Oneida, Orleans, Queens, St. Lawrence, Schuyler, Sullivan, Warren, Wyoming, Onondaga, Oswego, Rensselaer, Saratoga, Seneca, Tloga, Washington, Yates, Ontario, Otsego, Richmond, Schenectady, Steuben, Tompkins, Wayne, Orange, Putnam, Rockland, Schoharie, Suffolk, Ulster, Westchester

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON, CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE. (Use page 2 if needed. The address(es) must be a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph 5.) If none, check this box: No New York State Business Location.

Hempstead Community Health Center, 135 Main Street, Hempstead, NY 11550; Elmont Health Center,

Facility ID 531, 161 Hempstead Turnpike, Elmont, NY 11003; Oceanside Family Health Center, Facility

Print or Type

Name of Signer:

FRANK PISCETELLI

Signature:

[Handwritten signature of Frank Piscetelli]

Capacity of Signer (Check one):

- Authorized Person, Officer of the Corporation, General Partner of the Limited Partnership, Member of the Limited Liability Company, Manager of the Limited Liability Company

Certificate of Assumed Name

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON OR CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE: (Continued)

ID 10145, 3227 Long Beach Road, Sulte 2, Oceanside, NY 11572; Roosevelt/Freeport Health Center,

Facility ID 9171, 380 Nassau Road, Roosevelt, NY 11575; South Ocean Care Family Health Center,

Facility ID 6423, 101 South Bergen Place, Freeport, NY 11520; Freeport High School, Facility ID 13953,

50 South Brookside Avenue, Freeport, NY 11520; Roosevelt High School, Facility ID 7648, 1 Wagner Ave.

Roosevelt, NY 11575; Westbury High School, Facility ID 10402, 1 Post Road, Old Westbury, NY 11568;

LIFQHC - Mobile Van, Facility ID 15322, 135 Main Street, Hempstead, NY 11550; Westbury/New Cassel

Family Health Center, Facility ID 7020, 682 Union Avenue, New Cassel, NY 11590

Filer's Name and Mailing Address:

Name:

Farrell Fritz, P.C.

Company, if Applicable:

400 RXR Plaza

Mailing Address:

Uniondale, NY 11556

City, State and Zip Code:

NOTE: You are not required to use this form. This certificate should be prepared under the guidance of an attorney.

FEE: Limited Liability Companies and Limited Partnerships - \$25.

Corporations - \$25 plus the fee for each county indicated in paragraph 5. The additional fee for each county within New York City (Bronx, Kings, New York, Queens and Richmond) is \$100 additional. The fee for each county outside New York City is \$25. Checks over \$500 must be certified.

(For office use only)



**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 31, 2023

Long Island FQHC, Inc.
c/o: Farrell Fritz, P.C.
Attn.: Jennifer Stacchini, Esq.
549 Fern Ave. – Fl. 2
Lyndhurst, NJ 07071

Email: JStacchini@FarrellFritz.com

Re: Certificate of Assumed Name – Long Island FQHC, Inc.
Harmony Healthcare Long Island

Dear Ms. Stacchini:

I have reviewed the proposed Certificate of Assumed Name of Long Island FQHC, Inc., for the assumed name - Harmony Healthcare Long Island, signed by the authorized persons.

Please be advised that pursuant to 10 NYCRR 600.11, the proposed Certificate of Assumed Name does not require the formal approval of the Department of Health or the Public Health and Health Planning Council (PHHPC) because no prior assumed name for the subject Not-for-profit Corporate entity was approved by PHHPC or its predecessor.

Additionally, the Certificate of Assumed Name does not require the formal approval of PHHPC or the Commissioner of Health under either the Public Health Law or the Not-For-Profit Corporation Law, because said Certificate neither changes the Corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

There is no legal objection to the filing of the above-referenced Certificate of Assumed Name.

Sincerely,

Mark A. Schweitzer,
Associate Attorney
Bureau of Program Counsel,
Division of Legal Affairs

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth
Medical Center

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) An April 6, 2023, electronic letter to the PHHPC requesting approval from Frank M. Cicero, Consultant to St. Elizabeth Medical Center;
- 3) A copy of the proposed Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center, along with the Restated Certificate of Incorporation of St. Elizabeth Medical Center;
- 4) A copy of the Bylaws of St. Elizabeth Medical Center with proposed amendment;
- 5) The March 23, 2023 Resolution of the co-member, the Board of Directors of Mohawk Valley Health System, to approve the Amendment;
- 6) The April 27, 2023 Resolution of the co-member, the Board of Directors of Partners in Franciscan Ministries, to approve the Amendment; and
- 7) The March 23, 2023 Resolution of the Board of Directors of St. Elizabeth Medical Center to approve the Amendment.

Attachments.

cc: J. Corvino

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: July 19, 2023

Subject: Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center

St. Elizabeth Medical Center ('SEMC') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed Certificate of Amendment of the Certificate of Incorporation.

Through the proposed Amendment, SEMC will change its legal name to "St. Elizabeth Community Health Support". Mohawk Valley Health System is the co-member and co-operator of SEMC. This request is being submitted in support of a Transformation Grant-funded CON Application (Project No. 172305-C).

Through that CON application, SEMC was approved for the construction of a new hospital campus in downtown Utica and for the consolidation of services from the campuses of SEMC and Faxton-St. Luke's Healthcare. The Operating Certificate Number of Faxton-St. Luke's Healthcare (#3202003H) will be retained for that hospital.

Attached is an electronic letter request from Frank M. Cicero on behalf of SEMC, the proposed Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center along with the Restated Certificate of Incorporation, the proposed amended Bylaws and the co-member Resolutions of the Board of Directors of Mohawk Valley Health System, the Board of Directors of Partners in Franciscan Ministries as well as the Board of Directors of SEMC authorizing the amendment.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation, or the proposed amendment to the existing Bylaws.

Attachments

Cicero Consulting Associates VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Pofit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Pofit
Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

April 6, 2023

Ms. Colleen Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: St. Elizabeth Medical Center (Operating Certificate #3202002H)

Dear Ms. Leonard:

On behalf of our client, St. Elizabeth Medical Center (SEMC), we are writing to seek approval from the Public Health and Health Planning Council (PHHPC) for an Amendment to the Certificate of Incorporation of St. Elizabeth Medical Center, a New York State, not-for-profit corporation that currently operates an Article 28 hospital in Utica of the same name. Through the proposed Amendment, SEMC will change its legal name to "St. Elizabeth Community Health Support" and will remove its Article 28 purposes. Mohawk Valley Health System is the sole member and co-operator of both St. Elizabeth Medical Center and Faxton-St. Luke's Healthcare St. Luke's Division (FSLH).

This request is being submitted in support of a Transformation Grant-funded C.O.N. Application (Project No. 172305-C) that is nearly complete and through which FSLH was approved for the following:

- Construct a new hospital campus in downtown Utica for the consolidation of services from the campuses of SEMC and FSLH. The Operating Certificate Number of FSLH (#3202003H) will be retained for hospital.
- Transfer all inpatient beds and most outpatient services from SEMC to the new campus. The outpatient services that will remain on the SEMC campus will result in the site becoming an outpatient extension clinic of FSLH.
- Transfer most inpatient beds and most outpatient services from FSLH to the new campus. The FSLH campus will retain 24 inpatient physical medicine and rehabilitation beds, as well as some outpatient services.
- All extension clinics of SEMC will become extension clinics of FSLH, under Operating Certificate #3202003H.

Ms. Colleen Leonard
April 6, 2023
Page 2

Project No. 172305-C is currently nearing the end of construction, and the applicant believes it is important to implement the presently requested changes to the legal documents to occur concurrent with the opening of the new hospital campus on October 1, 2023. This request is being submitted as part of an agreement between the hospitals that memorializes the above-noted changes and also transfers operationally necessary assets from SEMC to FSLH, which will be renamed "MVHS, Inc." and will do business as Wynn Hospital. A separate request for the FSLH name change is being concurrently submitted to you under a separate cover letter. Mohawk Valley Health System will remain the sole member of MVHS, Inc.

In furtherance of this specific request, please find the following documents:

1. Attachment No. 1 – Proposed Certificate of Amendment of the Certificate of Incorporation of SEMC;
2. Attachment No. 2 – Proposed Amended and Restated Bylaws of St. Elizabeth Community Health Support;
3. Attachment No. 3 – Board Resolution authorizing the name and purpose change – MVHS; and
4. Attachment No. 4 – Board Resolution authorizing the name/purpose change – SEMC.

Please feel free to call me if you require other information. Thank you for your consideration in this matter.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Mr. Louis Aiello, Senior Vice President, Chief Financial Officer, Mohawk Valley Health System

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ST. ELIZABETH MEDICAL CENTER**

Under Section 803 of the Not-for-Profit Corporation Law

1. The name of the Corporation is St. Elizabeth Medical Center. The Corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 8, 1870. The Corporation was formed under C. 319 of the Laws of 1848.

