STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

May 22, 2014
10:00 a.m.

- New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC
- New York State Department of Health Offices, Triangle Building, 335 East Main Street, 2nd Floor Rochester, NY 14604

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Jeffrey Kraut, Chair

A. Applications for Construction of Health Care Facilities

Cardiac Services - Construction **Exhibit # 1**

	Number	Applicant/Facility
1.	141033 C	New York Presbyterian Hospital – Columbia Presbyterian Center (Westchester County)
2.	141034 C	Lawrence Hospital Center (Westchester County)

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

	Number	Applicant/Facility
1.	131158 C	Richmond Center for Rehabilitation and Specialty Healthcare (Richmond County)
2.	132368 C	Kendal at Ithaca (Tomkins County)

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

Ambulatory Surgery Centers - Establish/Construct **Exhibit # 3**

	Number	Applicant/Facility
1.	132124 B	Union Square Surgery Center, LLC (New York County)
2.	132346 B	Northway SPC, LLC d/b/a the Northway Surgery and Pain Center (Saratoga County)
3.	141004 E	Garden City Surgi Center (Nassau County)
4.	141069 E	Greater New York Endoscopy Surgical Center (Kings County)
5.	141080 E	Upstate Orthopedics Ambulatory Surgery Center (Onondaga County)

Diagnostic and Treatment Centers - Establish/Construct **Exhibit # 4**

	Number	Applicant/Facility
1.	141013 E	Ralph Lauren Center for Cancer Care and Prevention (New York County)

Dialysis Services- Establish/Construct **Exhibit # 5**

	Number	Applicant/Facility
2.	132352 E	Lincoln Dialysis, LLC (Queens County)

Residential Health Care Facilities - Establish/Construct **Exhibit # 6**

	Number	Applicant/Facility
1.	131160 B	Highland View Care Center Operating Co. LLC d/b/a Highland View Care Center (Bronx County)
2.	132306 E	Northwoods Rehabilitation and Extended Care Facility at Moravia (Cayuga County)
3.	132349 E	Lincoln Center for Rehabilitation and Healthcare, LLC (Queens County)

4.	132355 E	Flushing Center for Rehabilitation and Healthcare, LLC (Queens County)
5.	132357 E	URNC Operating, LLC d/b/a Utica Rehabilitation & Nursing Center (Oneida County)
6.	132360 E	NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation (Kings County)
7.	141029 E	Ontario Operations Associates LLC d/b/a Ontario Center for Rehabilitation and Healthcare (Ontario County)
8.	141091 E	Atlantis Operating LLC d/b/a The Phoenix Rehab and Healing Center (Kings County)

Certified Home Health Agencies – Establish/Construct **Exhibit # 7**

	Number	**Applicant/Facility**
1.	141051 E	Oswego Health Home Care, Inc. (Oswego County)

C. Certificates

Certificate of Dissolution **Exhibit # 8**

Applicant

The Foundation for Planned Parenthood of Western New York, Inc.

Restated Certificate of Incorporation **Exhibit # 9**

Applicant

AC Center, Inc.

Application for Authority **Exhibit # 10**

Applicant

HCWNY Foundation, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures **Exhibit # 11**

Number	Applicant/Facility
2131 L	Cambridge Home Care, LLC (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
2135 L	InterMed Health Care Services, Inc. (Bronx, Kings, Nassau, New York and Queens Counties)
2132 L	LK Healthcare, Inc. d/b/a Accessible Home Health Care of Staten Island (Richmond County)
2365 L	Refuah Home Health, Inc. (Kings, Orange, Rockland and Sullivan Counties)
1818 L	Sofia's Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)
2110 L	Ultimate Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)
2209 L	Magic Home Care, LLC (Kings, Queens and Richmond Counties)

II. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

John Palmer, Ph.D., Vice Chair **Exhibit #12**

For Adoption

13-03 Addition of Section 400.25 to Title 10 NYCRR
(Disclosure of Quality and Surveillance Related Information)

13-12 Amendment of Section 1.31 of Title 10 NYCRR
(Disclosure of Confidential Cancer Information)

III. COMMITTEE ON HEALTH PLANNING

Dr. John Rugge, Chair

Public Health and Health Planning Council

Project # 141033-C
New York Presbyterian Hospital - Columbia Presbyterian Center

County: **Westchester** ***Program:*** **Hospital**
Purpose: **Construction** ***Acknowledged:*** **January 24, 2014**

Executive Summary

Description

New York Presbyterian Hospital-Columbia Presbyterian Center, part of a 2,478-bed, not-for-profit hospital health care system located in New York and Westchester counties, is seeking to jointly construct and operate a cardiac catheterization laboratory located at Lawrence Hospital Center (Westchester County). New York Presbyterian Hospital is requesting to amend its operating certificate, requesting a joint certification with Lawrence Hospital Center to operate a cardiac catheterization laboratory located at Lawrence Hospital Center.

Concurrently, Lawrence Hospital Center is seeking to amend its operating certificate requesting a joint certification, via CON 141034, with New York Presbyterian Hospital to operate the new cardiac catheterization laboratory located at Lawrence Hospital Center. The application results from both Lawrence Hospital Center and New York Presbyterian Hospital joining services in order to provide cardiac catheterization and enhance quality of cardiac services at Lawrence Hospital Center through the shared resources and improved access of patients. As part of this project, NYP-Columbia will also concurrently reduce one of its existing cardiac catheterization laboratories, resulting in no net increase in cardiac catheterization laboratories in New York State.

New York Presbyterian Hospital will provide clinical leadership and quality oversight for the outpatient procedures for the cardiac catheterization laboratory located at Lawrence Hospital Center. Lawrence Hospital Center will provide quality oversight for the inpatient procedures. Patients needing surgery will be transferred to New York Presbyterian Hospital-Columbia Presbyterian Center.

DOH Recommendation

Contingent Approval

Need Summary

NYP-Columbia will reduce its cardiac catheterization laboratories from 8 to 7 and transfer one lab from New York County to Lawrence Hospital in Westchester County. New York Presbyterian Center is currently treating 752 patients from Westchester County, which is enough to support two PCI laboratories in Westchester County. The transfer of one lab will allow Westchester residents to receive treatment closer to home. The new lab will meet all the Department's minimum qualifications. The transfer of the single lab will not result in a change in the number of laboratories within the New York Presbyterian Health System.

Program Summary

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

Financial Summary

There are no project costs associated with this project.

Budget:

Revenues	$9,604,370
Expenses	9,023,846
Excess of Revenues over Expenses	$ 580,524

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
Approval contingent upon:
1. Submission of an executed Comprehensive Cardiac Center Affiliation Operating Agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [BFA]
3. Submission of an executed Occupancy License Agreement, acceptable to the Department. [BFA]
4. Submission of a executed Comprehensive Cardiac Center Affiliation Operating Agreement with a NYS Cardiac Surgery Center, acceptable to the Department, in accordance with the standards at Section 405.29(c)(8)(i). [HSP]
5. Submission of written documentation of governing body approval of the co-operator contract. [HSP]

Approval conditional upon:
1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
June 12, 2014

Need Analysis

Project Description

New York Presbyterian Center-Columbia (NYP-Columbia) requests approval for joint certification with Lawrence Hospital Center (Lawrence) of a PCI capable cardiac catheterization Lab at Lawrence Hospital. This project will be a transfer of one lab from NYP-Columbia (New York County) to Lawrence (Westchester County).

Background

New York Presbyterian Center-Columbia has the following certified beds and services:

Table 1: NYP-Columbia: Certified Beds. Source: HFIS, 2014.

Bed Category	Certified Capacity
AIDS	14
Bone Marrow Transplant	12
Chemical Dependence Detox	3
Coronary Care	18
Intensive Care	99
Maternity	58
Medical / Surgical	551
Neonatal Continuing Care	11
Neonatal Intensive Care	14
Neonatal Intermediate Care	33
Pediatric	100
Pediatric ICU	41
Physical Medicine and Rehabilitation	16
Psychiatric	25
Total	995

Table 2: NYP-Columbia: Certified Services. Source: HFIS, 2014.

AIDS	Neonatal Continuing Care
AIDS Center	Neonatal Intensive Care
Ambulatory Surgery – Multi Speciality	Neonatal Intermediate Care
Audiology O/P	Nuclear Medicine – Diagnostic
Cardiac Catheterization – Adult Diagnostic	Nuclear Medicine – Therapeutic
Cardiac Catheterization – Electrophysiology (EP)	Pediatric
Cardiac Catheterization – Pediatric Diagnostic	Pediatric Intensive Care
Cardiac Catheterization – Pediatric Intervention Elective	Pediatric O/P
Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)	Pharmaceutical Service
Cardiac Surgery – Adult	Physical Medical Rehabilitation O/P
Cardiac Surgery – Pediatric	Prenatal O/P
Certified Mental Health Services O/P	Primary Medical Care O/P
Chemical Dependence – Detoxification	Psychiatric
Clinical Laboratory Service	Radiology – Diagnostic
Comprehensive Psychiatric Emergency Program	Radiology-Theapeutic
Coronary Care	Renal Dialysis – Acute

Dental O/P	Renal Dialysis – Chronic
Emergency Department	Respiratory Care
Epilepsy Comprehensive Services	Therapy – Occupational O/P
Family Planning O/P	Therapy – Physical O/P
Health Fairs O/P	Therapy – Speech Language Pathology
Intensive Care	Transplant – Bone Marrow
Linear Accelerator	Transplant – Heart – Adult
Lithotripsy	Transplant – Heart – Pediatric
Magnetic Resonance Imaging	Transplant – Kidney
Maternity	Transplant – Liver
Medical Social Services	
Medical/Surgical	

State designations:

- AIDS Center;
- Regional Perinatal Center;
- Regional Pediatric Trauma Center;
- SAFE Center; and
- Stroke Center

Analysis

New York Presbyterian Center-Columbia seeks approval for joint certification with Lawrence Hospital Center of a PCI capable cardiac catheterization laboratory at NYP-Columbia. Lawrence Hospital Center will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – adult intervention;
- Cardiac catheterization – percutaneous coronary intervention;

Through this application, NYP-Columbia, located in New York County will reduce one of its existing cardiac catheterization labs and transfer it to a network facility Lawrence in Westchester County. The hospital network will not see a change in the number of cardiac catheterization labs.

Currently NYP-Columbia is treating over 500 patients from Westchester County, but this number sometimes surges to over 700 (NYP-Columbia treated 752 Westchester residents in 2012). The transfer of the lab to Lawrence in Westchester will allow the patients to be treated closer to home.

- Volume Requirements:
  - 709.14(d)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.
    - The standard will be met:
      - It is projected there will be 60 emergency PCI procedures performed in the first year of the Lab's operations and 77 emergency PCI procedures performed in the third year of operation. Both the number of emergency PCIs and total PCI cases will exceed the above referenced minimums.
      - If provided locally, the services would greatly ameliorate the inconvenience and cost to patients and families of travelling to New York County.
  - Section 709.14(d)(1)(ii)(k): Where public need is established herein, priority consideration shall be given to applicants that can demonstrate projected volume in excess of 300 PCI cases per year.
    - This standard will be met:
      - Based on the above projections of the 304 PCI anticipated cases that will be done in year 1.

- o Section 405.29(3)(iii): Minimum Workload Standards. Any institution seeking to maintain approval shall present evidence that the annual minimum workload standards have been achieved and maintained. Diagnostic Cardiac Catheterization Services shall achieve and maintain an annual minimum volume of 200 angiographic diagnostic cardiac catheterization procedures within two years of initial approval.
  - ▪ This standard will be met.

- o Section 405.29(2)(iv): Minimum Workload Standards. Each PCI Capable Cardiac Catheterization Laboratory Center must maintain a minimum volume of 150 percutaneous coronary intervention cases per year including at least 36 emergency percutaneous coronary intervention cases per year. Hospitals with volumes below 400 percutaneous coronary intervention cases per year must comply with NYSDOH reviews as outlined in regulations.
- o Section 405.29(2)(iv)(a): PCI Capable Cardiac Catheterization Laboratory Centers with an annual volume between 300 and 400 percutaneous coronary intervention cases shall undergo a review of cases and outcome trends conducted by the Department to evaluate the appropriateness and quality of care provided by the center.
  - ▪ This standard will be met.
    - As previously noted, it is projected that there will be 304 PCI procedures performed in the first year of operations. Since more than 300 PCI's are anticipated per year, the program will not be subject to reviews required for programs with lesser volume.

In 2008, the PCI volume for residents of Westchester County was 1,709 procedures; by 2012, these procedures declined by 19.4 percent to 1,376. It should be noted that there are large swings in data and in 2011 the visits were only down 5.6 percent to 1,612. The overall numbers are still showing a decline in the number of Westchester County residents requiring PCI treatment. (Table 3).

Table 3: Westchester County Residents: PCI Utilization Statistics by Place of Procedure.
Source: Cardiac Services Program, 2008 – 2012.

County/Hospital	2008	2009	2010	2011	2012
Bronx County	277	258	163	123	114
Kings County	3	3	6	2	1
New York County	1425	1300	1207	1484	1254
Richmond County	4	1	8	3	7
Subtotal	**1,709**	**1,562**	**1,384**	**1,612**	**1,376**
Hudson Valley Region Hospitals					
Good Samaritan Hospital (Suffern)	3	3	3	1	4
Orange Regional Medical	0	0	0	1	2
St. Francis Hospital	10	5	10	8	8
Vassar Brothers Medical Center	11	3	5	2	8
Westchester Medical Center	719	684	683	485	352
White Plains Hospital	0	0	122	240	274
Total	**743**	**695**	**823**	**737**	**648**

All existing PCI capable cardiac catheterization laboratories are expected to maintain a volume of 300 PCI procedures per year. Currently, there are 7 hospitals in the Hudson Valley region with PCI Labs, of these; only one (1) is not meeting the PCI volume standard of 300 procedures per year (Table 5). The one facility not meeting the 300 visits is still seeing 291 for the last year reported, showing that the Hudson Valley region is at capacity.