3. A Restated Certificate of Incorporation was filed by the Department of State on March 6, 2014.

4. The Corporation was formed under the Not-for-Profit Corporation Law.

5. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

6. The Corporation's Certificate of Incorporation is hereby amended to effect the following:

a. Paragraph 1 of the Certificate of Incorporation is hereby amended to change the Corporation's name. The full text of the amended Paragraph is:

"The name of the Corporation is: St. Elizabeth Community Health Support (herein, the "Corporation")."

b. Paragraph 4 of the Certificate of Incorporation is hereby amended to change the Corporation's purposes. The full text of the amended Paragraph is:

"(4) The purposes and objects of the Corporation shall be as follows:

1. To promote the delivery of high quality, efficient and effective health care services in Oneida County and the surrounding area by addressing the social determinants of health, such as poverty, education, nutrition, housing, transportation, access to health care and access to behavioral health services, with a particular focus on impoverished, sick, elderly, infirm and disabled persons, by providing comprehensive support services to MVHS, Inc., *formerly known as Faxton St. Luke's Healthcare*, and Mohawk Valley Health System;
2. To serve as an auxiliary of the Sisters of St. Francis of the Neumann Communities;

3. To provide educational and community support, and health-related awareness activities and programs incident to the purposes set forth above;
 4. To solicit funds for the above purposes; and
 5. To pursue, enhance and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be established, operated and maintained in accordance with all approvals required by applicable law.”
- c. Paragraph 5 of the Certificate of Incorporation, relating to the establishment of the Mohawk Valley Heart Institute, Inc., is deleted in its entirety.
- d. Subparagraph (xv) of Paragraph 7(b) of the Certificate of Incorporation, relating to the reservation of powers to its members, is amended to reflect the amended name of an affiliate. The full text of the amended Subparagraph is:

“(xv) To accept delegations of authority on behalf of the Corporation pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Corporation, the authority to accept, utilize, transfer and share in the assets, revenues and income of the Corporation and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of the Corporation pursuant to any master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings. Notwithstanding the foregoing, any and all proceeds from services performed at MVHS, Inc. which are proscribed by the Ethical and Religious Directives for Catholic Healthcare Services shall not be transferred to or used for the benefit of Mohawk Valley Health System, or the Corporation or any subsidiary of the Corporation, and neither Mohawk Valley Health System nor the Corporation shall provide or support such services maintained by MVHS, Inc. or any subsidiary of MVHS, Inc. or any affiliate of Mohawk Valley Health System.

For the purposes of this subsection (b) of section (7), Mohawk Valley Health System shall have: (a) the power to initiate and direct action by the Corporation without a prior recommendation of Corporation’s Board of Directors; and (b) the power to accept, reject or modify the recommendation of the Corporation’s Board of Directors and to direct action by the Corporation or to return the matter to the Corporation’s Board of Directors for reconsideration, with reasons for rejection and/or suggested change. Notwithstanding the foregoing, Mohawk Valley Health System shall not direct any action with respect to the Corporation that requires the approval of the Partners in Franciscan Ministries, Inc., without prior written approval of such action by the Partners in Franciscan Ministries, Inc. The Board

of Directors and officers of the Corporation shall not implement any action requiring the approval of Mohawk Valley Health System until Mohawk Valley Health System shall have exercised its reserve powers and communicated its determinations in writing to the Corporation's Board of Director and, in the case of any powers over the Corporation that are also reserved to the Partners in Franciscan Ministries, Inc., to the Partners in Franciscan Ministries, Inc.

With respect to any entity that is controlled by Mohawk Valley Health System, such entity's charter and governing documents shall contain a section that provides for the foregoing rights and powers to be reserved to Mohawk Valley Health System. All the policies, property, affairs and businesses of the controlled entities shall be under the charge, control and direction of their respective governing bodies, subject to the powers that are or shall be reserved to Mohawk Valley Health System as described in this paragraph."

- e. Paragraph 14 of the Certificate of Incorporation, related to dissolution of the Corporation, is amended to reference the Corporation without using the Corporation's former name. The full text of the amended Paragraph is:

"(14) In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to Partners in Franciscan Ministries, Inc ("PFM") and/or the Congregation of the Sisters of St. Francis of the Neumann Communities ("Sisters"), provided that they shall then qualify under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law). If neither PFM nor the Sisters shall so qualify at the time of dissolution, then distribution shall be to such organization(s) organized and operated exclusively for charitable, education, religious or scientific purposes as shall at the time qualify as an exempt organization under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law), as the Corporation shall determine."

- f. A new Paragraph 18 is added to the Certificate of Incorporation to change all references to "Trustees" of the Corporation to "Directors" of the Corporation. The full text of the new Paragraph is:

(18) All references in this Certificate of Incorporation and any Amendments or Restatements thereto to "Trustee" or "Trustees" shall be deemed a reference to "Director" or "Directors."

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is:

St. Elizabeth Community Health Support
111 Hospital Drive
Utica, NY 13502

8. This Certificate of Amendment to the Corporation's Certificate of Incorporation was authorized unanimous written consent of the members entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Amendment this 23 day of March, 2023, and hereby affirms that the statements contained herein are true under penalties of perjury.



Darlene Stromstad
President & Chief Executive Officer

FILING RECEIPT

=====

ENTITY NAME: ST. ELIZABETH MEDICAL CENTER

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROVISIONS RESTATED

COUNTY: ONEI

=====

FILED:03/06/2014 DURATION:***** CASH#:140306000872 FILM #:140306000805

FILER:

HARRIS BEACH PLLC
99 GARNSEY ROAD

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

REGISTERED AGENT:



=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL

SERVICE CODE: AL

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CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 190.00
OPAL 0.00
REFUND 0.00

RESTATED CERTIFICATE OF INCORPORATION
OF
ST. ELIZABETH MEDICAL CENTER

Pursuant to Section 805 of the Not-for-Profit Corporation Law

HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

**RESTATED CERTIFICATE OF INCORPORATION
OF
ST. ELIZABETH MEDICAL CENTER**

Pursuant to Section 805 of the Not-for-Profit Corporation Law

The undersigned, President/CEO of St. Elizabeth Medical Center, certifies:

1. The name of the corporation is St. Elizabeth Medical Center (the "Corporation"). The Corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 8, 1870. The Corporation was formed under C. 319 of the Laws of 1848.
3. The Certificate of Incorporation of the Corporation is amended to affect the following amendments authorized by the Not-For-Profit Corporation Law:
 - a. Paragraph (6) of the Certificate of Incorporation reads as follows:
 - (6) The member of St. Elizabeth Medical Center shall be Partners in Franciscan Ministries, Inc.
 - b. Paragraph (6) of the Certificate of Incorporation is deleted in its entirety and is replaced with the following:
 - (6) Partners in Franciscan Ministries, Inc., and Mohawk Valley Health System shall serve as co-members of the Corporation.
 - c. Paragraph (7) of the Certificate of Incorporation reads as follows:
 - (7) The following powers shall be reserved to the Corporate Member to exercise and shall be referred to as Reserved Powers:
 - (a) To change the philosophy, mission, and purpose of the Corporation.
 - (b) To appoint and remove the President/CEO of the Corporation.
 - (c) To appoint and remove the Board of Trustees of the Corporation.
 - (d) To approve the Certificate of Incorporation and Bylaws of the Corporation.

- (e) To receive the annual report of the Corporation.
- (f) To approve the formation of subsidiaries, affiliates or divisions of the Corporation.
- (g) To approve a change in the name of the Corporation.
- (h) To receive, review and monitor the budget of the Corporation as deemed necessary by the Corporate Member.
- (i) To receive the annual audit of the Corporation.
- (j) To receive, review and monitor strategic, long range plans of the Corporation as deemed necessary by the Corporate Member.
- (k) To approve the financial transactions of the Corporation according to the annual United States Conference of Catholic Bishops alienation guidelines.

d. Paragraph (7) is deleted in its entirety and replaced with the following:

- (7) (a) The following powers shall be reserved to co-member, Partners in Franciscan Ministries, Inc., to exercise and shall be referred to as the Reserved Powers of the Partners in Franciscan Ministries, Inc.:
 - (i) To approve and interpret those elements of the Corporation's statement of mission and philosophy adopted by the Corporation that relate to the Corporation's status as a Catholic organization or the pursuit of the Corporation's Catholic mission and philosophy, and any amendments thereof, and to require the Corporation to operate in conformance with its Catholic mission and philosophy.
 - (ii) To approve any amendment of the Corporation's purposes or powers in its Certificate of Incorporation that would terminate the Corporation's status as a Catholic organization or diminish its commitment or ability to operate in a manner consistent with the Ethical and Religious Directives for Catholic Healthcare Services.
 - (iii) To approve the sale, transfer, mortgage, guaranty, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Partners in Franciscan Ministries, Inc., to meet the requirements of the United States Conference of Catholic Bishops.

- (iv) To approve and reject appointments to the pension committee for the defined benefit pension plan sponsored by the Corporation, which qualifies as a church plan under Section 3(33) of the Employee Retirement Income Security Act of 1974.
- (v) To approve any amendments or modifications to, or the termination of, the St. Elizabeth Medical Center Church Plan.
- (vi) To elect or appoint and remove, with or without cause, one director of the Corporation who does not currently serve on the board of Mohawk Valley Health System.

For the purposes of this subsection (a) of section (7), the power of the Partners of Franciscan Ministries, Inc., to “approve” means the power to accept or reject a recommendation of the Board of Directors of the Corporation or an action by Mohawk Valley Health System or any future Members of the Corporation with respect to the powers reserved to the Partners of Franciscan Ministries, Inc. The Corporation’s Board of Directors and officers or Mohawk Valley Health System. or any future Members of the Corporation shall not implement any action requiring the approval of Partners of Franciscan Ministries, Inc., until Partners of Franciscan Ministries, Inc., shall have exercised its reserved powers and communicated its determination in writing to the Corporation’s other Members and Board of Directors.