As shown in Table 4, NYP-Columbia treated 580 patients for PCI in 2012 and NYP-Weill treated 172 patients. These 752 patients are all from Westchester County and could potentially be treated in Westchester after the PCI lab has been transferred to Lawrence Hospital.

Table 4: NYP-Columbia: PCI Utilization Statistics for NYP-Columbia. Source: Cardiac Services Reporting System, 2012.					
Hospital	2008	2009	2010	2011	2012
NYP-Columbia	569	532	477	729	580
NYP-Weill	247	233	225	197	172
Total	**816**	**765**	**702**	**926**	**752**

Table 5: Hudson Region Hospitals: PCI Utilization Statistics. Source: Cardiac Services Program 2008- 2012.					
Hospital	2008	2009	2010	2011	2012
Good Sam Suffern Hospital	888	792	661	645	531
Orange Regional Medical	87	109	534	554	592
St. Francis Hospital	3,196	3,292	3,092	2,718	2,388
Vassar Brothers Medical Center	739	659	679	696	703
Westchester Medical Center	1277	1218	1043	694	488
White Plains Hospital	0	0	133	256	291
St. Lukes Cornwall	0	39	364	348	324
Total	**6187**	**6109**	**6506**	**5911**	**5317**

Based on 709.14(d)(2), PCI capable cardiac catheterization labs are required to maintain a minimum PCI volume of 300 procedures per year, and this volume level will be maintained following the approval.

Conclusion

As stated in 10 NYCRR 709.14(d)(1), the factors and methodology for determining the public need for PCI Capable Cardiac Laboratory Centers shall include, but not be limited to, the following:

- The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- Documentation by the applicant must demonstrate the hospital’s ability to provide high quality care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.
- Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

Over the last five (5) years, PCI procedures for the residents of Westchester County have declined. The declining utilization pattern for the residents of Westchester County is consistent with the statewide pattern. However, the Westchester residents being treated at New York Presbyterian Center exceed the number needed to support a PCI lab in Westchester. If fewer than half the Westchester patients currently being treated at the New York Presbyterian facilities return to Westchester, their number will be enough to support the PCI lab.

Because the NYP-Columbia PCI laboratory at Lawrence Hospital would serve Westchester County patients currently traveling to Manhattan, its operation would not adversely affect the ability of existing PCI programs at Hospitals in Westchester County and the Hudson Valley to maintain current PCI volumes.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

New York Presbyterian Hospital - Columbia Presbyterian Center (NYP-Columbia), a 2,478-bed, not-for-profit hospital health care system that is a full services cardiac surgery provider with eight (8) cardiac catheterization laboratories (CCLs), seeks approval for the relocation of one of its existing percutaneous coronary intervention (PCI) capable cardiac catheterization labs from NYP-Columbia to Lawrence Hospital Center (LHC) in Westchester County. Under this arrangement, there will be no net increase or loss of cardiac catheterization laboratories in New York State. The aim of the jointly operated program is to provide residents of Westchester County local access to higher-level cardiac catheterization services.

Clinical leadership and quality oversight for outpatient procedures will be provided by NYP-Columbia for the cardiac catheterization laboratory located at the LHC site. Additionally, the policies and procedures currently in place at NYP-Columbia for its cardiac catheterization laboratory services will be incorporated into the operation of the joint cardiac catheterization lab, and patients who require surgery will be transferred to NYP-Columbia.

Currently, among other services, NYP-Columbia is certified for:

Cardiac Catheterization – Adult Diagnostic Cardiac Catheterization – Electrophysiology Cardiac Catheterization – Pediatric Diagnostic Cardiac Catheterization – Intervention Elective Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) Cardiac Surgery – Adult Cardiac Surgery – Pediatric

The Operating Certificate of NYP-Columbia will change to indicate that there will be an off-site location at Lawrence Hospital Center, with the inpatient component of the above-noted services to be provided by Lawrence under contract through NYP-Columbia, and the outpatient component of the above-noted services to be provided by NYP-Columbia.

A concurrent CON (#141034) has been submitted by Lawrence Hospital Center. Upon approval, LHC will have the services below added to their operating certificate. In addition, the LHC operating certificate will change to indicate that the inpatient component of those services will be provided by Lawrence under contract through NYP-Columbia and the outpatient component of those services will be provided by NYP-Columbia.

Cardiac Catheterization – Adult Diagnostic Cardiac Catheterization – Intervention Elective Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Comprehensive Cardiac Center Affiliation Operating Agreement

The applicant has submitted a draft comprehensive cardiac center affiliation agreement and operating agreement, which is summarized below:

Parties:	New York Presbyterian Hospital (NYPH) and Lawrence Hospital Center (LHC)
Purpose:	The parties have applied for two separate certificate of need applications to jointly operate an Article 28 diagnostic cardiac catheterization and PCI capable cardiac catheterization program.
Duties of NYP:	NYP will provide all non-physician personnel (including allied health and technical staffing) for the Cath Lab; will arrange for the provision of diagnostic cardiac catheterizations and percutaneous coronary intervention services to outpatients of the Cath Lab and to Lawrence inpatients; shall serve as the Comprehensive Cardiac Surgery Center Affiliate for the Cath Lab; shall make arrangements to staff the Cath Lab with a sufficient number of licensed and/or certified, appropriately trained and credentialed non-physician clinicians, and NYP shall bill patients, or, as applicable, responsible third party payors for the technical component of the Outpatient Services rendered in the Cath Lab.
Duties of LHC:	LHC shall arrange that the Cath Lab is staffed by a sufficient number of licensed, Board certified, appropriately trained and credentialed physicians to provide services to outpatients and inpatients seeking services at the Cath Lab during all hours of the Cath Lab's operations and only Lawrence shall have the right to submit bills for and collect fees and charges to third party payors and patients for the clinical services provided to Inpatients.
Term:	The term of the agreement shall be for three years. Following the end of the Initial Term, the term shall automatically be extended for successive one year periods.
Compensation:	Lawrence Hospital shall pay NYP a fee for each cardiac catheterization procedure performed on an Inpatient basis. The estimated fee paid to NYP during the first and third year is $3,988,610 and $4,640,364, respectively.

Employee Leasing Agreement

The applicant has submitted a draft employee leasing agreement, which is summarized below:

Parties:	Lawrence Hospital Center and New York Presbyterian Hospital
Purpose:	Lawrence has agreed to lease to NYPH certain of its respective employees to provide services in connection with the operation of the Cath Lab.
Leased Employees:	Lawrence shall lease to NYPH certain non-physician Lawrence employees to provide services in the Cath Lab on either a full time or part time basis. During the term of this Agreement, each Leased Employee shall be and shall remain an employee of Lawrence and while performing Services as the Cath Lab will be managed and receive direction from NYPH managers and supervisors whose duty it is to oversee the operation of the Cath Lab.
Lease Employee Status:	Each Leased Employee shall remain an employee of Lawrence not NYPH. At such time as a leased Employee is providing Services at the Cath Lab pursuant to this Agreement, NYPH managers and supervisors shall have authority and responsibility for supervisors and directing such Leased Employee, determining the means and methods by which such Leased Employee provide Services hereunder and confirming that Leased Employee performs Services to appropriate professional standards and in conformance with Law.
Responsibilities and	NYPH shall have and exercise all authority and power to direct the

Authority of NYPH:	activities and duties of the Leased Employees; NYPH will cooperate with Lawrence so that Lawrence is able to comply with the collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal opportunities, whether federal, state of local; NYPH shall provide all equipment and materials reasonably necessary for the Leased Employees to provide Services pursuant to this Agreement and NYPH may at its sole option, require Lawrence to immediately remove from the Cath Lab and leased employee.
Responsibilities and Authority of Lawrence:	Lawrence shall have the sole and exclusive responsibility for determining, paying and providing the wages, salaries and fringe benefits and other compensation of all the Leased Employees and Lawrence will comply with all applicable collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal employment opportunities, whether federal, State of local.
Term:	This agreement will terminate upon the termination, expiration or non-renewal of the Operating Agreement.
Compensation:	NYPH agrees to pay Lawrence a fee for the Leasing of the Employees. The estimated fee paid to Lawrence during the first and third year is estimated at $6,520,532 and $7,534,396, respectively.

Occupancy License Agreement

The applicant has submitted a draft occupancy license agreement for the space that NYPH will lease from Lawrence, which is summarized below:

Premises:	3,500 square feet located on the 3rd floor, 3 West, in the building located at 55 Palmer Avenue, Bronxville, New York.
Lessor:	Lawrence Hospital Center
Lessee:	New York Presbyterian Hospital
Term:	Five years unless sooner terminated in accordance with the provisions of this Agreement.
Rental:l	The annual rent shall be $156,000 ($44.57 per sq.ft.)
Provisions:	The lessee shall be responsible for maintenance and utilities.

Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars, for New York Presbyterian Hospital, for the first and third years, summarized below:

	Year One	Year Three
Revenues:		
Outpatient	$4,029,700	$4,964,006
Annual Fee from Lawrence Hospital	3,988,610	4,640,364
Total Revenues	$8,018,310	$9,604,370
Expenses:		
Operating	$7,172,474	$8,186,338
Capital	899,610	837,508
Total Expenses	$8,072,084	$9,023,846
Excess of Revenues over Expenses	($53,774)	$580,524
Outpatient: (Visits)	496	611
Cost Per Visit	$16,274.36	$14,768.98

Incremental utilization, broken down by payor source, for the first and third years of New York Presbyterian Hospital outpatient services is as follows:

	Year One	Year Three
Medicaid Managed Care	9.07%	9.16%
Medicare Fee For Service	47.78%	47.79%
Commercial Fee For Service	39.71%	39.77%
Other	3.44%	3.28%

Expense assumptions are based on the standard NYPH cardiac catheterization staffing model and were jointly determined by NYPH and Lawrence Hospital Center. Utilization assumptions are based on actual NYPH cardiac catheterization laboratory volume of residents of Westchester County who travel to NYP/Columbia for PCI procedures.

Capability and Feasibility

There is no total project cost associated with this application.

The submitted incremental budget for New York Presbyterian Hospital projects an excess of revenues over expenses of ($53,774) and $580,524 for the first and third year of operation, respectively. Revenues are based on current reimbursement rates of New York Presbyterian Hospital's outpatient cardiac catheterization services.

As shown on Attachment A, New York Presbyterian Hospital has maintained an average positive working capital position and average positive net asset position. Also, New York Presbyterian Hospital has achieved an average excess of revenues over expenses of $247,326,000 in 2011 and 2012, respectively.

BFA Attachment B is the November 30, 2013 internal financial statements of New York Presbyterian Hospital. As shown, the facility had a positive working capital position and a positive net asset position through November 30, 2013. Also, the facility achieved an operating income of $149,287,000 through November 30, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of New York Presbyterian Hospital
BFA Attachment B	November 30, 2013 internal financial statements of New York Presbyterian Hospital.

Public Health and Health Planning Council

Project # 141034-C

Lawrence Hospital Center

County:	**Westchester**	***Program:***	**Hospital**
Purpose:	**Construction**	***Acknowledged:***	**January 24, 2014**

Executive Summary

Description

Lawrence Hospital Center, a 291-bed not-for-profit hospital located in Westchester County, is seeking to jointly construct and operate a cardiac catheterization laboratory located at Lawrence Hospital Center. Lawrence Hospital Center is requesting to amend its operating certificate, requesting a joint certification with New York Presbyterian Hospital- Columbia Presbyterian Center (NYP-Columbia) to operate a cardiac catheterization laboratory located at Lawrence Hospital Center.

New York Presbyterian Hospital- Columbia Presbyterian Center (NYP-Columbia) is also seeking to amend its operating certificate, requesting a joint certification, via CON 141033, with Lawrence Hospital Center to operate the new cardiac catheterization laboratory located at Lawrence Hospital Center. The application results from both Lawrence Hospital Center and New York Presbyterian Hospital joining services in order to provide cardiac catheterizations and enhance quality of cardiac services at Lawrence Hospital Center through the shared resources and improved access to patients. As part of this project, NYP-Columbia will also concurrently reduce one of its existing cardiac catheterization laboratories, resulting in no net increase in cardiac catheterizations laboratories in New York State.

New York Presbyterian Hospital will provide clinical leadership and quality oversight for the outpatient procedures for the cardiac catheterization laboratory located at Lawrence Hospital Center. Lawrence Hospital Center will provide quality oversight for the inpatient procedures. Patients needing surgery will be transferred to New York Presbyterian Hospital/Columbia Presbyterian Center.

DOH Recommendation

Contingent Approval

Need Summary

NYP-Columbia will reduce its cardiac catheterization laboratories from 8 to 7 and transferring one lab from New York County to Lawrence Hospital in Westchester County. New York Presbyterian Center is currently treating 752 patients from Westchester County which is enough to support two PCI laboratories in Westchester County; the transfer of the one lab will allow Westchester residents to receive treatment closer to home. The new lab will meet all the Department's minimum qualifications. The transfer of the single lab will not result in a change in the number of laboratories within the New York Presbyterian Health System.

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 $8,598,237 will be financed as follows: Equity of $5,765,895 from New York Presbyterian Hospital and a bank loan of $2,832,342 at an interest rate of 5% for a six year term.