- (7) (b) Subject to the powers reserved to the Partners in Franciscan Ministries, Inc., the following powers shall be reserved to co-member Mohawk Valley Health System to exercise and shall be referred to as the Reserved Powers of Mohawk Valley Health System:
 - (i) To approve and interpret the statement of mission and philosophy adopted by the Corporation, to require that the Corporation operate in conformance with its mission and philosophy and to coordinate the missions, visions, activities and resources of the Corporation and other affiliates of Mohawk Valley Health System in order to promote high quality, efficient and effective health care services in Oneida County, New York, and surrounding areas. Notwithstanding the foregoing, Mohawk Valley Health System shall not have the power to approve or interpret those elements of Corporation’s mission and philosophy that relate specifically to its status as a Catholic organization or the pursuit of the Corporation’s Catholic mission and philosophy.

- (ii) To elect or appoint, fix the number of, and remove, with or without cause, the directors of the Corporation, and to appoint and remove, with or without cause, the President/Chief Executive Officer of the Corporation. Notwithstanding the foregoing, the Partners in Franciscan Ministries, Inc., shall be entitled to appoint and remove, with or without cause, one additional director designated by the Partners in Franciscan Ministries, Inc., to the Corporation's Board of Directors.
- (iii) To amend or repeal the Certificate of Incorporation and Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws of the Corporation, unless such amendment would terminate the Corporation's status as a Catholic organization or diminish its commitment or ability to operate in a manner consistent with the Ethical and Religious Directives for Catholic Healthcare Services.
- (iv) To approve any plan of merger, consolidation, dissolution or liquidation of the Corporation.
- (v) To approve the debt of the Corporation in excess of an amount to be fixed from time to time by Mohawk Valley Health System.
- (vi) To approve the sale, acquisition, lease, transfer, mortgage, guarantee or pledge of real or personal property of the Corporation in excess of an amount to be fixed from time to time by Mohawk Valley Health System. Notwithstanding the foregoing, the approval of the Partners in Franciscan Ministries, Inc., shall be required for the sale, transfer, mortgage, guarantee, pledge or other alienation of real or personal property of Corporation in excess of an amount to be fixed from time to time by the Partners in Franciscan Ministries, Inc., to meet the requirements of the United States Conference of Catholic Bishops.
- (vii) To approve the capital and operating budgets of the Corporation.
- (viii) To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to the Corporation.
- (ix) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization

or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships, or joint ventures of the Corporation.

- (x) To approve and coordinate the strategic plan of the Corporation.
- (xi) To approve all contracts of reimbursement for the Corporation from governmental or private third party insurers.
- (xi) To approve all applications of the Corporation to federal or state governmental agencies for establishment or operating licensure, including but not limited to certificate of need applications to the New York State Department of Health.
- (xii) To approve management contracts for the Corporation subject to approval and/or regulation under the laws and regulations of the State of New York.
- (xiii) To approve any material change in the services offered by the Corporation.
- (xiv) To require the Corporation to participate in any and all programs and services, as determined by Mohawk Valley Health System in its discretion, provided, however, that Mohawk Valley Health System may not require the Corporation to participate in any program or service or take any action that would constitute a default or event of default under any mortgage, indenture or other material agreement or instrument to which the Corporation is a party and by which it is bound, and may not require the Corporation's participation in any program or service which would be contrary to its status as a Catholic organization or the pursuit of its Catholic mission or philosophy, as determined by the Partners in Franciscan Ministries, Inc.
- (xv) To accept delegations of authority on behalf of the Corporation pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Corporation, the authority to accept, utilize, transfer and share in the assets, revenues and income of the Corporation and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of the Corporation pursuant to any master trust

indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings. Notwithstanding the foregoing, any and all proceeds from services performed at affiliate Faxton St-Luke's Healthcare which are proscribed by the Ethical and Religious Directives for Catholic Healthcare Services shall not be transferred to or used for the benefit of Mohawk Valley Health System, the Corporation or any subsidiary of the Corporation, and neither Mohawk Valley Health System nor the Corporation shall provide or support such services maintained by Faxton-St. Luke's Healthcare or any subsidiary of Faxton-St. Luke's Healthcare or any affiliate of Mohawk Valley Health System.

For the purposes of this subsection (b) of section (7), Mohawk Valley Health System shall have: (a) the power to initiate and direct action by the Corporation without a prior recommendation of Corporation's Board of Directors; and (b) the power to accept, reject or modify the recommendation of the Corporation's Board of Directors and to direct action by the Corporation or to return the matter to the Corporation's Board of Directors for reconsideration, with reasons for rejection and/or suggested change. Notwithstanding the foregoing, Mohawk Valley Health System shall not direct any action with respect to the Corporation that requires the approval of the Partners in Franciscan Ministries, Inc., without prior written approval of such action by the Partners in Franciscan Ministries, Inc. The Board of Directors and officers of the Corporation shall not implement any action requiring the approval of Mohawk Valley Health System until Mohawk Valley Health System shall have exercised its reserve powers and communicated its determinations in writing to the Corporation's Board of Directors and, in the case of any powers over the Corporation that are also reserved to the Partners in Franciscan Ministries, Inc., to the Partners in Franciscan Ministries, Inc.

With respect to any entity that is controlled by Mohawk Valley Health System, such entity's charter and governing documents shall contain a section that provides for the foregoing rights and powers to be reserved to Mohawk Valley Health System. All the policies, property, affairs and businesses of the controlled entities shall be under the charge, control and direction of their respective governing bodies, subject to the powers that are or shall be reserved to Mohawk Valley Health System as described in this paragraph.

- e. Paragraph (8) of the Certificate of Incorporation reads as follows:
- (8) The business of St. Elizabeth Medical Center shall be managed by a Board of Trustees consisting of not fewer than nine nor more than fifteen persons.
- f. Paragraph (8) of the Certificate of Incorporation is deleted in its entirety and is replaced with the following:
- (8) The business of the Corporation shall be managed by a Board of Directors consisting of not fewer than nine persons.
- g. Paragraphs (11), (12), (13), (14) and (15) shall be added to address: (1) that the Corporation is organized exclusively for purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any subsequent federal tax law (the "Code"); (2) that no part of the Corporation's net earnings nor any distribution of assets on the dissolution of the Corporation shall inure to the benefit of any private person; (3) that no substantial part of the activities of the Corporation shall be carrying on propaganda, otherwise influencing legislation or participating in any political campaign; (4) the distribution of the Corporation's assets in the event of the Corporation's liquidation; and (5) the distribution of the Corporation's income in any taxable year in which the Corporation is a private foundation as described in Code Section 509(a). Paragraphs ((11), (12), (13), (14) and (15) are added to read as follows:
- (11) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable purposes, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent federal tax law (the "Code") and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal Income Tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).
 - (12) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.
 - (13) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall

not participate in, or intervene (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

(14) In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to Partners in Franciscan Ministries, Inc (“PFM”) and/or the Congregation of the Sisters of St. Francis of the Neumann Communities (“Sisters”), provided that they shall then qualify under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law). If neither PFM nor the Sisters shall so qualify at the time of dissolution, then distribution shall be to such organization(s) organized and operated exclusively for charitable, education, religious or scientific purposes as shall at the time qualify as an exempt organization under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law), as SEMC shall determine.

(15) In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make any investments in such manner as the subject corporation detects under Code Section 4944; or (d) make any taxable expenditures as defined in Code Section 4945(d).

h. Paragraph (16) shall be added to state the following:

(16) All references to “Trustees” shall be changed to “Directors” throughout the Certificate of Incorporation and Amendments or Restatements thereto and any reference to “Trustee” or “Trustees” shall be deemed a reference to “Director” or “Directors”.

i. Paragraph (17) shall be added to state the location of the office of the Corporation as follows:

(17) The office of the Corporation shall be located in the County of Oneida.

4. The text of the Certificate of Amendment is hereby restated, as amended, to read as herein set forth in full:

(1) The name of the corporation is St. Elizabeth Medical Center (the "Corporation"). The Corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

(2) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law. The Corporation is a Type B corporation under Section 201 (purposes) of the Not-For-Profit Corporation Law.

(3) The Secretary of State is designated as the agent upon whom process may be served, and the post office address within the State to which the Secretary of State shall mail a copy of any process is: 2209 Genesee Street, Utica, NY 13501.

(4) The business and objects of the Corporation hereby formed shall be:

(a) to maintain a hospital for poor, sick, aged, infirm and disabled persons;
and

(b) to operate a certified home health agency and to otherwise provide home care services.

(5) Pursuant to the establishment of the Mohawk Valley Heart Institute, Inc. pursuant to Article 28 of the Public Health Law, the Corporation hereby delegates to the Mohawk Valley Heart Institute, Inc.:

(a) Joint operational decision making authority and responsibility with the Corporation over such services for which a joint operating certificate will be issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and the Corporation.

(b) Notwithstanding the foregoing, the Corporation retains control over and does not delegate to Mohawk Valley Heart Institute, Inc., authority and responsibility for all other services, operations, and clinical programs, for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.

(6) Partners in Franciscan Ministries, Inc., and Mohawk Valley Health System shall serve as co-members of the Corporation.

(7) (a) The following powers shall be reserved to co-member, Partners in Franciscan Ministries, Inc., to exercise and shall be referred to as the Reserved Powers of the Partners in Franciscan Ministries, Inc.:

(i) To approve and interpret those elements of the Corporation's statement of mission and philosophy adopted by the Corporation that relate to the Corporation's status as a Catholic organization

or the pursuit of the Corporation's Catholic mission and philosophy, and any amendments thereof, and to require the Corporation to operate in conformance with its Catholic mission and philosophy.

- (ii) To approve any amendment of the Corporation's purposes or powers in its Certificate of Incorporation that would terminate the Corporation's status as a Catholic organization or diminish its commitment or ability to operate in a manner consistent with the Ethical and Religious Directives for Catholic Healthcare Services.
- (iii) To approve the sale, transfer, mortgage, guaranty, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Partners in Franciscan Ministries, Inc., to meet the requirements of the United States Conference of Catholic Bishops.
- (iv) To approve and reject appointments to the pension committee for the defined benefit pension plan sponsored by the Corporation, which qualifies as a church plan under Section 3(33) of the Employee Retirement Income Security Act of 1974.
- (v) To approve any amendments or modifications to, or the termination of, the St. Elizabeth Medical Center Church Plan.
- (vi) To elect or appoint and remove, with or without cause, one director of the Corporation who does not currently serve on the board of Mohawk Valley Health System.

For the purposes of this subsection (a) of section (7), the power of the Partners of Franciscan Ministries, Inc., to "approve" means the power to accept or reject a recommendation of the Board of Directors of the Corporation or an action by Mohawk Valley Health System or any future Members of the Corporation with respect to the powers reserved to the Partners of Franciscan Ministries, Inc. The Corporation's Board of Directors and officers or Mohawk Valley Health System or any future Members of the Corporation shall not implement any action requiring the approval of Partners of Franciscan Ministries, Inc., until Partners of Franciscan Ministries, Inc., shall have exercised its reserved powers and communicated its determination in writing to the Corporation's other Members and Board of Directors.

(7) (b) Subject to the powers reserved to the Partners in Franciscan Ministries, Inc., the following powers shall be reserved to co-member Mohawk Valley Health System to exercise and shall be referred to as the Reserved Powers of Mohawk Valley Health System:

- (i) To approve and interpret the statement of mission and philosophy adopted by the Corporation, to require that the Corporation operate in conformance with its mission and philosophy and to coordinate the missions, visions, activities and resources of the Corporation and other affiliates of Mohawk Valley Health System in order to promote high quality, efficient and effective health care services in Oneida County, New York, and surrounding areas. Notwithstanding the foregoing, Mohawk Valley Health System shall not have the power to approve or interpret those elements of the Corporation's mission and philosophy that relate specifically to its status as a Catholic organization or the pursuit of Corporation's Catholic mission and philosophy.
- (ii) To elect or appoint, fix the number of, and remove, with or without cause, the directors of the Corporation, and to appoint and remove, with or without cause, the President/Chief Executive Officer of the Corporation. Notwithstanding the foregoing, the Partners in Franciscan Ministries, Inc., shall be entitled to appoint and remove, with or without cause, one additional director designated by the Partners in Franciscan Ministries, Inc., to the Corporation's Board of Directors.
- (iii) To amend or repeal the Certificate of Incorporation and Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws of the Corporation, unless such amendment would terminate the Corporation's status as a Catholic organization or diminish its commitment or ability to operate in a manner consistent with the Ethical and Religious Directives for Catholic Healthcare Services.
- (iv) To approve any plan of merger, consolidation, dissolution or liquidation of the Corporation.
- (v) To approve the debt of the Corporation in excess of an amount to be fixed from time to time by Mohawk Valley Health System.
- (vi) To approve the sale, acquisition, lease, transfer, mortgage, guarantee or pledge of real or personal property of the Corporation in excess of an amount to be fixed from time to time by Mohawk Valley Health System. Notwithstanding the foregoing, the approval of the Partners in Franciscan Ministries, Inc., shall be required for the sale, transfer, mortgage, guarantee, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Partners in Franciscan Ministries, Inc., to meet the

requirements of the United States Conference of Catholic Bishops.

- (vii) To approve the capital and operating budgets of the Corporation.
- (viii) To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to the Corporation.
- (ix) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships, or joint ventures of the Corporation.
- (x) To approve and coordinate the strategic plan of the Corporation.
- (xi) To approve all contracts of reimbursement for the Corporation from governmental or private third party insurers.
- (xi) To approve all applications of the Corporation to federal or state governmental agencies for establishment or operating licensure, including but not limited to certificate of need applications to the New York State Department of Health.
- (xii) To approve management contracts for the Corporation subject to approval and/or regulation under the laws and regulations of the State of New York.
- (xiii) To approve any material change in the services offered by the Corporation.
- (xiv) To require the Corporation to participate in any and all programs and services, as determined by Mohawk Valley Health System in its discretion, provided, however, that Mohawk Valley Health System may not require the Corporation to participate in any program or service or take any action that would constitute a default or event of default under any mortgage, indenture or other material agreement or instrument to which the Corporation is a party and by which it is bound, and may not require Corporation's participation in any program or service which would be contrary to its status as a Catholic organization or the pursuit of its Catholic mission or philosophy, as determined by the Partners in Franciscan Ministries, Inc.

- (xv) To accept delegations of authority on behalf of Corporation pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Corporation, the authority to accept, utilize, transfer and share in the assets, revenues and income of the Corporation and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of the Corporation pursuant to any master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings. Notwithstanding the foregoing, any and all proceeds from services performed at affiliate Faxton St-Luke's Healthcare which are proscribed by the Ethical and Religious Directives for Catholic Healthcare Services shall not be transferred to or used for the benefit of Mohawk Valley Health System, or the Corporation or any subsidiary of the Corporation, and neither Mohawk Valley Health System nor the Corporation shall provide or support such services maintained by Faxton-St. Luke's Healthcare or any subsidiary of Faxton-St. Luke's Healthcare or any affiliate of Mohawk Valley Health System.

For the purposes of this subsection (b) of section (7), Mohawk Valley Health System shall have: (a) the power to initiate and direct action by the Corporation without a prior recommendation of Corporation's Board of Directors; and (b) the power to accept, reject or modify the recommendation of the Corporation's Board of Directors and to direct action by the Corporation or to return the matter to the Corporation's Board of Directors for reconsideration, with reasons for rejection and/or suggested change. Notwithstanding the foregoing, Mohawk Valley Health System shall not direct any action with respect to the Corporation that requires the approval of the Partners in Franciscan Ministries, Inc., without prior written approval of such action by the Partners in Franciscan Ministries, Inc. The Board of Directors and officers of the Corporation shall not implement any action requiring the approval of Mohawk Valley Health System until Mohawk Valley Health System shall have exercised its reserve powers and communicated its determinations in writing to the Corporation's Board of Director and, in the case of any powers over the Corporation that are also reserved to the Partners in Franciscan Ministries, Inc., to the Partners in Franciscan Ministries, Inc.

With respect to any entity that is controlled by Mohawk Valley Health System, such entity's charter and governing documents shall contain a section that provides for the foregoing rights and powers to be reserved to

Mohawk Valley Health System. All the policies, property, affairs and businesses of the controlled entities shall be under the charge, control and direction of their respective governing bodies, subject to the powers that are or shall be reserved to Mohawk Valley Health System as described in this paragraph.

(8) The business of the Corporation shall be managed by a Board of Directors consisting of not fewer than nine persons.

(9) Any action required or permitted to be taken by the Board of Trustees of the Corporation, or by any committee thereof, may be taken without a meeting if all members of the Board of Directors or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Directors or committee shall be filed with the minutes of the proceedings of the Board of Directors or committee.

(10) Any one or more members of the Board of Directors or any committee thereof may participate in the meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.

(11) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable purposes, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent federal tax law (the "Code") and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal Income Tax under Code Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code Section 170(c)(2).

(12) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or any other private persons, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in this Certificate of Incorporation.

(13) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

(14) In the event of dissolution or final liquidation of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the lawful debts and liabilities of the Corporation, distribute all the assets of the Corporation to Partners in

Franciscan Ministries, Inc ("PFM") and/or the Congregation of the Sisters of St. Francis of the Neumann Communities ("Sisters"), provided that they shall then qualify under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law). If neither PFM nor the Sisters shall so qualify at the time of dissolution, then distribution shall be to such organization(s) organized and operated exclusively for charitable, education, religious or scientific purposes as shall at the time qualify as an exempt organization under Code Section 501(c)(3) (or the corresponding provision of any future United States Internal Revenue Law), as SEMC shall determine.

(15) In any taxable year in which the Corporation is a private foundation as described in Code Section 509(a), the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Code Section 4942; and the Corporation shall not (a) engage in any act of self dealing as defined in Code Section 4941(d); (b) retain any excess business holdings as defined in Code Section 4943(c); (c) make any investments in such manner as the subject corporation detects under Code Section 4944; or (d) make any taxable expenditures as defined in Code Section 4945(d).

(16) All references to "Trustees" shall be changed to "Directors" throughout the Certificate of Incorporation and Amendments or Restatements thereto and any reference to "Trustee" or "Trustees" shall be deemed a reference to "Director" or "Directors".

(17) The office of the Corporation shall be located in the County of Oneida.