Budget:

Revenues	$15,370,396
Expenses	15,323,101
Excess of Revenues over Expenses	$ 47,295

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a executed Comprehensive Cardiac Center Affiliation Operating Agreement with a NYS Cardiac Surgery Center, acceptable to the Department, in accordance with the standards at Section 405.29(c)(8)(i). [HSP]
3. Submission of written documentation of governing body approval of the co-operator contract. [HSP]
4. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [HSP]
5. Submission of an executed Comprehensive Cardiac Center Affiliation Operating Agreement, acceptable to the Department. [BFA]
6. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [BFA]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-**02 Hospitals.** [AER]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by June 15, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

June 12, 2014

Need Analysis

Background

Lawrence has the following certified beds and services:

Table 1: Lawrence: Certified Beds. Source: HFIS, 2014.	
Bed Category	Certified Capacity
Coronary Care	10
Intensive Care	8
Maternity	23
Medical / Surgical	228
Neonatal Intermediate Care	7
Pediatric	12
Total	288

Table 2: Lawrence: Certified Services. Source: HFIS, 2014.	
Ambulatory Surgery – Multi Speciality	Medical/Surgical
Audiology O/P	Neonatal Intermediate Care
Clinical Laboratory Service	Nuclear Medicine - Diagnostic
Coronary Care	Nuclear Medicine - Therapeutic
CT Scanner	Pediatric
Dental O/P	Pharmaceutical Service
Emergency Department	Physical Medicine and Rehabilitation O/P
Family Planning O/P	Primary Medical Care O/P
Intensive Care	Radiology - Diagnostic
Lithotripsy	Renal Dialysis - Acute
Magnetic Resonance Imaging	Therapy - Speech Language Pathology
Maternity	Therapy - Speech Language Pathology O/P
Medical Social Services	

State designations:

- Level 2 Perinatal;
- Stroke Center;

Analysis

Lawrence Hospital Center seeks approval for joint certification with New York Presbyterian Center-Columbia of a PCI capable cardiac catheterization laboratory at NYP-Columbia. Lawrence Hospital Center will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – adult intervention;
- Cardiac catheterization – percutaneous coronary intervention;

Through this application NYP-Columbia located in New York County will reduce one of its existing cardiac catheterization labs and transferring it to a network facility Lawrence in Westchester County. The hospital network will not see a change in the number of cardiac catheterization labs.

Currently NYP-Columbia is treating over 500 patients from Westchester County but this number sometimes surges to over 700 (NYP-Columbia treated 752 Westchester residents in 2012). The transfer of the lab to Lawrence in Westchester will allow the patients to be treated closer to home.

- Volume Requirements:
  - Section 709. 14(d)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.
    - The standard will be met:
      - It is projected there will be 60 emergency PCI procedures performed in the first year of the Lab's operations and 77 PCI procedures performed in the third year of operation. Both the number of emergency PCls and total PCI cases will exceed the above referenced minimums.
      - If provided locally, the services would greatly ameliorate the inconvenience and cost to patients and families of travelling to New York County.
  - Section 709. 14(d)(1)(ii)(k): Where public need is established herein, priority consideration shall be given to applicants that can demonstrate projected volume in excess of 300 PCI cases per year.
    - This standard will be met:
      - Based on the above projections of the 304 PCI anticipated cases that will be done in year 1.
  - Section 405.29 (3)(iii): Minimum Workload Standards. Any institution seeking to maintain approval shall present evidence that the annual minimum workload standards have been achieved and maintained. Diagnostic Cardiac Catheterization Services shall achieve and maintain an annual minimum volume of 200 angiographic diagnostic cardiac catheterization procedures within two years of initial approval.
    - This standard will be met.
  - Section 405.29(2)(iv): Minimum Workload Standards. Each PCI Capable Cardiac Catheterization Laboratory Center must maintain a minimum volume of 150 percutaneous coronary intervention cases per year including at least 36 emergency percutaneous coronary intervention cases per year. Hospitals with volumes below 400 percutaneous coronary intervention cases per year must comply with NYSDOH reviews as outlined in regulations.
  - Section 405.29(2)(iv)(a): PCI Capable Cardiac Catheterization Laboratory Centers with an annual volume between 300 and 400 percutaneous coronary intervention cases shall undergo a review of cases and outcome trends conducted by the Department to evaluate the appropriateness and quality of care provided by the center.
    - This standard will be met.
      - As previously noted, it is projected that there will be 304 PCI procedures performed in the first year of operations. Since more than 300 PCI's are anticipated per year, the program will not be subject to reviews required for programs with lesser volume.

In 2008, the PCI volume for residents of Westchester County was 1,709 procedures; by 2012, these procedures declined by 19.4 percent to 1,376. It should be noted that there are large swings in data and in 2011 the visits were only down 5.6 percent to 1,612. The overall numbers are still showing a decline in number of Westchester County residents requiring PCI treatment. (Table 3).

Table 3: Westchester County Residents: PCI Utilization Statistics by Place of Procedure. Source: Cardiac Services Program, 2008 – 2012.

County/Hospital	2008	2009	2010	2011	2012
Bronx County	277	258	163	123	114
Kings County	3	3	6	2	1
New York County	1425	1300	1207	1484	1254
Richmond County	4	1	8	3	7
Subtotal	**1,709**	**1,562**	**1,384**	**1,612**	**1,376**

Table 3: Westchester County Residents: PCI Utilization Statistics by Place of Procedure. Source: Cardiac Services Program, 2008 – 2012.					
County/Hospital	2008	2009	2010	2011	2012
Hudson Valley Region Hospitals					
Good Samaritan Hospital (Suffern)	3	3	3	1	4
Orange Regional Medical	0	0	0	1	2
St. Francis Hospital	10	5	10	8	8
Vassar Brothers Medical Center	11	3	5	2	8
Westchester Medical Center	719	684	683	485	352
White Plains Hospital	0	0	122	240	274
Total	**743**	**695**	**823**	**737**	**648**

All existing PCI capable cardiac catheterization laboratories are expected to maintain a volume of 300 PCI procedures per year. Currently, there are 7 hospitals in the Hudson Valley region with PCI Labs, of these; only one (1) is not meeting the PCI volume standard of 300 procedures per year (Table 5). The one facility not meeting the 300 visits is still seeing 291 for the last year reported, showing that the Hudson Valley region is at capacity.

As shown in Table 4, NYP-Columbia treated 580 patients for PCI in 2012 and NYP-Weill treated 172. The 752 patients are all from Westchester County and could potentially be treated in Westchester after the PCI lab has been transferred to Lawrence Hospital.

Table 4: NYP-Columbia: PCI Utilization Statistics for NYP-Columbia. Source: Cardiac Services Reporting System, 2012.					
Hospital	2008	2009	2010	2011	2012
NYP-Columbia	569	532	477	729	580
NYP-Weill	247	233	225	197	172
Total	**816**	**765**	**702**	**926**	**752**

Table 5: Hudson Region Hospitals: PCI Utilization Statistics. Source: Cardiac Services Program 2008- 2012.					
Hospital	2008	2009	2010	2011	2012
Good Samaritan Hospital (Suffern)	888	792	661	645	531
Orange Regional Medical	87	109	534	554	592
St. Francis Hospital	3,196	3,292	3,092	2,718	2,388
Vassar Brothers Medical Center	739	659	679	696	703
Westchester Medical Center	1277	1218	1043	694	488
White Plains Hospital	0	0	133	256	291
St. Lukes Cornwall	0	39	364	348	324
Total	**6187**	**6109**	**6506**	**5911**	**5317**

Based on 709.14(d)(2), PCI capable cardiac catheterization labs are required to maintain a minimum PCI volume of 300 procedures per year and this volume level will be maintained following the approval.

Conclusion

As stated in 10 NYCRR 709.14(d)(1), the factors and methodology for determining the public need for PCI Capable Cardiac Laboratory Centers shall include, but not be limited to, the following:

- The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- Documentation by the applicant must demonstrate the hospital's ability to provide high quality care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.
- Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

Over the last five (5) years, PCI procedures for the residents of Westchester County have declined. The declining utilization pattern for the residents of Westchester County is consistent with the statewide pattern. However, the Westchester residents being treated at New York Presbyterian Center exceed the number needed to support a PCI lab in Westchester. If fewer than half the Westchester patients currently being treated at the New York Presbyterian facilities return to Westchester, their number will be enough to support the PCI lab.

Because the NYP-Columbia PCI laboratory at Lawrence Hospital would serve Westchester County patients currently traveling to Manhattan, its operation would not adversely affect the ability of existing PCI programs at Hospitals in Westchester County and the Hudson Valley to maintain current PCI volumes.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Lawrence Hospital Center (LHC), a 291-bed not-for-profit hospital located in Westchester County, requests approval to accommodate the relocation an existing cardiac catheterization laboratory from New York Presbyterian Hospital – Columbia Presbyterian Center (NYP–Columbia). As part of this proposal, NYP-Columbia, a full services cardiac surgery provider with eight (8) cardiac catheterization laboratories (CCLs) on its campus, seeks to amend its operating certificate by decertifying and transferring one (1) of its CCLs to Lawrence Hospital (under companion CON 141033).

Upon approval, the relocated cardiac catheterization lab from NYP-Columbia will become jointly operated by NYP-Columbia and Lawrence Hospital at the LHC site and Lawrence Hospital will be licensed to provide diagnostic cardiac catheterizations and percutaneous coronary intervention (PCI) procedures. The applicant states the rationale behind the jointly operated program is to provide residents of Westchester County local access to higher-level cardiac catheterization services that are also under the oversight of NYP-Columbia. Staffing at LHC is expected to increase by 20.0 FTEs by the end of the first year and is projected to remain at that level into the third year of operation.

The Applicant has submitted a written plan that demonstrates the hospital's ability to comply with the standards for PCI Capable Cardiac Catheterization Laboratories and has assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Comprehensive Cardiac Center Affiliation Operating Agreement

The applicant has submitted a draft comprehensive cardiac center affiliation agreement and operating agreement; which is summarized below:

Parties	New York Presbyterian Hospital (NYPH) and Lawrence Hospital Center (LHC)
Purpose	The parties have applied for two separate Certificate of Need applications to jointly operate an Article 28 diagnostic cardiac catheterization and PCI capable cardiac catheterization program.
Duties of NYP	NYP will provide all non-physician personnel (including allied health and technical staffing) for the Cath Lab; will arrange for the provision of diagnostic cardiac catheterizations and percutaneous coronary intervention services to outpatients of the Cath Lab and to Lawrence inpatients; shall serve as the Comprehensive Cardiac Surgery Center Affiliate for the Cath Lab; shall make arrangements to staff the Cath Lab with a sufficient number of licensed and/or certified, appropriately trained and credentialed non-physician clinicians, and NYP shall bill patients, or, as applicable, responsible third party payors for the technical component of the Outpatient Services rendered in the Cath Lab.
Duties of LHC	LHC shall arrange that the Cath Lab is staffed by a sufficient number of licensed, Board certified of Board eligible, appropriately trained and credentialed physicians to provide services to outpatients and inpatients seeking services at the Cath Lab during all hours of the Cath Lab's operations and only Lawrence shall have the right to submit bills for and collect fees and charges to third party payors and patients for the clinical services provided to Inpatients.
Term	The term of the agreement shall be for three years. Following the end of the Initial Term, the term shall automatically be extended for successive one year periods.
Compensation	Lawrence Hospital shall pay NYP a fee for each cardiac catheterization procedure performed on an Inpatient. The estimated fee paid to NYP during the first and third year is \$3,988,610 and \$4,640,364, respectively.

Employee Leasing Agreement

The applicant has submitted a draft employee leasing agreement, which is summarized below:

Parties	Lawrence Hospital Center and New York Presbyterian Hospital
Purpose	Lawrence has agreed to lease to NYPH certain of its respective employees to provide services in connection with the operation of the Cath Lab.
Leased Employees	Lawrence shall lease to NYPH certain non-physician Lawrence employees to provide services in the Cath Lab on either a full time or part time basis. During the term of this Agreement, each Leased Employee shall be and shall remain an employee of Lawrence and while performing Services as the Cath Lab will be managed and receive direction from NYPH managers and supervisors whose duty it is to oversee the operation of the Cath Lab.
Lease Employee Status	Each Leased Employee shall remain an employee of Lawrence not NYPH. At such time as a leased Employee is providing Services at the Cath Lab pursuant to this Agreement, NYPH managers and supervisors shall have authority and responsibility for supervisors and directing such Leased Employee, determining the means and methods by which such Leased Employee provide Services hereunder and confirming that Leased Employee performs Services to appropriate professional standards and in conformance with Law.
Responsibilities and Authority of NYPH	NYPH shall have and exercise all authority and power to direct the activities and duties of the Leased Employees; NYPH will cooperate with Lawrence so that Lawrence is able to comply with the collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal opportunities, whether federal, state of local; NYPH shall provide all equipment and materials reasonably necessary for the Leased Employees to provide Services pursuant to this Agreement and NYPH may at its sole option, require Lawrence to immediately remove from the Cath Lab and leased employee.
Responsibilities and Authority of Lawrence	Lawrence shall have the sole and exclusive responsibility for determining, paying and providing the wages, salaries and fringe benefits and other compensation of all the Leased Employees and Lawrence will comply with all applicable collective bargaining agreements applicable to the Leased Employees and labor laws and laws regarding equal employment opportunities, whether federal, State of local.
Term	This agreement will terminate upon the termination, expiration or non-renewal of the Operating Agreement.
Compensation	NYPH agrees to pay Lawrence a fee for the Leasing of the Employees. The estimated fee paid to Lawrence during the first and third year is estimated at $6,520,532 and $7,534,396, respectively.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment is estimated at $8,598,237, further broken down as follows:

Renovation	$3,515,800
Asbestos Abatement or Removal	$58,300
Design Contingency	$320,000
Construction Contingency	$320,000
Planning Consultant Fees	$75,000
Architect Engineering Fees	$372,000
Construction Manager Fees	$220,000
Other Fees (Consultant)	$323,000
Moveable Equipment	$3,281,516
Telecommunications	$63,600
CON Fee	$2000
Additional Processing Fee	$47,021
Total Project Cost	$8,598,237

Project costs are based on a June 15, 2014 construction start date and a six month construction period.

The applicant's financial plan appears as follows:

Equity (New York Presbyterian Hospital)	$5,765,895
Bank Loan (5% interest rate for a six year term)	$2,832,342

Operating Budget

The applicant has submitted an incremental operating budget, in 2014 dollars for Lawrence Hospital Center for the first and third years, summarized below:

Lawrence Hospital Center (Inpatient)

	Year One	Year Three
Revenues:		
Inpatient	$6,015,200	$7,680,000
Annual Fee from NYP-Columbia	6,520,532	7,534,396
Space Lease Revenue	156,000	156,000
Total Revenues	$12,691,732	$15,370,396
Expenses:		
Operating	$12,977,019	$15,323,101
Capital	0	0
Total Expenses	$12,977,019	$15,323,101
Excess of Revenues over Expenses	($285,287)	$47,295
Total Discharges	304	389
Cost Per Discharge	$42,687.56	$39,391.01

Incremental utilization, broken down by payor source, for the first and third years of Lawrence Hospital Center inpatient services is as follows:

	Year One	Year Three
Medicaid Managed Care	5.98%	6.16%
Medicare Fee For Service	47.03%	46.78%
Medicare Managed Care	13.15%	13.11%
Commercial Fee For Service	1.97%	2.05%
Commercial Managed Care	31.87%	31.90%

Expense assumptions are based on the standard Lawrence Hospital Center cardiac catheterization staffing model, and were jointly determined by NYPH and Lawrence Hospital Center. Utilization assumptions are based on actual NYPH cardiac catheterization laboratory volume of residents of Westchester County who travel to NYP/Columbia for PCI procedures.

Capability and Feasibility

The total project cost of $8,598,237 will be met as follows: bank loan of $2,832,342 at an interest rate of 5% for a six year term and equity of $5,765,895 from New York Presbyterian Hospital. Presented as BFA Attachment C are the 2011 and 2012 certified financial statements of New York Presbyterian Hospital, which indicates the availability of sufficient funds for the equity contribution.

The incremental submitted budget for Lawrence Hospital Center projects an excess of revenues over expenses of ($285,287) and $47,295 for the first and third year of operation, respectively. The first year loss will be offset from operations. Revenues are based on current reimbursement rates of Lawrence Hospital Center inpatient cardiac catheterization services. The budget appears reasonable.

As indicated in BFA Attachment A, Lawrence Hospital Center has maintained an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, Lawrence Hospital Center has achieved an operating income from operations of $12,049,773 and $11,508,571 in 2011 and 2012, respectively.

BFA Attachment B are the October 31, 2013 internal financial statements of Lawrence Hospital Center. As shown, the facility had a positive working capital position and a positive net asset position through October 31, 2013. Also, the facility achieved an operating income of $720,404 through October 31, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of Lawrence Hospital Center
BFA Attachment B	Financial Summary- October 31, 2013 internal financial statements of Lawrence Hospital Center
BFA Attachment C	2011 and 2012 certified financial statements of New York Presbyterian Hospital

Public Health and Health Planning Council

Project # 131158 C
Richmond Center for Rehabilitation and Specialty Healthcare

County: **Richmond County**
Purpose: **Construction**
Program: **Residential Health Care Facility**
Acknowledged: **April 1, 2013**

Executive Summary

Description
SV Operating Three, LLC, doing business as Richmond Center for Rehabilitation and Specialty Healthcare (Richmond Center), requests approval to add 72 new neuro-behavioral beds to its operating certificate, and construct a 72 neuro-behavioral unit on the 3rd floor of the former Bayley Seton Hospital, located at 75 Vanderbilt Avenue, Staten Island. These additional 72 neuro-behavioral beds will bring the facility's total bed capacity from 300 to 372 beds. The facility's neuro-behavioral capacity would increase from 72 neuro-behavioral beds to 144 neuro-behavioral beds. The renovation to the 3rd floor will be constructed by the Landlord, SV Land I, LLC, who will lease the additional space to Richmond Center.

DOH Recommendation
Contingent Approval.

Need Summary
Richmond Center for Rehabilitation and Specialty Healthcare is hoping to repatriate patients needing neurobehavioral care to New York. Currently there are over 308 New York residents receiving this type of care in Massachusetts. With only 72 beds of this type in the entire NYC planning area, Richmond Center for Rehabilitation and Specialty Healthcare has been forced to turn away an additional 50 patient referrals in the last 12 months, which demonstrates the need for the additional 72 neurobehavioral beds. Richmond Center for Rehabilitation and Specialty Healthcare' s catchment area would allow for many NY residents to return from out of state and be closer to family members.

Program Summary
The addition of 72 beds at Richmond Center will address the need for additional behavioral intervention beds. The design of the new third floor unit will provide a modern, code conforming residential environment for this difficult-to-manage population.

Financial Summary
Total project cost of $6,548,582 will be met as follows: Equity of $1,637,582 (via landlord) and a bank loan of $4,911,000 at an interest rate of 6.00% for a 10 year term.

Incremental Budget:

Revenues	$11,518,398
Expenses	7,142,667
Net Income	$ 4,375,731

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of 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 the CON fees. [PMU]
2. The submission of a commitment signed by the applicant who indicates that, upon completion of construction the facilities repatriation plan will be initiated. Additionally the applicant will provide a signed affidavit stating that repatriating patients back to NY from out of state will take precedence over all other facility initiatives. [RNR]
3. Submission of a detailed plan to repatriate out of state patients back to New York. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
   - Reach out to out of state nursing home discharge planners to facilitate the repatriation to Richmond Center;
   - Communicate with local hospital discharge planners to make sure residents are not being referred to out of state facilities;
   - A schedule outlining visit dates and times and an exact timeline of events for repatriation
   - Submit an annual report to DOH, which demonstrates substantial progress with the implementation of the plan. The report should include but not be limited to:
   - o Information on activities relating to a, b, and c above; Documentation pertaining to the number of referrals and the number of patients repatriated back to NYS
   - o Other factors as determined by the applicant to be pertinent. [RNR]
4. The 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]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
   - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
     - o Information on activities relating to a-c above; and
     - o Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
     - o Other factors as determined by the applicant to be pertinent. [RNR]

   The DOH reserves the right to require continued reporting beyond the two year period.
6. Submission and programmatic review and approval of the final floor plans. [LTC]
7. Submission and programmatic review and approval of the room layouts showing placement of all appropriately sized furniture. [LTC]
8. Submission of a bank loan commitment, acceptable to the Department. [BFA]

9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

<u>Approval conditional upon</u>:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Approval of limited review CON #141200 and completion of the project which will ensure the existing second floor neurobehavioral unit meets the CMS mandated sprinkler regulation. [LTC]
3. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
4. The applicant shall complete construction by January 30, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 12, 2014

Need Analysis

Background

Richmond Center for Rehabilitation and Specialty Healthcare, a 300 bed Residential Health Care Facility located at 91 Tompkins Avenue, Staten Island, New York 10304, Richmond County, is seeking approval to add an additional 72 neurobehavioral beds to be located at the newly renovated 3rd floor of the former Bayley Seton Hospital Campus at 75 Vanderbilt Avenue, for a total of 144 neurobehavioral beds and 372 overall beds.

Analysis

Richmond Center for Rehabilitation and Specialty Healthcare utilization was higher than that of Richmond County for 2009 and 2011, but was slightly lower in 2010, as shown in Table 1 below:

Table 1: RHCF Richmond Center for Rehabilitation and Specialty Healthcare/Richmond County

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Richmond Center RHCF Beds	94.3%	92.2%	94.8%
Richmond Center Neurobehavioral Beds	99.9%	99.4%	98.0%
Richmond County	95.2%	93.6%	95.2%
NYC	95.4%	94.8%	94.8%

NYC region has an 8,862 bed need number. This project will not affect the bed need complement.

Table 2: RHCF Need – NYC Region

2016 Projected Need	51,071
Current Beds	41,895
Beds Under Construction	314
Total Resources	42,209
Unmet Need	8,862

NYC's overall utilization rate is below that of the 97 percent planning optimum. This leaves a rebuttable presumption that there is no need for additional beds in the area, according to the Title 10 Section 709.3 regulation.

The following factors documented by the applicant suffice to rebut the presumption of no need:

- Currently RCRSH has the only (72) neurobehavioral beds in the NYC planning area.
- The current 72 neurobehavioral beds are operating at 99% occupancy.
- According to a 2013 survey, there were 308 New York residents receiving treatment in neurobehavioral beds located in Massachusetts.
- The survey identified 87 out-of-state patients that would qualify for RCRSH admission criteria.
- In the last 12 months RCRSH has turned away more than 50 referrals from area hospitals.
- Patients with cognitive capacity at RCRSH are prepared for a smooth transition back to their community.

Richmond Center has a plan in place for the repatriation of patients to NYC from New Jersey and the Massachusetts. They have a list of facilities with Neurobehavioral Beds in each state and are planning site visits for each. The facility has included a list that outlines 52 current patients that are residing out of state who can immediately be repatriated and 20 patients that will be displaced out of state if additional resources are not added.

Below is the facility's plan for safe and effective treatment of the new patients:

- A plan of care will be developed, reviewed, and altered to meet the needs of each patient being clinically accepted.
- Residents will be evaluated and moved to the appropriate wing to meet their needs.
- After DOH final approval, each subunit will be opened in succession, but the next will not open until the previous is filled, allowing staff to fully clinically assess and orient each patient.
- An experienced Neurobehavioral IDT team will review and oversee all procedures.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Richmond Center for Rehabilitation and Specialty Healthcare was above the 75 percent planning average for both 2010 and 2011. The facility reported Medicaid admissions of 50.8 percent in 2010 and 56.0 in 2011. The 75 percent planning averages for Richmond County for 2010 and 2011 were 26.7 percent (2010) and 29.5 percent (2011).

Conclusion

Approval of this application will facilitate the repatriation of patients who have been forced to leave New York State to receive neurobehavioral care.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

	Existing	Proposed
Facility Name	Richmond Center for Rehabilitation and Specialty Healthcare	Same
Address	91 Thompkins Avenue Staten Island, NY 10304	Same
RHCF Capacity	300 (Includes 72 behavioral intervention beds)	372 (includes 144 behavioral intervention beds)
ADHCP Capacity	N/A	N/A
Type Of Operator	Proprietary	Same
Class Of Operator	LLC	Same
Operator	SV Operating Three, LLC	Same

Program Review

Richmond Center for Rehabilitation and Specialty Healthcare (Richmond Center) is a 300 bed nursing home with 72 behavioral intervention beds located in Richmond County. Neurobehavioral is a specialty bed unit for the care of individuals who require nursing home placement and exhibit cognitive deficits which often manifest as aggressive and anti-social behaviors. The original neurobehavioral unit was opened by St. Elizabeth Ann's Health Care Center on the second floor of the former Bayley Seton Hospital building, which is adjacent to the St. Elizabeth Ann's. The nursing home changed ownership on April 1, 2012 with SV Operating Three, LLC assuming operational ownership from St. Elizabeth Ann's.

The St. Elizabeth Ann's neurobehavioral program was approved in 1997, with the first phase of 28 beds commencing operation in September, 1999. The unit does not comply with the current regulation, 10 NYCRR 713-4.7, and did not comply with 10 NYCRR 713-3.7, effective when the unit opened. St. Elizabeth Ann's was granted a series of waivers prior to the second and third phases which created the 72 bed unit. The waivers included:

- Unit size in excess of 20 beds;
- Unit does not have 100% single occupancy bedrooms,
- Toilet rooms are not handicapped accessible;
- Bedrooms cannot accommodate a wheelchair turnaround;
- No outdoor activity space accessible from the unit;
- Low ceiling height in corridor;
- Wardrobe units insufficiently sized;
- Dead-end corridor per NFPA 12-2.5.6;
- Shower stalls only 3' X 3' and not handicapped accessible.

In addition, the second floor does not meet the August, 2013 CMS sprinkler mandate.

The existing neurobehavioral unit functions without a step-down unit to transition the resident from a secure to a less restrictive environment, such as a conventional nursing unit or community based setting. The discharge process instead employs an interdisciplinary team, led by activities and neurobehavioral education teachers, to tailor the program to the individual resident. Those residents who can learn using contemporary instructional strategies, including role play, multi-modal learning, and problem solving through the internet, can be successfully discharged from the unit without the use of a step down unit. The resident centered approach, coupled with the inherent inefficiencies of the physical plant, requires an extremely rich staffing model. Richmond Center has devoted the additional resources needed to maintain coverage and oversee the challenging residential environment, and the redesign of this unit will offer potential savings in operating costs.

The subject application seeks to build on the experience of the operator in serving the neurobehavioral population to meet the continued need for these beds, particularly the repatriation of New York State residents in Massachusetts and other out-of state locations. Richmond Center proposes the construction of a new code conforming 72 bed unit of the third floor. Subsequently the existing second floor unit will be renovated to meet all current Codes, including 10 NYCRR 713-4.7 and FGI 2010.

Physical Environment

The existing Bayley Seton building is a multi-use seven story structure with nursing home space located on floors two and three. Offices for Richmond University Medical Center (RUMC) and related organizations are situated on the first and sixth floors, with the remaining floors largely vacant. RUMC offices on the third floor are being relocated, with the entire floor undergoing a gut renovation to provide 41,630 feet of total altered area for the neurobehavioral expansion.