5. This restatement of the certificate of incorporation of St. Elizabeth Medical Center was authorized by unanimous vote of the Corporate Member at a meeting of the Corporate Member held on the 30th day of September, 2013 at which a quorum was present and acting throughout and authorized by unanimous vote of the Board of Trustees of the Corporation at a meeting of the Board of Trustees held on the 3rd day of October 2013 at which a quorum was present and acting throughout.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certificate this 21st day of January, 2014. The undersigned affirms that statements made herein are true under the penalties of perjury.



Richard Ketcham
President/CEO

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

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

March 5, 2014

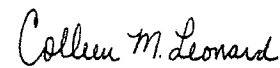
Sharon Palmer
Director, Facilities Planning and Support Services
Faxton St. Luke's Health Care
1656 Champlin Avenue
Utica, New York 13502

Re: Restated Certificate of Incorporation of St. Elizabeth Medical Center

Dear Ms. Palmer:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 12th day of December, 2013, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Restated Certificate of Incorporation of St. Elizabeth Medical Center, dated January 21, 2014.

Sincerely,


Colleen M. Leonard
Executive Secretary

/cl

**AMENDED AND RESTATED
BYLAWS
of
ST. ELIZABETH COMMUNITY HEALTH SUPPORT**

**ARTICLE ONE
ORGANIZATION**

- 1.1 The name of the corporation is St. Elizabeth Community Health Support (the “Corporation”).
- 1.2 The Corporation was formerly known as St. Elizabeth Medical Center and was incorporated under the name of St. Elizabeth's Hospital and Home on February 8, 1870, as a membership corporation under the laws of the State of New York.
- 1.3 The Corporation is the sole corporate member of St. Elizabeth Medical Center Foundation (“SEMC Foundation”).

**ARTICLE TWO
MISSION AND VISION**

2.1 **MISSION OF THE CORPORATION**

The Corporation, inspired by St. Francis of Assisi and faithful to the teachings of the Roman Catholic Church, is committed to excellence in supporting community health, well-being and health and wellness-related education. We pledge to do this with compassion and respect for the dignity of all.

2.2 **VISION OF THE CORPORATION**

The Vision of the Corporation:

- Offer the highest quality comprehensive health care support services to the greater Utica area as a Catholic Community organization, supplementing the work and mission of the Sisters of St. Francis of the Neumann Communities.
- Service the region as a major provider of education in healthcare and wellness.
- Respond to the needs of our community, and meet their expectations by continuously improving the quality of our services.
- Achieve these goals in a cost-effective manner.

**ARTICLE THREE
OFFICES, PURPOSES AND POWERS**

3.1 OFFICES

The principal office of the Corporation shall be located in New York State (“the State”). The Corporation shall have and continuously maintain in the State a registered office and a registered agent whose office shall be identical with the registered office, and may have such other offices as the Board may determine from time to time.

3.2 PURPOSES AND POWERS

The Corporation shall have the following purposes and powers:

- A. To promote the health of residents of Oneida County and the surrounding counties by addressing the social determinants of health, such as poverty, education, nutrition, housing, transportation, access to healthcare and access to behavioral health services, with a particular focus on the impoverished, sick, aged, infirmed and disabled through a service line dedicated to population health and community well-being, whose purposes may include, but not be limited to, bridging health care entities and care with the public at large in order to improve people's lives and improve the health of populations in and around Oneida County. To the extent necessary, each such service or facility shall be established and operated in accordance with all approvals required by the Public Health Law or other law of the State, and all approvals required from any other body having jurisdiction over the Corporation's activities.
- B. To serve as an auxiliary of the Sisters of St. Francis of the Neumann Communities or their affiliate Partner’s in Franciscan Ministries.
- C. To carry on educational activities, scientific research and other health related activities or programs incident to the purposes set forth above.
- D. To solicit funds for the above purposes.
- E. To pursue, enhance, and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be established, operated and maintained in accordance with all approvals required by applicable law.

ARTICLE FOUR MEMBERSHIP

4.1. COMPOSITION

Mohawk Valley Health System (“MVHS”) and Partners in Franciscan Ministries, Inc. (“PFM”), which is sponsored by the Sisters of St. Francis of the Neumann Communities, shall be co-members of the Corporation.

4.2 RIGHTS OF MEMBERS

A. MVHS - In addition to all other rights and powers of membership prescribed by New York Law, the Certificate of Incorporation and/or the Bylaws of the Corporation, the following governance and management powers shall be delegated to MVHS to the extent permitted by the New York Not-for-Profit Corporation Law:

- (1) Except as otherwise set forth herein, to approve and interpret the statement of mission and philosophy adopted by the Corporation, to require that the Corporation operate in conformance with its mission and philosophy and to coordinate the missions, visions, activities and resources of the Corporation in order to promote high quality, efficient and effective health care services in Oneida County, New York, and surrounding areas. Notwithstanding the foregoing, MVHS shall not have the power to approve or interpret those elements of the Corporation’s mission and philosophy that relate specifically to its status as a Catholic organization or the pursuit of the Corporation’s Catholic mission and philosophy;
- (2) To elect or appoint, fix the number of, and remove, with or without cause, the directors of the Corporation, and to appoint and remove, with or without cause, the President/Chief Executive Officer of the Corporation. Notwithstanding the foregoing, PFM shall be entitled to appoint and remove, with or without cause, the one additional director designated by PFM to the Corporation’s Board of Directors;
- (3) To amend or repeal the Certificate and Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws, of the Corporation;
- (4) To approve any plan of merger, consolidation, dissolution or liquidation of the Corporation;

- (5) To approve the debt of the Corporation in excess of an amount to be fixed from time to time by MVHS;
- (6) To approve the sale, acquisition, lease, transfer, mortgage, guarantee or pledge of real or personal property of the Corporation in excess of an amount to be fixed from time to time by MVHS. Notwithstanding the foregoing, the approval of PFM shall be required for the sale, transfer, mortgage, guarantee, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by PFM, to meet the requirements of the United States Conference of Catholic Bishops;
- (7) To approve the capital and operating budgets of the Corporation;
- (8) To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to such Corporation;
- (9) To approve any corporate reorganization of the Corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the Corporation, including but not limited to subsidiary corporations, partnerships, or joint ventures of the Corporation;
- (10) To approve and coordinate the strategic plans of the Corporation;
- (11) To the extent applicable, to approve all contracts of reimbursement for the Corporation from governmental or private third party insurers;
- (12) To the extent applicable, to approve all applications of the Corporation to federal or state governmental agencies for establishment or operating licensure, including but not limited to Certificate of Need applications to the New York State Department of Health as required;
- (13) To the extent applicable, to approve management contracts for the Corporation subject to approval and/or regulation under the laws and regulations of the State of New York;
- (14) To approve any material change in the services offered by the Corporation;

- (15) To require the Corporation to participate in any and all programs and services, as determined by MVHS in its discretion, provided, however, that MVHS may not require Corporation to participate in any program or service or take any action that would constitute a default or event of default under any mortgage, indenture or other material agreement or instrument to which the Corporation is a party and by which it is bound, and may not require the Corporation's participation in any program or service which would be contrary to its status as a Catholic organization or the pursuit of its Catholic mission or philosophy; and
- (16) To accept delegations of authority on behalf of the Corporation pursuant to Section 701 of the Not-for Profit Corporation Law and exercise on behalf of the Corporation, the authority to accept, utilize, transfer and share in the assets, revenues and income of the Corporation and to maintain a single consolidated set of books and financial records, as may be necessary or desirable to carry out the obligations of the Corporation pursuant to any master trust indenture or similar instrument and, provided, however, that no such authority shall be accepted or exercised except pursuant to the Not-for-Profit Corporation Law and until all approvals required by law have first been obtained, including, without limitation, the prior approval of the Department of Health as may be required for obligated group financings.

For the purposes of the foregoing, MVHS shall have: (i) the power to initiate and direct action by the Corporation without a prior recommendation of the Corporation's board of directors; and (ii) the power to accept, reject or modify the recommendation of the Corporation's board of directors and to direct action by the Corporation or to return the matter to the board of directors of the Corporation for reconsideration, with reasons for rejection and/or suggested change. Notwithstanding the foregoing, in the case of the Corporation, MVHS shall not direct any action with respect to the Corporation that requires the approval of PFM without prior approval of such action by PFM. The board of directors and officers of the Corporation shall not implement any action requiring the approval of MVHS until MVHS shall have exercised its reserve powers and communicated its determinations in writing to the Corporation's Board of

Directors and, in the case of any powers over the Corporation that are also reserved to PFM, to PFM.

- B. PFM – The following powers shall be reserved exclusively to PFM:
- (1) to approve and interpret those elements of the Corporation’s statement of mission and philosophy adopted by the Corporation that relate to the Corporation’s status as a Catholic organization or the pursuit of the Corporation’s Catholic mission and philosophy, and any amendments thereof, and to require the Corporation to operate in conformance with its Catholic mission and philosophy; this power shall include approval of the individual who will serve in a position to oversee Mission, which position will report directly to the President/CEO and shall not be eliminated without the prior approval of PFM.
 - (2) to approve any amendment of the Corporation’s purposes or powers in its Certificate of Incorporation that would terminate the Corporation’s status as a Catholic organization or diminish its commitment or ability to operate in a manner consistent with the Ethical and Religious Directives for Catholic Healthcare Services; and
 - (3) to approve the sale, transfer, mortgage, guaranty, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the PFM to meet the requirements of the United States Conference of Catholic Bishops.
 - (4) to approve and reject appointments to the Pension Committee for the St. Elizabeth Medical Center Church Plan.
 - (5) to approve any amendments or modifications to, or the termination of, the St. Elizabeth Medical Center Church Plan; and
 - (6) to elect or appoint and remove, with or without cause, one director of the Corporation who does not currently serve on the Board of MVHS.