The new behavioral intervention program will consist of three behavior intervention units of 20, 19 and 17 beds respectively, and a 16 bed behavior intervention step-down unit. Access will be controlled into each unit, with secured doors adjacent to the elevators. The behavioral intervention units will be configured with all single occupancy rooms, and provide adequate and family support and staff conference space. The step-down unit will be configured with seven double and two single bedrooms, and include the required quiet room area, which will also serve as a family counseling area. Neurobehavioral program offices will also be located within the step-down unit. Resident rooms will be arrayed in a linear fashion, with the nursing control station generally located in the center of the unit. Some units include wings that jut out to accommodate dining, activity, and exercise/rehab space, and storage. Each unit will be serviced by at least one elevator with access controlled to ensure appropriate egress. An additional stair tower will be constructed at the end of the step-down unit, which will also serve the second floor thereby eliminating the dead end corridor condition.

Each unit will include a rehabilitation/exercise area, and on-unit dining. While the submitted drawings clearly show sufficient dining space, final plans should show sufficient capacity on each unit, in light of the security issues which are germane to the neurobehavioral program. Each unit will provide showers or bathtubs with a minimum of three fixtures per unit, and a toilet and shower will be proximate to the exercise room. Plans show only a single tub for the entire unit; a minimum of two tubs serving the floor would better serve the needs of the residents. Walls will employ surfaces that are be constructed to avoid hazards to residents and staff, and all electrical outlets will be recessed and tamper proof. Monolithic ceilings and walls will be designed to be resistant to damage. Outdoor space will be created on the existing roof, flanking the step-down unit corridor.

Compliance

Richmond Center for Rehabilitation and Specialty Healthcare is currently in substantial compliance with all applicable codes, rules and regulations. Richmond Center is not in compliance with the CMS mandated sprinkler regulation, with the second floor neurobehavioral unit lacking the required system. A limited review application has been submitted to the Department for a project which will, when completed, result in the second floor meeting the CMS mandated sprinkler regulation.

Conclusion

The addition of 72 beds at Richmond Center will address the need for additional behavioral intervention beds. The design of the new third floor unit will provide a modern, code conforming residential environment for this difficult to manage population. Richmond Center will also accrue operational savings by constructing a unit which will enable staffing at a reduced level compared to the pattern implemented on the existing unit.

In order to avoid unfavorable comparisons between the new and old neurobehavioral units the applicant will be required to renovate the non-code conforming second floor. However the absence of an operational sprinkler system on the second floor creates urgency since the continued certification of the nursing home is at risk.

The applicant has supplied assurances that the installation of the sprinkler system will be undertaken immediately, and a limited review application has been submitted to the Department for review. The limited review application includes the construction of a new 20 bed transition area in which residents will be relocated, avoiding disruptions to their routine and the associated security issues. Existing residents will then return to newly renovated single bedded rooms, as the sprinkler installation proceeds throughout the floor.

Many of the code deficiencies cited earlier will be alleviated by the sprinkler project. A subsequent project, to be completed no more than 18 months following the completion of the third floor, will address the remaining deficiencies, transforming the second floor into an equivalent resident environment. The applicant is encouraged to continue reconstruction of the second floor as the sprinkler installation finishes in order to enjoy savings to the overall construction budget, and the benefit of full operation of the two neurobehavioral floors in code conforming space.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $6,548,582, further broken down as follows:

Renovation and Demolition	$4,331,600
Design Contingency	433,160
Construction Contingency	433,160
Architect/Engineering Fees	346,528
Other Fees (Consultant)	36,400
Moveable Equipment	561,600
Financing Costs	220,995
Interim Interest Expense	147,330
CON Fee	2,000
Additional Processing Fee	35,809
Total Project Cost	$6,548,582

Project costs are based on an August 1, 2014 construction start date and a twelve month construction period.

The applicant's financing plan appears as follows:

Equity (via landlord)	$1,637,582
Bank Loan (interest rate of 6.00% for a ten year term)	4,911,000

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	Year One	**Year Three**
Revenues:		
Medicaid Managed Care	$11,520,748	$11,518,398
Expenses:		
Operating	$6,253,517	$6,253,517
Capital	902,225	889,150
Total Expenses	$7,155,742	$7,142,667
Net Income	$4,365,006	$4,375,731
Utilization: (patient days)	26,120	26,120
Occupancy	99.39%	99.39%

Utilization will be 100% Medicaid Managed Care.

Expense assumptions are based on the historical experience of the facility. Utilization assumptions are based on the historical experience of the existing neuro-behavioral beds.

The applicant's neurobehavioral beds are currently operating at 99% occupancy. Due to the additional admissions of neurobehavioral admissions from providers in Richmond County, admission from providers in New York City outside of Richmond County, admissions from outside of New York City but within New York State, and the need to repatriate of New York residents who have been forced into out-of-state facilities due to the lack of care options within New York State, the applicant feels there is a demand for these additional beds.

Capability and Feasibility

Total project cost of $6,548,582 will be met as follows: Equity of $1,637,582 (via landlord) and a bank loan of $4,911,000 at an interest rate of 6.00% for a ten year term. BFA Attachment C is the personal net worth statement of the sole member SV Land I, LLC, Daryl Hagler, which indicates the availability of sufficient funds for the equity contribution.

Working capital requirements are estimated at $1,190,444, which is equivalent to two months of third year expenses. The applicant has indicated that the working capital will be met via equity from the operations of Richmond Center for Rehabilitation and Specialty Healthcare. BFA Attachment A is the 2012 certified financial statement of Richmond Center for Rehabilitation and Specialty Healthcare, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an incremental net income of $4,365,006 and $4,375,731 during the first and third years, respectively. Revenues are based on current reimbursement rates for the neuro-behavioral beds.

As shown on Attachment A, the facility had a positive working capital position and a positive net asset position through 2012. Also, the facility achieved a net income of $956,269 through 2012. The current operator, SV Operating Three, LLC took over the operations of Richmond Center for Rehabilitation and Specialty Healthcare on April 1, 2012.

BFA Attachment B is the September 30, 2013 internal financial statements of Richmond Center for Rehabilitation and Specialty Healthcare. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position through September 30, 2013. The applicant has indicated that the negative working capital position is the result of the members taking cash out of the business that they used for their other facilities. Also, the facility achieved a net income of $1,083,684 through September 30, 2013.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	2012 certified financial statements of Richmond Center for Rehabilitation and Specialty Healthcare
BFA Attachment B	September 30, 2013 internal financial statements of Richmond Center For Rehabilitation and Specialty Healthcare
BFA Attachment C	Personal Net Worth Statement

Public Health and Health Planning Council

Project # 132368-C

Kendal at Ithaca

County: **Tompkins**
Purpose: **Construction**
Program: **Residential Health Care Facility**
Acknowledged: **January 7, 2014**

Executive Summary

Description

Kendal at Ithaca is a voluntary not-for-profit corporation and a Continuing Care Retirement Community (CCRC) consisting of 212 independent living residences, 36 adult home/assisted living units, and a 35-bed residential health care facility (RHCF). Kendal is seeking approval to construct a replacement RHCF facility within the CCRC located at 2230 North Triphammer Road in Ithaca, and to add thirteen new RHCF beds to better serve the residents and to respond to more current occupancy levels. The original facility was opened in December of 1995, and is associated with Kendal New York and Religious Society of Friends. The new facility will consist of three households with sixteen private rooms each, totaling 48 certified RHCF beds.

DOH Recommendation

Contingent Approval

Need Summary

Because RHCF beds in CCRCs are not subject to the RHCF bed need methodology set forth in 10 NYCRR Section 709.3, there will be no Need review of this project.

Program Summary

The expansion of Kendal will meet the need for skilled nursing placements generated by the CCRC. The replacement nursing unit will utilize contemporary nursing home design principles and result in an improved residential environment.

Financial Summary

The total cost of the project is $16,866,978. Project costs will be met with $2,748,000 in cash and a $14,118,978 mortgage over 30 years at 6.5%.

Total reimbursable cost is limited to $11,086,250.

Budget:	Revenues:	$1,812,406
	Expenses:	$7,292,092
	Loss:	$(5,479,686)

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of 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 and programmatic approval of the final floor plans. [LTC]
3. Submission of a commitment acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning of approval of final plans and specifications, and before the start of construction. Included in the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-04 (If not available on NYSDOH website at the time of submission preparation, please inquire to BAEFP for a copy of the current guidelines.). [AER]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Per Article 28 requirements, space shall be provided to accommodate required program prescribed by Title 10 NYCRR and the 2010 Guidelines for Design and Construction of Health Care Facilities (FGI) for the exclusive use of the skilled nursing facility (vs. non-article 28 occupancies) including, but not limited to, physical therapy, occupational therapy, and designated isolation room(s). [AER]
3. The submission of Final (100%) Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction (If not available on NYSDOH website at the time of submission preparation, please inquire to BAER for a copy of the current guidelines.). [AER]
4. The applicant shall start construction on or before August 25, 2014 and complete construction by October 20, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), failure to meet the construction dates may constitute abandonment of the approval. In accordance with Part 710.10(a), this approval may be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

Council Action Date

June 12, 2014

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Kendal at Ithaca	Same
Address	2230 North Triphammer Road Ithaca, NY 14850	Same
RHCF Capacity	35	48
ADHCP Capacity	N/A	N/A
Type Of Operator	Voluntary	Same
Class Of Operator	Corporation	Same
Operator	Kendal at Ithaca, Inc.	Same

Program Review

Kendal at Ithaca (Kendal) is a continuing care retirement community consisting of 212 independent living residences, a 36 bed adult home/assisted living program, and a 35 bed skilled nursing facility. Kendal has embarked upon an expansion project with two major components: the construction of a 24 unit independent apartment building, and the replacement and expansion of the skilled nursing unit. The project will add 13 beds, resulting in a new SNF capacity of 48 beds.

Currently Kendal operates at nearly full capacity, with the demand for skilled nursing placements increasing as the resident population ages. The additional SNF beds are required to ensure that Kendal will be able to meet the needs of the CCRC, thus avoiding the transfer of residents to outside nursing homes. The additional beds will also enable Kendal to stay within the optimal 5:1 ratio of independent to skill nursing beds.

Physical Environment

The applicant has chosen to pursue a total replacement project which creates a single-standard residential environment. The 48 bed facility will be constructed as appendages to the existing building, forming three neighborhoods of 16 beds each. Each neighborhood will contain 16 single bedrooms, each with its own bathroom and shower. Two rooms in each unit will be designed as bariatric rooms complete with ceiling mounted lifts. A kitchen with adjoining pantry area will prepare all meals for the unit, and a dining room and living room with fireplace are situated adjacent to the kitchen in each neighborhood. Each neighborhood will also include a tub for assisted bathing, affording resident choice. Outdoor space is provided via access to a courtyard which includes benches and walking paths.

Access into the nursing home will be made through a new main entrance with lobby, proceeding down a new corridor to connecting into the existing nursing home building. The former main dining room will be converted into a common area connecting the three new neighborhoods and a large multipurpose room for group activities. The remainder of the 35 bed nursing unit will be recycled for use as offices for the home health care program and medical examination rooms. The barber and beauty salon and the rehabilitation and fitness area will remain in their existing locations. A corridor through the old nursing home building will connect to the beauty salon, and the rehabilitation area will be accessed via the corridor connecting into the new entrance lobby.

Compliance

Kendal at Ithaca is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The expansion of Kendal will meet the need for skilled nursing placements generated by the CCRC. The replacement nursing unit will utilize contemporary nursing home design principles and result in an improved residential environment.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total cost to construct the proposed replacement facility, add 13 new beds and renovate existing facility is projected to be $16,866,978, broken down as follows:

New Construction	$6,363,610
Renovation and Demolition	1,583,625
Site Development	1,434,379
Design Contingency	794,724
Construction Contingency	476,543
Architect/Engineering Fees	1,042,634
Construction Manager Fees	232,625
Other Fees(Consultant)	2,502,853
Movable Equipment	319,250
Financing Costs	381,817
Interim Interest Expense	1,640,668
CON Application Fee	2,000
CON Processing Fee	92,250
Total Project Cost	$16,866,978

Project cost is based on a construction start date of August 25, 2014 with a fourteen month completion period. Project cost per bed, exclusive of CON fees, is $349,432, compared to a geographic per bed limitation of $229,000 with a construction midpoint of 2015.

Reimbursable project cost will be $11,086,250, as shown below:

$229,000 per bed cap x 48 beds	$10,992,000
CON Application Fee	2,000
CON Processing Fee	92,250
Total Reimbursable Project Cost	$11,086,250

Financing for the project is anticipated as follows:

Cash	$2,748,000
Tax-Exempt Bonds (6.50% over 30 year term)	$14,118,978

A letter of interest has been submitted from Ziegler as a source of permanent financing.

Kendal at Ithaca will be contributing 25% equity of the allowable project cost before CON fees ($10,992,000). The Department is allowing the applicant to finance the amount over and above the bed cap since there are no Medicaid patients at the facility.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year and third years subsequent to the facility replacement. The budget is summarized as follows:

	Year One	Year Three
Revenue:		
Medicare	$ 165,487	$165,872
Private Pay	1,446,959	1,646,534
Total	$1,612,446	$1,812,406

Expenses:		
Operating	$6,384,358	$6,776,078
Capital	513,253	516,014
Total	$6,897,611	$7,292,092
Net Income (Loss)	$(5,285,165)	$(5,479,686)
Utilization (patient days)	13,306	14,028
Occupancy	75.95%	80.07%

The following is noted with respect to the operating budget:

- Medicare and private pay assume current rates of payment.
- Occupancy is projected at 75.95% and 80.07% for the first and third years, respectively.
- Utilization by payor source is projected as follows:

Medicare	4.23%
Private Pay	95.77%

The historical occupancy for the 35 RHCF beds is 94% in 2012, which only allows the applicant to take on two more residents. With Kendall adding 24 more independent living units, the board has voted for the expansion of RHCF beds to anticipate future needs. Kendal at Ithaca currently has no capacity for outside admissions, and the additional beds will allow outside admissions, including Medicaid patients.