4.3 ANNUAL MEETING

MVHS shall, in its capacity as the active member of the Corporation, hold its annual meeting each year at a time and place determined by MVHS. At the annual meeting, MVHS

shall elect Directors of the Corporation, receive the annual report of the Directors of the corporation, and transact such other business as may properly come before the meeting.

4.4 ANNUAL REPORT TO MEMBER

At the annual meeting of the member, the Chairperson or President, and the Treasurer of the Corporation shall present an Annual Report showing in appropriate detail the following information:

- (a) a complete verified financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;
- (b) a summary of the activities of the Corporation during the preceding year.

The Annual Report shall be filed with the minutes of the annual meeting.

ARTICLE FIVE BOARD OF DIRECTORS

5.1 NUMBER

The Board of Directors shall consist of not less than nine (9) voting directors.

5.2 QUALIFICATION

Directors shall be selected for their experience, expertise and skills; their ability and willingness to devote time and effort to fulfilling the Board's responsibilities; their commitment to the community and the health care needs of its residents; and their personal and professional ethics and values.

5.3 ELECTION AND TENURE

A. Composition of Board of Directors. The board shall be comprised of no fewer than nine (9) voting Directors. MVHS shall appoint all but two (2) Directors (the "Elected Directors"): the Chief Executive Officer of MVHS who shall serve ex-officio as a voting Director; and one (1) voting Director who shall be appointed by PFM.

B. Election and Terms of Office. Elected Directors of the Board shall be nominated by the Governance Affairs Committee of MVHS and shall be elected by a simple majority of the Board of MVHS. The Board shall not be bound or limited to such nominees. An Elected Director shall serve until their successor shall be elected and shall qualify. The MVHS

appointed Directors shall serve at the pleasure of MVHS. The PFM-appointed Director shall serve at the pleasure of PFM.

C. Reappointment. Director reappointment is neither automatic nor guaranteed. The decision will be made on a case by case basis after a thorough assessment of the Director's performance and contribution, his or her commitment to correct any deficiencies, and Board and organizational need.

5.4 VACANCIES

Vacancies on the Board due to the expiration of term, removal, resignation, death, or incapacity of a Director, or due to an increase in the number of Board seats, or any other cause, shall be filled by a simple majority vote of the Board of MVHS. Nominees shall be presented by the Governance Affairs and Ethics Committee of MVHS, but the MVHS Board shall not be bound or limited to such nominees.

5.5 REMOVAL

Each member of the Board of Directors shall be required to attend at least 75% of all meetings of the Board, any Committees on which he or she serves, and Board Continuing Education Programs. Any Director who fails to maintain sufficient attendance, without good cause acceptable to the Board, may be dismissed from the Board of Directors by a vote of two-thirds of the MVHS Directors. In addition, the Board of MVHS may remove any Director, with or without cause, upon a two-thirds (2/3) vote of the MVHS Board. Notwithstanding the foregoing, the PFM-appointed Director shall serve at the pleasure of PFM.

5.6 RESIGNATION/LEAVE OF ABSENCE.

A. Resignation. Any Director may resign at any time by giving written notice to the Chairperson or to the Secretary of the Corporation. Such resignation shall take effect on the date of receipt thereof or at such later time as may be specified therein.

B. Leave of Absence. Any Director may request a Leave of Absence of up to three (3) months for medical reasons relating to the Director, or a member of the Director's immediate family ("Leave"). The request shall be made in writing to the Chairperson who may grant the Leave on such terms as determined by the Chairperson after consultation with the Director. If the Chairperson requests a Leave, the request shall be made to the Vice Chairperson who shall, for the duration of the Leave, exercise all powers of the Chairperson as set forth herein.

While on Leave, the Director shall be excused from any attendance requirements and all other obligations of a Director as set forth in these Bylaws. The Director's Board position shall remain vacant during the term of the Leave, and the Director's position shall not be counted in determining the presence of a quorum.

If the Director on Leave is a Board Officer other than the Chairperson, the Office shall be temporarily filled, for the duration of the Leave, by a majority vote of the MVHS Directors at the next regular meeting of the MVHS Board, or at a special meeting called for such purpose. Any committee positions held by the Director may be temporarily filled for the duration of the Leave, at the discretion of the Chairperson.

As circumstances warrant, the Director may request an extension of the initial Leave for an additional period not to exceed three (3) months. Such request may be granted or denied by the Chairperson as set forth above.

5.7 ADDITIONAL ADVISORS

The Board or the Chairperson of the Board may invite additional individuals with expertise in a pertinent area to meet with and assist the Board. Such advisors shall not vote or be counted in determining the existence of a quorum and may be excluded from any session of the Board by majority vote of the Directors present.

5.8 MEETINGS OF DIRECTORS

A. Annual Meeting The Board of Directors shall hold an annual meeting each year in the month of April or May for the purposes of organizing itself, selecting members of the Board Committees when appropriate, and conducting such other business as may come before the meeting. At each annual meeting, the Board shall assess its own performance and take such action or make such recommendations as are warranted.

B. Regular Meetings The Board of Directors shall hold at least nine (9) regular meetings annually.

C. Special Meetings Special meetings of the Board may be called by the Chairperson, the Chief Executive Officer or upon the written request of three (3) Directors. No business shall be conducted at a special meeting other than that stated in the notice of the meeting.

D. Place All meetings of the Board shall be held at the principal office of the Corporation or at such other place within this State as the Notice of Meeting shall provide.

E. Notice Written notice of the time and place of the annual and regular meetings of the Board shall be given to each Director personally by first class mail, by facsimile or, by e-mail or other communications device, not less than five (5) days before such meeting. Notice of the time, place and purposes of special meetings of the Board shall be served as set forth herein at least two (2) days before the date of such special meeting. In the case of a special meeting or when required by law or these Bylaws, the notice shall also state the purpose for which the meeting is called. Oral or written notice of the postponement of any scheduled regular meeting shall be given to each Director not less than one (1) day before the scheduled date of such meeting.

F. Adjournment When a meeting is adjourned, it is not necessary to give any notice of the adjourned meeting or the business to be transacted at any adjourned meeting other than by motion adopted at the meeting at which such adjournment is taken and included in the minutes.

G. Quorum Unless a greater or lesser number is required by law, the Certificate of Incorporation or these Bylaws, a majority of the Directors entitled to vote constitutes a quorum for the transaction of business at any meeting of the Board. If a quorum is not present at any meeting, a majority of the Directors present may adjourn the meeting to a new date. Notice of such date shall be provided to Board members as required in Section 5.8(e). Vacant Director positions, which shall include those temporarily vacant due to a granted Leave, will not count toward the number of Directors needed for purposes of a Quorum.

H. Voting Subject to the Conflict of Interest provisions of these Bylaws, and the Board's Conflict of Interest policies, each voting Director present is entitled to vote on any matter before the Board.

I. Manner of Acting Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. Any action required or permitted to be taken by the Board may be taken without a meeting by the consent in writing of all Directors entitled to vote. Such written consent(s) shall be filed with the minutes of the Board.

J. Meeting by Conference Telephone or Similar Device Personal attendance at meetings is encouraged. Nevertheless, in appropriate circumstances any one or more members of the Board may participate in a meeting of the Board by means of a conference telephone or

similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

5.9 POWERS AND FIDUCIARY OBLIGATIONS

A. Powers The administrative powers of the Corporation shall be vested in the Board of Directors, which shall have: charge, control, and oversight of the property, funds, and affairs of the Corporation; the power to elect and remove, with or without cause, officers and to fill vacancies among the officers for unexpired terms; the power to establish policies for the management and operation of the Corporation; and such other power and authority to do and perform all acts and functions for the benefit of the Corporation, not inconsistent with these Bylaws or the Certificate of Incorporation. The Board of Directors shall further have the power to appoint committees as hereinafter set forth and such other committees as from time to time shall be deemed advisable.

B. Fiduciary Obligations The members of the Board of Directors shall at all times conduct the affairs of the Corporation in strict conformance with all applicable fiduciary and ethical standards. Each Director shall act in a manner consistent with the duty of undivided loyalty to the interests of the Corporation, the duty to maintain in confidence information concerning the affairs of the Corporation, the duty to avoid actual or apparent conflicts of interest, and the duty to maintain and advance the charitable purposes of the Corporation. The Board shall adopt such mechanisms as it deems appropriate to assist the Directors in fulfilling these obligations. Without limiting the foregoing, the Board shall adopt, review and amend as appropriate: the mission and vision of the Corporation; a Board Conflicts of Interest Policy to provide a formal mechanism for identifying and treating actual and apparent conflicts; and mechanisms to ensure corporate compliance with laws, rules and regulations relating to the business of the Corporation.