Capability and Feasibility

The facility will provide equity of $2,748,000 from accumulated funds. BFA Attachment A is the Financial Summary of Kendal at Ithaca. The remaining project cost of $14,118,978 will be satisfied from a bank mortgage at stated terms. A bank letter of interest has been submitted by the applicant.

Working capital requirements should be minimal, as operations transfer to the new facility and revenue streams will not be negatively impacted. Costs associated with relocation of residents are not budgeted, since these expenses will be absorbed as normal staff job functions.

The submitted budget indicates that a loss in revenues of $5,285,165 and $5,479,686 would be experienced in the first and third years following replacement, respectively. The CFO has submitted a letter attesting to Kendal at Ithaca, Inc. to incur all operational losses of the RHCF, which will be achieved through the ongoing CCRC monthly fees and the upfront entrance fee. The budget appears reasonable.

As shown on BFA Attachment A, the facility has maintained positive working capital and net asset balances and generated an average excess balance of $848,842 over the 2011-2012 periods.

Therefore, based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Kendal at Ithaca, 2011 and 2012 certifieds
BFA Attachment B	Financial Summary, Kendal at Ithaca 2013 internals
BFA Attachment C	Historical Utilization, 2011-2013

Public Health and Health Planning Council

Project # 132124-B
Union Square Surgery Center, LLC

County: **New York**	***Program:*** **Diagnostic and Treatment Center**
Purpose: **Establishment and Construction**	***Acknowledged:*** **September 9, 2013**

Executive Summary

Description
Union Square Surgery Center, LLC, a to-be-formed limited liability company, requests approval for the establishment and construction of a single-specialty freestanding Ambulatory Surgical Center (ASC) to provide ophthalmology. The center will be located in approximately 3,300 square feet on the first floor of an existing building located at 20 West 13th Street, New York. The center will consist of one operating room, one pre-op bay, two recovery bays, clean and soiled workrooms, patient and staff toilets, staff lockers and appropriate support space. The center will be staffed with one board certified ophthalmologist.

The sole proposed member of Union Square Surgery Center, LLC is John Khadem, M.D.

DOH Recommendation
Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary
The proposed project will serve the Chelsea and Clinton neighborhoods and surrounding communities. The number of projected surgical procedures to be performed is 4,564 in the first year of operation and 5,522 procedures in the third year.

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

A transfer and affiliation agreement is expected to be provided by Manhattan Eye, Ear and Throat.

Financial Summary
Total project costs of $1,925,040 will be met with a $1,540,032 bank loan and $385,008 in member's equity.

Budget:	Revenues:	$1,651,434
	Expenses:	1,423,208
	Net Income:	$228,226

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon</u>:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed construction loan commitment, acceptable to the Department. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
6. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
7. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
8. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of a photocopy of applicant's Articles of Organization, as filed with the Department of State, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization of USSC, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
13. Submission of a signed statement from the applicant, acceptable to the Department, that the proposed transaction has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose [HSP]
6. The installation and certification of an automatic sprinkler system for the entire high-rise building, in compliance with 2000 NFPA 101 and NFPA 13, will be required prior to DOH approval of any article 28 space and issuance of an operating certificate. [AER]
7. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-03s, prior to the applicant's start of construction. [AER]
8. The applicant shall complete construction by March 31, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction (including installation of the building-wide sprinkler system per above condition), is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 12, 2014

Need Analysis

Project Description

Union Square Surgery Center is seeking approval to establish and construct an Article 28 diagnostic and treatment center to provide single specialty ambulatory surgery services at 20 West 13th Street, New York, 10011, in New York County. The proposed specialty is ophthalmology.

Analysis

The service area is zip codes 10011, 10001, 10018, 10019, 10020, and 10036 in Manhattan.

The number of projected surgical procedures is 4,564 in year 1 and 5,522 procedures in year 3. These projections are based on the current practices of the participating surgeon. The proposed ASC will have one operating room. Based on the current practice, approximately 16 percent of these procedures are done in the local hospitals and the remaining 84 percent are done in the private practice. The latter will now be moved to the proposed ASC and performed in a procedure room. Thus, based on the projected volume to be performed in an operating room, only one operating room is required, with the other procedures being performed in a procedure / examination room.

New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: New York County (Source: SPARCS 2012)

ASC Type	Name	Total Patients 2012
Gastroenterology	Carnegie Hill Endo, LLC	7,357
Multi-Specialty	Center for Specialty Care	4,585
Gastroenterology	East Side Endoscopy	8,811
Multi-Specialty	Fifth Avenue Surgery Center	2,051
Multi-Specialty	Gramercy Park Digestive Disease	8,577
Multi-Specialty	Gramercy Surgery Center, Inc	2,136
Endoscopy	Kips Bay Endoscopy Center LLC	9,401
Gastroenterology	Manhattan Endoscopy Ctr, LLC	9,857
Ophthalmology	Mid Manhattan Surgi-Center	3,888
Multi-Specialty	Midtown Surgery Center, LLC	2,860
Ophthalmology	Retinal Ambulatory Surgery Ctr	1,718
Multi-Specialty	Surgicare of Manhattan,LLC	3,993
Gastroenterology	West Side GI	3,652
Multi-Specialty	Roosevelt SC (Opened April 1, 2013)	N/A
Gastroenterology	Yorkville Endoscopy Center (Opened February 22, 2013)	N/A
Total		68,886

In addition there are two freestanding ASCs, one single-specialty ASC and one multi-specialty ASC, which have been approved, but are not yet operational. The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion

Approval of the proposed ASC would bring under Article 28 regulation an additional provider of ambulatory surgery to serve the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

Program Analysis

Project Proposal
Union Square Surgery Center, LLC is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center.

Proposed Operator	Union Square Surgery Center, LLC
Site Address	20 West 13th Street, New York, NY
Surgical Specialties	Single Specialty: Ophthalmology
Operating Rooms	1 (Class B)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	6.5 FTEs / 6.5 FTEs
Medical Director(s)	John J. Khadem, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Manhattan Eye, Ear and Throat Hospital 2.4 miles/8 minutes
On-call service	The surgeon's, as well as the Center's and back-up hospital's contact information and an after-hours contact number will all be provided to patients as part of discharge instructions.

Character and Competence
The sole member of the LLC is:

Name	
John J. Khadem, MD	100%

Dr. Khadem is a board-certified practicing ophthalmologist.

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 facility will ensure that patients have access to primary care services through expansion of the Transfer and Affiliation Agreement with Manhattan Eye, Ear and Throat Hospital (MEETH), a division of Lenox Hill Hospital (LHH), to include primary and other specialty services, as needed. Outreach to the underserved will include participation in community health events and religious institutions to ensure the local community is aware of the facility's services and its relationship with MEETH/LHH.

The applicant intends to use an Electronic Medical Record but has not yet identified the specific system it will be using. The facility has indicated interest in becoming a part of an Accountable Care Organization (ACO) and has made inquiries to MEETH/LHH in an effort to establish a mutual network relationship, as well as express its desire to integrate into a Regional Health Information Organization (RHIO)/Health Information Exchange (HIE).

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 3,300 square feet on the first floor of an existing building located at 20 West 13th Street, New York under the terms of the executed lease agreement summarized below:

Date:	August 28, 2013
Landlord:	John Khadem M.D.
Lessee:	Union Square Surgery Center, LLC
Term:	10 years with the option to renew for an additional 10 years.
Rental:	$168,000/year ($51 per sq. ft.) increasing 3% yearly
Provisions:	The lessee will be responsible for insurance, utilities and maintenance.

The applicant has indicated that the lease will be a non-arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness. Other non-related parties occupy the remainder of the building.

Total Cost and Financing

Total project costs for renovations and movable equipment are estimated at $1,925,040, itemized as follows:

Renovation & Demolition	$1,034,158
Design Contingency	103,416
Construction Contingency	103,416
Architect/Engineering Fees	81,511
Consultant Fees	125,000
Movable Equipment	400,000
Telecommunications	15,000
Financing Costs	28,583
Interim Interest Expense	21,437
Application Fee	2,000
Additional Processing Fee	10,519
Total Project Cost	$1,925,040

Project cost is based on a July 1, 2014 construction start date and a four month construction period. The applicant's financing plan appears as follows:

Bank Loan (10yrs, 7%)	$1,540,032
Member's equity	$ 385,008

A letter of interest from Capital One Bank has been submitted by the applicant.

Operating Budget

The applicant has submitted an operating budget in 2014 dollars, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues:	$1,338,139	$1,651,434
Expenses:		
Operating	920,281	1,025,757
Capital	387,220	397,451
Total Expenses:	$1,307,501	$1,423,208
Net Income:	$30,638	$228,226
Utilization: (procedures)	4,564	5,522
Cost per procedure	$286.48	$257.73

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

	Year One and Year Three
Commercial Fee for Service	23%
Commercial Managed Care	20%
Medicare Fee for Service	40%
Medicaid Managed Care	12%
Private Pay	3%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of the physician's private practice. Upon CON approval, Dr. Khadem will continue to operate his private practice.

Capability and Feasibility

Total project costs of $1,925,040 will be met through a loan from Capital One Bank for $1,540,000 at stated terms, with the remaining $385,040 from proposed member's equity. BFA Attachment A is the net worth statement of the proposed member, which indicates the availability of sufficient funds.

Working capital needs are estimated at $237,201 based on two months of third year expenses. The applicant will finance $118,601 of working capital at an interest rate of 6% over 3 years for which a letter of interest has been provided by Capital One Bank. The remaining $118,600 will be provided as equity by the proposed member. BFA Attachment B is the pro-forma balance sheet of Union Square Surgery Center, LLC as of the first day of operation, which indicates positive member's equity of $503,609.

The submitted budget indicates a net income of $30,638 and $228,226 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BHFP	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: NYU Langone Medical Center -- **No Response**
550 First Avenue
New York, NY 10016

Facility: Bellevue Hospital Center -- **No Response**
First Avenue at 27th Street
New York, NY 10016

Facility: Beth Israel Medical Center/ -- **No Response**
Petrie Division
First Avenue at 16th Street
New York, NY 10003

Facility: New York Eye and Ear Infirmary Mount Sinai
310 East 14th Street
New York, NY 10003

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	**Inpatient**		
95%	31,954	554	183	Yes

The New York Eye and Ear Infirmary Mount Sinai (NYEEIMS) opposes the application, stating that it will lose $450,000-$600,000 in surgical revenues annually from the three physicians associated with the application who currently perform surgeries at NYEEIMS. The hospital states that this loss of revenues would have adverse effects on its community-oriented services, including its emergency department and trauma services, its services to the uninsured and underinsured, its outpatient clinics, and its extensive community education activities. The hospital does not describe these effects in specific terms.

In 2012, NYEEIMS had expenses of $142.3 million on revenue of $159.5 million. In 2011, NYEEIMS had expenses of $129.3 million on revenue of $141.8 million. The hospital's current assets in 2012 were $73.5 million and current liabilities were $25.7 million, for a working capital ratio of 2.9 to1.0. In 2011, current assets were $63.0 million, and current liabilities $27.6 million, for a working capital ratio of 2.3 to 1.0. In 2012, NYEEIMS incurred bad debt expenditures of $3.8 million and provided charity care of $1.9 million. In 2011, NYEEIMS incurred bad debt expenditures of $4.3 million and provided charity care in the amount of $1.7 million.

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the projected volume of the proposed ASC is based on the actual experience of the proposed operator and his associates in his practice. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting, in close proximity to the proposed operator's PC practice.

Staff Recruitment and Retention: The applicant plans to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the proposed operators are committed not to seek to attract staff from local hospitals. The applicant will retain staff through competitive salary benefits and continuing education opportunities, elective work schedules within regular work hours and occasional long weekends or additional days off as rewards for hard work and efficiency.

Office-Based Cases: The applicant states that approximately 94 percent of the procedures projected for the proposed ASC are currently performed in the office-based setting; the remainder are performed in the hospital setting.

DOH Comment

The presumed loss of 183 case to the ASC by the single hospital commenting on this application would constitute only 0.6% of that facility's annual ambulatory surgical volume of more than 31,000 cases, carried out in operating rooms functioning at 95 percent of capacity. The Department finds that such minimal projected impact, and the fact that none of the three other hospitals in the area chose to comment on this application, provide no basis for reversal or modification of the recommendation for limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project # 132346-B
Northway SPC, LLC d/b/a The Northway Surgery and Pain Center

County:	**Saratoga**	***Program:***	**Ambulatory Surgery Center**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**December 31, 2013**

Executive Summary

Description

Northway SPC, LLC, proposes to develop a single specialty ambulatory surgery center to provide pain management services. The Center will be located at 1596 Route 9, Clifton Park, New York 12065. The ownership of Northway SPC, LLC will be 95% NSPC Holdings, LLC and 5% Heritage Ambulatory Surgery Center, LLC.

The members of NSPC Holdings, LLC which will have 95% membership in Northway SPC, LLC is as follows:

Edward A Apicella, M.D.	35%
Martin Ferrillo, D.O.	35%
Charles Gordon, M.D.	15%
Quentin Phung, M.D.	15%

The Membership of Heritage Ambulatory Surgery Center, LLC which will have 5% membership in Northway SPC, LLC is as follows:

Robert Tiso, M.D.	37.50%
Joseph Catania	37.50%
Eric Tallarico, M.D.	5.00%
Nameer Haider, M.D.	20.00%

The proposed ambulatory surgery center is located in Clifton Park, where the four physicians will perform procedures and improve efficiencies that allow for more complex procedures to address their patient needs.

Currently Edward A Apicella, M.D. and Martin Ferrilli, D.O. operate a private practice with offices in Albany and Saratoga Springs. Charles Gordon, M.D. and Quentin Phung, M.D. operate a private practice which provides office based surgery services in two procedure rooms in Clifton Park. Heritage Ambulatory Surgery Center Alliance, LLC will provide consulting services and provide administrative services to the ambulatory surgery center.

DOH Recommendation

Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended.

Need Summary

The proposed project is a conversion of an office-based ambulatory surgery practice into an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management. The number of projected procedures is 8,232 in the first year.

Program Summary

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

A transfer and affiliation agreement is expected to be provided by Saratoga or Ellis Hospital.

Financial Summary

The total project costs for establishment of this facility and moveable equipment is $979,655. The members will provide equity of $99,655 based on their percentage of membership. The residual $880,000 will be provided via bank loan to North SPC, LLC for a seven year term at 4.5% interest rate.

Budget:	Revenues:	$7,619,876	Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.
	Expenses:	3,564,058	
	Gain/ (Loss)	$4,055,818	

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval with an expiration of the operating certificate five (5) 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 a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement with a local acute care hospital, acceptable to the Department. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed operating agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of executed equipment bank loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. Submission of an executed lease agreement, acceptable to the Department. [CSL]
12. Submission of revised Articles of Incorporation of Northway SPC, LCC, stating the location of the principal office of the LLC by specific address, acceptable to the Department. [CSL]
13. Submission of the executed Operating Agreement of Northway SPC, LCC, acceptable to the Department. [CSL]
14. Submission of a revised Schedule 3B(I)(H), confirming the applicant intends to enter into an Administrative Services Agreement, acceptable to the Department. [CSL]
15. Submission of an executed Administrative Services Agreement, acceptable to the Department. [CSL]

16. Submission of an amended and executed Operating Agreement of NSPC Holdings, LLC such that in Section 1.27 the term “person” shall mean only natural persons, acceptable to the Department. [CSL]
17. Submission of the list of members of Heritage Ambulatory Surgery Center Alliance, LLC that indicates indirect ownership percentage. [CSL]
18. Submission of the list of all managers of Heritage Ambulatory Surgery Center Alliance, LLC. [CSL]
19. Submission of the executed and dated Operating Agreement of Heritage Ambulatory Surgery Center Alliance, LLC, acceptable to the Department. [CSL]
20. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote that the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines **DSG-05**, prior to the applicant’s start of construction. If not available on the DOH website at the time you are ready to prepare these documents, please request that these guidelines be sent to you. [AER]
7. The applicant shall start construction on or before July 1, 2014 and complete construction by December 31, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 12, 2014

Need Analysis

Project Description
Northway SPC, LLC d/b/a The Northway Surgery and Pain Center is requesting approval to establish and construct an Article 28 diagnostic and treatment center to provide single-specialty ambulatory surgery services specializing in pain management. The proposed location is 1759 Route 9, Clifton Park, 12065, in Saratoga County.

Analysis
The service area includes Albany, Rensselaer, Saratoga, Schenectady, Warren, and Washington Counties; it will also serve the neighboring communities in Fulton and Montgomery Counties.

In 2012, four of the sponsoring physicians performed a total of 9,700 procedures.

The number of projected procedures is 8,232 in year 1 and 9,961 in year 3.

Saratoga County currently has a freestanding endoscopy center that served 1,707 patients in 2013; a freestanding single specialty ambulatory surgery center specializing in ophthalmology services opened in the county in July 2013.

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion
The proposed project will bring procedures that are currently being performed in private physicians' offices under a regulated Article 28 entity.

Recommendation
From a need perspective, contingent approval is recommended with the expiration of the operating certificate five years from the date of issuance.

Program Analysis

Project Proposal
Northway SPC, LLC (NSPC) is seeking approval to establish and construct an Article 28 single-specialty ambulatory surgery center in Clifton Park. Upon approval, the center will be known as The Northway Surgery and Pain Center.

Proposed Operator	Northway SPC, LLC
Doing Business As	The Northway Surgery and Pain Center
Site Address	1596 Route 9, Clifton Park (Saratoga County)
Surgical Specialties	Single Specialty: Pain Management
Operating Rooms	4 (3 Class B and 1 Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 3:00 pm
Staffing (1st Year / 3rd Year)	22.20 FTEs / 23.20 FTEs
Medical Director(s)	Edward Apicella, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by either Saratoga or Ellis Hospital 15 mi./19 min. & 11 mi./20 min., respectively
On-call service	An after-hours contact number will all be provided to patients as part of discharge instructions and all calls will be responded to by the appropriate on-call physician.

Character and Competence

The members of the LLC are:

Name	Percentage
NSPC Holdings, LLC	**95%**
Edward Apicella, MD (35%)	
Martin Ferrillo, DO (35%)	
Charles F. Gordon III, MD (15%)	
Quentin Phung, MD (15%)	
Heritage Ambulatory Surgery Center Alliance, LLC	**5%**
Robert L. Tiso, MD (37.50%)	
Eric A. Tallarico, MD (37.50%)	
Joseph A. Catania, MD (5%)	
Nameer Haider, MD (20%)	

The majority member Northway SPC, LLC (95%) is comprised of four (4) physicians from two practices. Heritage Ambulatory Surgery Center Alliance, LLC, a 5% member of the proposed Center, is comprised of four (4) physicians who will provide administration and consulting services to the center.

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

Dr. Tiso disclosed two (2) closed malpractice cases (one closed by settlement) and one (1) open malpractice case. Dr. Catania disclosed two (2) closed malpractice cases (both by settlement) and four (4) open malpractice cases.

Integration with Community Resources

The proposed ASC will specialize in Pain Management services and anticipates that the majority of patients will come from primary care physicians' referrals. For those patients who have a need for primary care follow-up and do not have a primary care physician, the center will provide a list of physicians located near the facility who are accepting new patients. The ASC staff will ensure that the list is maintained up-to-date by contacting the primary care offices several times per year. The center aims to provide quality pain management services to all who are referred to the physicians credentialed by the ASC without regard to their ability to pay. In addition to participating in both the Medicare and Medicaid programs, the center will welcome referrals from hospital emergency departments and hospital-based clinics which provide services for the indigent and underserved.

The applicant intends on utilizing an Electronic Medical Record (EMR) but has not yet identified the specific system it will use. The ASC's goal is to integrate into a Regional Health Information Organization (RHIO) and it is receptive to becoming a part of an Accountable Care Organization (ACO) or Medical Home based on regulatory and market demands.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for moveable equipment is estimated at $979,655 broken down as follows:

Moveable Equipment	$972,308
Applicant Fee	2,000
Additional Processing Fee	5,348
Total Project Costs	$979,655

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied. The terms of which are summarized below.

Premises:	9,420 square feet located at 1759 Route 9 Associates, Saratoga County
Lessor:	The Northway SPC, LLC
Lessee:	1596 Route 9 Associates, LLC
Rental:	$396,060 annually ($42 per sq. ft.) Also, the annual increase in rent will be 2% over the ten year term.
Term:	15 years with (15) year renewal options.
Provisions:	Tenant shall pay real estate taxes, insurance for liability costs, maintenance for its premises and any improvements that the tenant makes shall be paid for out of the tenant's obligations.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be an arms-length lease agreement.

Operating Agreement

The applicant has provided a draft operating agreement, the terms of which are summarized below.

Effective Date:	Upon execution of agreement by both parties, Northway SPC, LLC and Heritage Ambulatory Surgery Center, LLC.
Term:	10 years from date of execution.
Conditions:	Both parties have agreed to the stated terms: Northway SPC, LLC in cooperation with Heritage Ambulatory Surgery Center Alliance, LLC to 5% membership. Management shall be maintained to any beneficial owner of 10% or more member. It is agreed that Heritage Ambulatory Surgery Center Alliance, LLC would be limited in scope in the organization to consulting and administrative services only.
Mandatory Redemption:	At any time on or after the 10th anniversary date, Northway SPC, LLC may exercise its option to buy back its membership from Heritage Ambulatory Surgery Center Alliance, LLC.
Dissolution of the Company:	The dissolution and termination of the company may be dissolved by a vote of the majority of Interest of Members at any time.

Administrative Service Agreement

The applicant has provide a draft administrative service agreement, the terms of which are summarized below.

Provider:	Heritage Ambulatory Surgery Center Alliance, LLC
Facility Operator:	Northway SPC, LLC
Services provided:	Billing and collections; data and coding services; claims collections; tracking accounts receivable; training of center staff and monthly and annual reports for claims; collections and receivables; manage billing software and vendor relationships; attend meetings to monitor compliance with Medicare and provide payroll, purchasing, accounts payable data entry services.
Compensation:	$270,000 annually which will be paid monthly.
Term:	10 years

The Northway SPC, LLC will enter into a consulting and administrative service agreement with Heritage Ambulatory Surgery Center Alliance, LLC. It should be noted that Northway SPC, LLC will operate and maintain governance of the facility and will be responsible for all of its day-to-day operations and strategic decisions through the operating agreement and scope of the Administrative Service Agreement.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first of operation after the change in ownership, summarized below:

Revenues:		$6,297,418	$7,619,876
Expenses:			
	Operating	$ 2,525,970	$ 2,976,865
	Capital	584,953	587,193
	Total Expenses	$3,110,923	$3,564,058
	Net Income:	$3,186,495	$4,055,818
	Utilization: Visits	8,232	9,961
	Cost Per Visit:	377.90	357.80

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

	Year One & Three
Commercial Fee-for-Service	60.2%
Commercial Managed Care	15.8%
Medicaid Managed Care	3.3%
Charity Care	0.3%
Other	20.0%
Private Pay	0.4%

Expense and utilization assumptions are based on the historical experience of similar facilities that these Members have operating in the Saratoga County Region.

Capability and Feasibility

The total project costs for establishment of this facility and moveable equipment is $979,655. The members will provide equity of $99,655 based on their percentage of membership. The residual $880,000 will be provided via bank loan to North SPC, LLC for a seven year term at 4.5% interest rate. A letter of interest has been submitted indicating interest.

BFA Attachment A is the personal net worth statements for the proposed members. Edward Apicella, M.D. and Martin Ferrillo, D.O. will each contribute $33,136 from their personal assets. Charles Gordon, M.D. and Quentin Phung, M.D. will each contribute $14,201from their personal assets.
Heritage Ambulatory Surgery Center, LLC is a new establishment and has no financial statements to date. The members of Heritage Ambulatory Surgery Center, LLC have submitted their net worth statements on BFA Attachment B indicating they have sufficient equity resources to provide for their 5% ownership totaling $4,983. This will be distributed equally among Robert Tiso, M.D., Joseph Catania, Eric Tallarico, M.D., and Nameer Haider, M.D.

Working capital requirements, estimated at $594,010, appear reasonable based on two months' of first year expenses. The proposed working capital requirement will be met via personal assets from the members of $325,000 and a bank loan of $269,010 at a rate of 4.5% for a term of seven years. A letter of interest has been submitted for the loan. Edward Apicella, M.D. and Martin Ferrillo, D.O. will each contribute $108,063 from their personal assets. Charles Gordon, M.D. and Quentin Phung, M.D. will each contribute $46,313 from their personal assets. As indicated on BFA Attachment A, the members have the ability to fund the working capital position. As shown on BFA Attachment B, Heritage Ambulatory Surgery Center Alliance, LLC is a new establishment with no financial statements. The members will use their personal equity to contribute a total of $16,250 allocated to each member $4,062.50 each. BFA Attachment B indicates sufficient resources to fund working capital. BFA Attachment C is the pro forma balance sheet of Northway SPC, LLC, which indicates a positive shareholders' equity position of $417,308 as of the first day of operation.

The submitted budget projects a net income of $3,186,495 and $4,055,818 during the first and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- Northway SPC, LLC
BFA Attachment B	Personal Net Worth Statement- Heritage Ambulatory Surgery Center Alliance, LLC
BFA Attachment C	Pro-forma Balance Sheet- Northway SPC, LLC
BHFP	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Saratoga Hospital -- **No Response**
211 Church Street
Saratoga Springs, NY 12866

Facility: Ellis Hospital -- **No Response**
1101 Nott Street
Schenectady, NY 12308

Facility: St. Peter's Hospital
315 So. Manning Blvd.
Albany, NY 12208

Although the hospital states that none of the applicant physicians for the proposed ASC practice at St. Peter's, the hospital projects a loss of $988,000 per year based on referrals that these physicians currently make to St. Peter's for surgery for spinal cord stimulator placements and kyphoplasty. With the establishment of the ASC, the hospital would lose these referrals and the associated surgeries (and an indeterminate number of percutaneous discectomies). However, the Department found that none of the CPT codes for the spinal cord stimulatory placement, and kyphoplasty procedures referred to in the hospital's letter (by CPT code) match any of the descriptions or CPT codes for any of the procedures the applicants list in their CON application as those to be performed in the proposed ASC; nor does the applicant propose to perform percutaneous discectomies.

St. Peter's had a current ratio of 2.1 in 2011 and 1.6 in 2012. In 2011, the hospital's operating margin was 1.7%, which rose to 4.1% in 2012. In 2011, the hospital experienced $20.4 million in bad debt and $10.9 million in charity care. In 2012, bad debt was $19.2 million, and charity care $10.3 million.

Facility: Albany Medical Center Hospital -- **No Response**
43 New Scotland Avenue
Albany, NY 12208

Supplemental Information from Applicant

Need and Source of Cases: Cases will be drawn from those currently being performed in the office setting of the applicant physicians. The applicant also states that the ASC will meet an unmet need in the community by having the ability to perform more complex procedures than are currently available at the applicant physicians' practice site. Based on National Center for Health Statistics estimates of chronic pain prevalence in the adult population, the applicant calculates that there are an estimated 182,000 persons in the six-county service area of the proposed ASC who could benefit from pain management intervention.