ARTICLE SIX OFFICERS

6.1 OFFICERS

The Corporation shall have a Chairperson and Vice-Chairperson of the Board, a Secretary, and a Treasurer, and such other officers as the Board of Directors may authorize. The Corporation shall also have a President/Chief Executive Officer, who shall be a voting member

of the Board. All officers shall be elected by MVHS at the annual meeting of MVHS and shall hold office until the corresponding meeting in the next year or until a successor shall have been duly elected and qualified. Any vacancy in any of the above offices shall be filled for the unexpired portion of the term by the Board of Directors of MVHS at any regular meeting of the MVHS Board or any special meeting called for such purpose.

6.2 CHAIRPERSON

The Chairperson shall preside at all meetings of the Board of Directors, shall appoint the members and Chairperson of each Committee in accordance with these Bylaws and with the approval of the Board, and shall, except as otherwise stated herein, be an ex officio member of all Committees. The Chairperson may serve no more than two consecutive terms in that office, regardless of the length of such terms. The Chairperson shall be eligible for additional terms as Chairperson following his or her absence from such office for a period of at least one year.

6.3 VICE-CHAIRPERSON

In the absence or inability to act of the Chairperson, or if the office of Chairperson is vacant, the Vice-Chairperson may exercise all the powers of the Chairperson. The Vice-Chairperson shall have such further power and shall perform such other duties on behalf of the Corporation as may be authorized by order of the Board of Directors.

6.4 CHAIR EMERITUS.

Upon completion of her or his term as Chairperson of the Board, the Chairperson shall hold the office of Chair Emeritus. The Chair Emeritus shall serve as an advisor to the Chairperson and perform such other duties as set forth in these Bylaws. The Chair Emeritus shall serve in that office until the succeeding Chairperson leaves office and assumes the role of Chair Emeritus.

6.5 SECRETARY

The Secretary shall act as Secretary of both the Corporation and the Board of Directors and shall be responsible for maintaining, or causing to be maintained, copies of the Resolutions of the Corporation and keeping the minutes of the meetings of the Board of Directors. The Minutes shall reflect all business conducted, including the Board's findings, conclusions, and recommendations. The Secretary shall be responsible for the giving and serving of all notices of meetings of the Board and shall be the custodian of the Corporate records.

6.6 TREASURER

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Corporation except as expressly provided otherwise, and shall deposit the same or cause the same to be deposited in the name of the Corporation in such bank or banks, trust company or trust companies, and in such safe deposit company or safe deposit companies as the Board of Directors, or any committee designated and vested with such power by the Board of Directors, may designate; shall keep or cause to be kept full and accurate accounts of all receipts and disbursements of the Corporation and, whenever required by the Board of Directors shall render, or cause to be rendered, financial statements of the Corporation. The Treasurer shall prepare, execute and file, or cause to be prepared, executed and filed, any annual report or statement which may be required by law.

6.7 PRESIDENT/CEO

MVHS shall appoint a qualified administrator to serve as the Corporation's President and Chief Executive Officer. The President/CEO shall be the Board's direct executive representative in the management of the Corporation. The President/CEO shall have the necessary authority and shall be responsible for management of the Corporation, subject only to the policies and directives of the Board and any of its committees to which the Board has delegated power for such action. The President/CEO shall be a voting member of the Board and all Board Committees. The President/CEO shall act as the duly authorized representative of the Board of Directors in all matters except those for which the Board has designated some other individual to act.

ARTICLE SEVEN COMMITTEES OF THE BOARD OF DIRECTORS

7.1 STRUCTURE

There shall be four (4) Committees of the Board: the Executive Committee, the Finance Committee, the Audit and Compliance Committee, and the Pension Committee. The Board may, by resolution, create such other Committees of the Board or Committees of the Corporation as it shall, from time to time, deem appropriate. Any Committees of the Corporation appointed by the Board shall be charged with such specific duties as determined by the Board and shall be disbanded upon completion of such duties.

7.2 PROCEDURE

The Committees of the Board shall conduct their activities in accordance with the following general principles and procedures unless alternative principles or procedures are adopted for any individual committee in these Bylaws or in a Resolution of the Board of Directors.

7.3 POWERS

Each Board Committee shall have and exercise only such Board delegated powers and authority as are granted to it in these Bylaws, or in a Resolution adopted by the Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Board. Except as otherwise set forth herein, actions and recommendations of a Committee shall be subject to Board approval. Each Committee shall prepare a meeting calendar and an annual work plan setting forth its goals and objectives, which shall be submitted to the Board for its approval at its first meeting of each fiscal year. The performance of each Committee shall be reviewed annually at the last meeting of the Board prior to its annual meeting.

7.4 COMMITTEE MEMBERS

A. Appointment. Except to the extent that membership on a Committee is determined herein, the Chairperson of the Board shall recommend, for Board approval at its annual meeting, the appointment of all Committee members and Committee Chairpersons

B. Tenure. Each member of a Board Committee shall hold office until the next annual election of Directors and until their successor is elected, unless they sooner cease to be a Director or resign or are removed from the Committee.

C. Resignation. Any member of a Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation takes effect on the date of receipt, or at such later time as may be specified therein.

D. Removal. Any member of a Board Committee may be removed at any time, with or without cause, by a resolution adopted by a majority of the Board of Directors. Any member of a Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.

E. Vacancies. Any vacancy on any Board Committee resulting from resignation, removal or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the Chairperson of the Board, subject to the approval of the Board.

7.5 ADVISORS TO BOARD COMMITTEES

The Chairperson of the Board, after consultation with the Chairperson of any Board Committee, may invite additional individuals with expertise in a pertinent area to meet with and assist the Board Committee as advisors to the Committee. Such advisors shall not vote or be counted in determining the existence of a quorum and may be excluded from any executive session of the Committee by a majority vote of the Committee members present. Advisors need not be Directors.

As deemed appropriate by the Committee Chair, members of the Corporation's administrative staff shall be required to attend Committee meetings to provide information and support to the members of the committee. Such administrative staff shall not vote or be counted in determining the existence of a quorum and may be excluded from any session of the Committee by the Chairperson of the Committee.

7.6 MANNER OF ACTION

A. Meetings. Each Committee shall meet as provided for in these Bylaws and at such additional times as may be necessary to perform its duties. Meetings of a Board Committee shall be called by the Chairperson of the Board, the Chairperson of the Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Board Committee shall be given, except in an emergency, at least 72 hours prior to the meeting.

B. Agenda/Minutes. There shall be an agenda prepared for Committee meetings and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Board of Directors when requested or as required.

C. Quorum. A majority of the voting members of a Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

D. Action. The act of a majority of the members of a Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent

members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members file written consents to a resolution authorizing the action.

E. Meeting by Conference Telephone or Similar Device. Personal attendance at meetings is encouraged. Nevertheless, in appropriate circumstances, any one or more members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other. Participation by this means shall constitute actual presence at the meeting.

7.7 CONFLICT OF INTEREST

Any Committee exercising Board delegated power or authority shall comply with the Conflict of Interest policies and procedures established by the Board of Directors.

7.8 EXECUTIVE COMMITTEE

A. Composition

The Executive Committee shall be composed of the Chairperson of the Board, the Vice Chairperson, Secretary, Treasurer, and the President/CEO.

B. Functions

When the Board is not in session, the Executive Committee shall have and exercise the powers and authority of the Board to transact all regular business of the Corporation, subject to any prior limitations imposed by the Board, these Bylaws, or statute.

The Executive Committee shall meet as necessary to conduct the business of the Corporation while the full Board is not in session.

7.9 FINANCE

A. Composition

The Finance Committee shall consist of the Treasurer of the Corporation and at least five (5) voting Directors, at least one of whom shall have substantial accounting or financial management expertise.

B. Functions

The Finance Committee shall have general oversight responsibility for the fiscal affairs of the Corporation and shall develop and recommend for Board approval, policies and procedures which will enable the Board to provide appropriate direction and oversight of the financial affairs of the Corporation and its subsidiaries. Its functions shall include:

- (1) Overseeing the President's development of a budget for the Corporation showing the expected receipts, income and expense for the ensuing year;
- (2) Recommending for adoption by the Board a budget developed by the President for the ensuing year;
- (3) Reviewing financial reports that report on the financial condition of the Corporation;
- (4) Retaining the Corporation's independent Certified Public Accountants to provide external financial auditing to the Corporation. This shall include, but not be limited to:
 - a. having unfettered communication with the firm, receiving reports directly from the firm regarding the audit, receiving observations from the firm regarding management and the firm's assessment of management's internal financial control system.
 - b. resolving any disputes between the firm and management and reviewing and responding to any major changes to critical accounting policies and practices.
 - c. reviewing all of the services provided by the firm, including reviewing who is principally leading the audit; what the character of the relationship is between the Corporation and the firm so that changes can be made if necessary; and assuring the firm's independence.
 - d. reviewing financial statements audited by the firm.

The duties enumerated above will be performed only by "independent directors", as defined in Section 102 of the New York State Not-for-Profit Corporation Law. Committee Directors who are not "independent directors" may not participate in or vote on (other than to provide information or answer questions) any of the duties outlined in this Section 7.9(b)(5).

- (6) Review and develop policies concerning insurance and managed care contracting for the Corporation and its subsidiaries.

- (7) Provide oversight and develop policies to insure the sufficiency of the liability insurance programs of the Corporations and its subsidiaries.
- (8) Reviewing and making recommendations to the Board on any request by the President for the Corporation to enter into any substantial transaction or incur a significant increase in debt according to standards established by the Board;

C. Meetings

The Finance Committee shall meet as needed, but not less than six (6) times per year.

7.14 AUDIT AND COMPLIANCE COMMITTEE.

A. Composition

The Audit and Compliance Committee shall be composed of at least three (3) Directors. At least a majority of the directors so appointed shall be “Independent Directors” as defined in Section 4958 of the Internal Revenue Code and supporting regulations.

B. Functions.

The function of the Audit and Compliance Committee is to provide oversight and to assist the Board of Directors in its oversight responsibilities by overseeing management’s systems of internal auditing and internal controls, and in overseeing the Corporate Compliance activities of the Corporation. Without limiting the foregoing, the Committee shall:

- (1) Select and retain non-financial independent external auditors, as needed.
- (2) Provide input into the Finance Committee’s retention of independent external financial auditors.
- (3) Oversight of internal controls through evaluation of regular management reports.
- (4) Corporate Compliance matters:
 - a. Review the Corporate Compliance Plan on a periodic basis, to consider changes to the plan. Make recommendations to the Board on changes to the plan.
 - b. Serve as a resource to the Compliance Officer and management on compliance issues, and monitor the results of the Compliance Program.

- c. Review and approve the audit schedule proposed by the Compliance Officer.
- d. Report to the Board at least semi-annually, regarding the status of the Compliance Plan.

C. Meetings.

The Committee shall convene at least four (4) times per year or as shall be necessary to discharge its responsibilities.

7.15 PENSION COMMITTEE

A. Composition

The Pension Committee shall consist of at least five (5) members: one (1) member shall be the PFM-appointed Director, who shall serve as the Chairperson of the Committee. The four (4) remaining members shall be appointed by the PFM-appointed Director. The Pension Committee's membership shall share common religious bonds and convictions with the Congregation of the Sisters of St. Francis of the Neumann Communities.

B. Functions

The Pension Committee shall perform the following functions:

- (1) Provide the Board of Directors level oversight and administration of the Corporation's employee pension and retirement plans.
- (2) Serve as the Administrator of the St. Elizabeth Medical Center Employees' Retirement Plans.
- (3) Make recommendations to PFM and to the Board of Directors to approve changes to the St. Elizabeth Medical Center Employees' Retirement Plans Documents and operational systems.
- (4) Review quarterly the financial results of investment manager actions of the St. Elizabeth Medical Center Employees' Retirement Plans. Meet at least annually to review the valuation of the Plans.
- (5) Make recommendations to PFM and to the Board of Directors after receiving recommendations from management of the Corporation relative to continuation or changes in
 - a. investment managers,
 - b. Plan Trustee, and

- c. investment policy for investments.
- (6) Review investment policy of St. Elizabeth Medical Center Employees' Retirement Plans to be followed by the Plan Trustee and investment managers for the investments of St. Elizabeth Medical Center Employees' Retirement Plan.
- (7) Take all steps that are reasonably possible to advise management and the Board of Directors whenever the St. Elizabeth Medical Center Employees' Retirement Plans fail to meet minimum funding and regulatory requirements as those requirements are applicable to a going concern.
- (8) Perform such other duties as designated by the Board of Directors.

C. Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

ARTICLE ELEVEN INDEMNIFICATION AND INSURANCE

11.1 INDEMNIFICATION AND INSURANCE

It is expressly provided that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of this Corporation, will be completely indemnified by the Corporation to the full extent permitted by law. If permitted by law, this indemnification shall include, but not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

11.2 INSURANCE

It is the policy of the Corporation that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of the Corporation, will be

completely and fully indemnified by this Corporation to the full extent permitted by the law. The Corporation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Corporation has the power to indemnify him or her against such liability under the laws of this or any other state.

ARTICLE TWELVE CONFLICT OF INTEREST

12.1 POLICY

Any Director, officer, key person, or committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Corporation's interest.

12.2 EFFECT

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in the Board approved Conflicts of Interest Policy must be observed. If so, such person shall not vote on, nor use his or her personal influence on, nor participate (other than to present factual information or to respond to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

12.3 FORMAL POLICY AND PROCEDURE

The Board shall adopt a formal Conflict of Interest Policy requiring annual disclosure of existing and potential conflicts of interest, mechanisms for addressing actual and potential conflicts of interest and corrective and disciplinary action with respect to transgressions of such policies.

ARTICLE FOURTEEN AMENDMENT TO BYLAWS

14.1 PROCEDURE

These Bylaws may be amended or repealed, or new Bylaws may be adopted, by a two-thirds (2/3) vote of the Board of Directors of MVHS of any regular or special meeting. At least ten (10) days written notice shall be given of the intention to take such action. Notwithstanding the foregoing, any Amendment to these Bylaws which affects the mission and philosophy of the Corporation as a Catholic organization or the pursuit of the Corporation's Catholic mission and philosophy or any amendment impacting the requirement of the Corporation to operate in conformance with its Catholic mission and philosophy or any amendment impacting the Pension Committee or relating to any of PFM's reserved powers, will require approval by PFM.

ARTICLE FIFTEEN GENERAL

15.1 PROCEDURE

The Board and any Board Committee may adopt rules or procedures which shall be consistent with these Bylaws.

15.2 EQUAL OPPORTUNITY

The Board shall, in all matters, act without regard to discrimination as to sex, race, age, creed, handicap, sexual preference, marital status or national origin.

15.3 CONSTRUCTION OF TERMS AND HEADINGS

Words used in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision of these Bylaws.

**RESOLUTION OF
THE BOARD OF DIRECTORS OF
MOHAWK VALLEY HEALTH SYSTEM**

(as Co-Member of St. Elizabeth Medical Center)

THE UNDERSIGNED, being the Secretary of Mohawk Valley Health System, a corporation organized and existing pursuant to New York Not-for-Profit Corporation Law (the "Corporation"), hereby certify that the following is a true and complete copy of the resolutions adopted by the vote of a majority of the Directors present at a duly called meeting of the Board of Directors held on March 23, 2023, at which a quorum was present, and such resolution remains in full force and effect.

WHEREAS, the Corporation is a co-member of St. Elizabeth Medical Center ("SEMC") with Partners in Franciscan Ministries; and

WHEREAS, the Corporation is a party to a certain Realignment and Asset Transfer Agreement (the "Agreement") by and among the Corporation, SEMC, Faxton-St. Luke Healthcare, St. Elizabeth College of Nursing (the "College") and Mohawk Valley Heart Institute, pursuant to which, *inter alia* SEMC has agreed to amend its Certificate of Incorporation in the form attached to the Agreement and Exhibit 1, and to amend its Bylaws in the form attached to the Agreement as Exhibit 2; and


WHEREAS, it is in the best interests of the Corporation, in its capacity as a co-member of SEMC, to approve the proposed amendment to SEMC's Certificate of Incorporation and the proposed SEMC Amended and Restated Bylaws as provided in the Agreement;

NOW, THEREFORE, be it

RESOLVED: That the Corporation hereby consents to the Amendment of SEMC's Certificate of Incorporation substantially in the form set forth in Exhibit 1 of the Agreement be, and hereby is, approved; and be it further

RESOLVED: That the Corporation hereby approves SEMC's Amended and Restated Bylaws, substantially in the form set forth in Exhibit 2 of the Agreement.

IN WITNESS WHEREOF, I have executed this Certificate this 23rd day of March, 2023.


KAREN L. LEACHT, Secretary

RESOLUTION OF
THE BOARD OF DIRECTORS OF
PARTNERS IN FRANCISCAN MINISTRIES

THE UNDERSIGNED, being the Secretary of Partners in Franciscan Ministries, a corporation organized and existing pursuant to New York Not-for-Profit Corporation Law (the "Corporation"), hereby certify that the following is a true and complete copy of the resolutions adopted by the vote of a majority of the Directors present at a duly called meeting of the Board of Directors held on April 27, 2023, at which a quorum was present, and such resolution remains in full force and effect.

WHEREAS, the Corporation is a co-member of St. Elizabeth Medical Center ("SEMC") with Mohawk Valley Health System; and

WHEREAS, SEMC is a party to a certain Realignment and Asset Transfer Agreement by and among the SEMC, Mohawk Valley Health System, Faxton-St. Luke Healthcare, St. Elizabeth College of Nursing (the "College") and Mohawk Valley Heart Institute (the "Agreement"), pursuant to which, inter alia SEMC has agreed to amend its Certificate of Incorporation in the form attached to the Agreement and Exhibit 1, and to amend its Bylaws in the form attached to the Agreement as Exhibit 2; and

WHEREAS, it is in the best interests of the Corporation, in its capacity as a co-member of SEMC, to approve the proposed amendment to SEMC's Certificate of Incorporation and the proposed Amended and Restated Bylaws of SEMC as provided in the Agreement;

NOW, THEREFORE, be it

RESOLVED: That the Corporation hereby consents to the Amendment of SEMC's Certificate of Incorporation substantially in the form set forth in Exhibit I (REALIGNMENT AND ASSET TRANSFER AGREEMENT) of the Agreement be, and hereby is, approved; and be it further

RESOLVED: That the Corporation hereby approves the Amended and Restated Bylaws of SEMC, substantially in the form set forth in (REALIGNMENT AND ASSET TRANSFER AGREEMENT); and be it further

RESOLVED: That the Corporation hereby approves the Bill of Sale of medical equipment, substantially in the form set forth in (REALIGNMENT AND ASSET TRANSFER AGREEMENT)

IN WITNESS WHEREOF, I have executed this Certificate this _ day of April, 2023



Ben Sio, Secretary