Staff Recruitment and Retention: The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. Employees will also move from the applicant physicians' practices to work in the ASC as permanent employees of the ASC. To retain good employees, the ASC will offer competitive wages and above-average benefits, as well as incentives for good performance.

Office-Based Cases: The applicant projects that approximately 90 percent of the procedures in the first year of operation would transfer from the practice's office-based surgery setting. By the third year of operation, it is projected that an additional 1,700 procedures not currently performed in an office-based setting would be performed in the proposed ASC.

DOH Comment

The information from the single hospital commenting on the application is based on the potential for referrals lost to the ASC for certain procedures currently performed in the hospital (St. Peter's). Since none of the applicant physicians currently perform surgeries at the hospital, any projected loss of revenues by the hospital to the proposed ASC must be considered speculative. This is especially true in view of the fact that none of the potential lost referrals described in the hospital's comments would involve procedures proposed to be performed in the new ASC. Therefore, the Department sees little prospect of financial loss to the hospital with the approval of this application. In view of this conclusion and in the absence of comments from the other hospitals invited to opine on the application, the Department finds no basis for reversal or modification of the recommendation for limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Public Health and Health Planning Council

Project # 141004-E
Garden City Surgi Center

County:	**Nassau**	***Program:***	**Diagnostic & Treatment Center**
Purpose:	**Establishment**	***Acknowledged:***	**January 7, 2014**

Executive Summary

Description

Endo Group, LLC, d/b/a Garden City Surgi Center (the Center), an existing multi-specialty free standing ambulatory surgical center (ASC) that is also certified to provide Outpatient Radiology Diagnostic and Clinical Laboratory services, is requesting approval to add North Shore-LIJ Ventures GCSC, LLC as a 70% member of the Center. The sole member of North Shore-LIJ Ventures, LLC is North Shore University Hospital, a voluntary not-for-profit 804 bed tertiary care hospital located in Manhasset.

The current and proposed membership interest of the Center is as follows:

Current Member	**Interest**
Phaco Group, LLC	78.3112%
Odyssey Venture Group, LLC	19.5778%
Jordan Garelick, M.D.	2.1110%

Proposed Member	**Interest**
Phaco Group,LLC	30.0%
North Shore-LIJ Ventures GCSC,LLC	70.0%

North Shore-LIJ Ventures GCSC, LLC has entered into a Membership Interest Purchase Agreement to acquire 70% membership interest in the Center for $7,076,300. BFA Attachment D is the financial summary for North Shore-Long Island Jewish Health System, which will fund this transaction for North Shore-LIJ Ventures GCSC, LLC, and shows sufficient funds for the purchase.

The Center performed 5,850 and 6,363 procedures in 2012 and 2013, respectively. The change in ownership will not result in any change in the services being provided or the capacity.

DOH Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation of this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

The purchase price of $7,076,300 will be met with accumulated funds from North Shore-Long Island Jewish Health System.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of an executed Articles of Organization of Endo Group, LLC and must specifically provide that managers must be members of Endo Group's LLC members, acceptable to the Department. [CSL]
3. Submission of an executed Operating Agreement of Endo Group, LLC, acceptable to the Department, revised such that
    a. Section 3.1 such that the powers and purposes of the LLC are limited to the ownership and operation of the Article 28 facility, specified by name and address. As drafted, section 3.1 is overbroad.
    b. The agreement specifically provides that managers must also be members of Endo Group's LLC members. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Program Analysis

Program Description

Endo Group, LLC, d/b/a Garden City Surgi Center (GCSC, the Center), an existing multi-specialty free standing ambulatory surgical center that is also certified to provide Outpatient Radiology Diagnostic and Clinical Laboratory services, is requesting approval to add North Shore-LIJ Ventures GCSC, LLC as a 70% member of the Center.

The sole member of North Shore-LIJ Ventures GCSC, LLC is North Shore University Hospital a voluntary, not-for-profit 804-bed tertiary care hospital located in Manhasset. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System. The Board of Trustees for North Shore-Long Island Jewish Health System is comprised of 160 members, of which 120 were subject to Character and Competence review. Additionally, the Department also reviewed the individuals who will be the managers of Garden City Surgi Center. Phaco Group, LLC will acquire the existing interests in the Center held by Odyssey venture Group, LLC and Mr. Jordan Garelick. Mr. Garelick will become a member of Phaco Group, LLC and Odyssey Venture Group, LLC will no longer be an owner of Endo Group, LLC.

Upon approval, the proposed membership interest of the Center will be:

Proposed Members	**Interest**
North Shore-LIJ Ventures GCSC, LLC	70.0%
Phaco Group,LLC*	30.0%

**Phaco Group members were not subject to review under this CON*

The managing members of the Center are:

Name

Dennis Dowling
Mark Jarrett, MD
John McGovern
Joseph Moscola
Laurence Kraemer
**Marc Werner, MD
**Robert Rothman, MD
**Michael Sable, MD
**existing members/managers of GCSC and not subject to review under this CON

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.

Mr. Michael Ashner disclosed two pending civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, and waste of corporate assets.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities. The Department cited Avalon Gardens Rehabilitation in a Stipulation and Order dated April 21, 2009 and July 16, 2009 for issues related to Quality of Care. On March 7, 2014, a complaint investigation resulted in Immediate Jeopardy which caused the facility to again be out of compliance. The Department cited Bayview Nursing & Rehabilitation Center in a Stipulation and Order dated September 29, 2005, June 13, 2007, and December 16, 2011 for issues related to Comprehensive Care Plans, Quality of Life and Quality of Care (Pressure Ulcers and Accidents). Civil money penalties of $74,658.64 were assessed and a Denial of

Payment for New Admissions was imposed from November 24, 2004 through January 10, 2005. The Hamptons Center for Rehabilitation and Nursing was cited several times by the Department in a Stipulation and Order (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) for issues related to Quality of Care (i.e., Treatment, Hydration, and Accidents) and for Administration and Facility Practices.

Mr. Richard Goldstein disclosed that he had been a director and shareholder of corporation which filed for bankruptcy in 2009 then subsequently sold their assets.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment (CJ) to settle the civil action filed by the SEC.

Mr. Lewis S. Ranieri disclosed that he was Chairman and director of a bank holding company whilch filed for Chapter 7 bankruptcy protection in November 2008. He also disclosed that, in March 2013, a company he was affiliated with entered into a settlement agreement with the SEC for failure to adequately oversee a third party's activities related to marketing a particular fund.

Ms. Lois Schlissel disclosed two pending civil legal matters dated January and July 2013 relating to unpaid legal fees.

Mr. Sean Simon disclosed that, in 2009, he (and more than 20 other officers/directors) had been named as defendants in several civil lawsuits alleging losses caused by certain funds' investments with Bernard Madoff. None of the suits alleged that Mr. Simon personally engaged in specific wrongdoing. He and the other defendants moved for dismissal and, to date, one of the suits has been dismissed and the others remain pending.

Mr. Michael Slade disclosed pending legal action. In 2004, six separate shareholder class-actions were filed against a company with which he was affiliated (as well as certain officers and directors of that company). The Court consolidated the suits and the matter is now in discovery. In addition, in April 2005, a second state court derivative action was filed alleging breaches of fiduciary duties by individual directors and officers. The company was named as a nominal defendant and has filed a motion to dismiss.

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.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of $76.4M to the federal government and $12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The $2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

North Shore-LIJ Ventures GCSC, LLC has entered into a Membership Interest Purchase Agreement with Endo Group, LLC. The applicant has submitted an executed agreement, which is summarized below:

Purchaser:	North Shore-LIJ Ventures GCSC, LLC
Seller:	Phaco Group,LLC, Odyssey Venture Group, LLC, and Jordan Garelick,M.D.
Purchase Price:	$7,076,300 for 70% membership interest with $50,000 to be held in escrow with the remaining balance due at closing.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price of $7,076,300 will be met with accumulated funds from North Shore-Long Island Jewish Health System. BFA Attachment D is the financial summary for North Shore-Long Island Jewish Health System which will fund this transaction for North Shore-LIJ Ventures GCSC, LLC, and shows sufficient funds for the purchase.

BFA Attachments C is the 2012 and as of December 31, 2013, financial summaries for the Center currently in operation, which shows the facility has experienced negative working capital in 2012, and maintained positive working capital in 2013, positive members' equity in both years, and a net income from operations of $1,762,194 and $2,070,929, respectively. The reasons for the 2012 negative working capital was due to the Center paying off all of its outstanding long term debt of $116,328 as a condition of the sale with North Shore-LIJ ventures GCSC, LLC, and reclassifying as current and the overpayments of $133,000 repaid to insurance companies.

BFA Attachments D is the 2012 and as of September 30, 2013 financial summaries for North Shore-Long Island Jewish Health System, Inc., which shows the system has maintained positive working capital, net assets and a net income from operations of $97,867,000 and $69,129,000, respectively.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Proposed Organizational Chart of Garden City Surgi Center
BFA Attachment B	Organizational Chart of North Shore-LIJ Health System, Inc.
BFA Attachment C	Financial Summary of Garden City Surgi Center, LLC- certified 2012 and internal 2013
BFA Attachment D	Financial Summary of North Shore-Long Island Jewish Health System, Inc.- certified 2012 and internals as of September 30, 2013

Public Health and Health Planning Council

Project # 141069-E
Greater New York Endoscopy Surgical Center

County:	**Kings**	***Program:***	**Diagnostic and Treatment Center**
Purpose:	**Establishment**	***Acknowledged:***	**February 20, 2014**

Executive Summary

Description
Brooklyn Endoscopy SC, LLC d/b/a Greater New York Endoscopy Surgical Center, an existing proprietary Article 28 diagnostic and treatment center is requesting approval for permanent life. The original application, CON 062405, was approved by the Public Health Council with a conditional, limited life of five (5) years from April 3, 2009, the date the operating certificate was issued.

The facility, which is located at 2211 Emmons Avenue, Brooklyn, continues to operate under the original lease, which was executed in 2010 for a term of (11) eleven years and is included on the original application submission, #062405. There has been no change to the membership of this facility since the original approval.

DOH Recommendation
Contingent Approval

Need Summary
Based on CON 062405, the applicant projected to perform 4,800 procedures in year 1 and 5,292 procedures in year 3, and the percent of Medicaid patients projected was 10 percent and that of charity care was four percent. For 2010-12, the applicant exceeded these projections considerably, with Medicaid visits at 23 percent in 2010 and 25 percent in 2012, and charity care at nine percent.

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

Financial Summary
There are no project costs associated with this application.

Total Budget	Revenues:	$5,744,420
	Expenses:	2,580,838
	Net Income:	$3,163,852

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval contingent upon</u>:

1. Submission of an affidavit attesting that there have been no changes to the legal documentation as originally approved by the Department. [CSL]

<u>Approval conditional upon</u>:

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

Council Action Date

June 12, 2014

Need Analysis

Background

Brooklyn Endoscopy SC, LLC d/b/a Greater New York Endoscopy Surgical Center, an existing Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to permanent life following a five (5) year limited life approval of CON 062405. Brooklyn Endoscopy SC is located at 2211 Emmons Avenue, Brooklyn, 11235, Kings County.

Analysis

The primary service area of the proposed project includes 11235, 11223, 11224, and 11239 in Kings County.

Based on CON 062405, the applicant projected to perform 4,800 procedures in year 1 and 5,292 procedures in year 3, and the percent of Medicaid patients projected was 10 percent and that of charity care was four percent. Based on the annual reports submitted by the applicant for 2010-12, the Greater NY Endoscopy SC exceeded these projections. The number of procedures was 5,883 in year 1 (2010) and 7,441 in year 3 (2012) with Medicaid visits at 23 percent in 2010 and 25 percent in 2012 and charity care at nine percent.

Upon approval of this project, the applicant projects to have 9,267 procedures in years 1 and 3, with 25 percent Medicaid visits and eight percent charity care visits.

The proposed project will serve all persons regardless of their ability to pay or the source of payment.

Conclusion

The proposed project will result in the continued operation of the facility as a source of access to ambulatory surgery services in Brooklyn, including access for Medicaid clients and the uninsured.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Brooklyn Endoscopy SC, LLC d/b/a Greater New York Endoscopy Surgical Center, an existing Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center specializing in gastroenterology procedures, is requesting permission to convert to permanent life following a five (5) year limited life approval. There will be no changes in services and staffing is expected to remain at 20.0 FTEs.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the current year and years one and three of operation subsequent to receiving a permanent life, which is summarized below:

	Current Year (2013)	Year One	Year Three
Revenues:	$5,744,420	$5,744,420	$5,744,420
Expenses:			
Operating	$2,164,359	$2,294,231	$2,294,231
Capital	310,392	286,607	286,607
Total Expenses:	$2,474,750	$2,580,838	$2,580,838
Net Income:	$3,269,670	$3,163,852	$3,163,852
Utilization (procedures)	9,267	9,267	9,267
Cost per procedure	$267.04	$278.49	$278.49

Below is the projected year one and three utilization from the original limited life application #062405, along with actual results.

Utilization (procedures)	Year One (2010)	Year Three (2012)
Projected	4,800	5,292
Actual	5,883	7,441

Utilization by payer source during year one and three (2010 and 2012) for project 062405 subsequent to receiving permanent life certification is as follows:

	Current Year (2013)	Year Three (2015)
Commercial Fee for Service	41.0%	41.0%
Medicare Fee for Service	18.4%	18.4%
Medicaid Fee for Service	1.0%	1.0%
Medicaid Managed Care	24.0%	24.0%
Charity Care	8.0%	8.0%
Other	7.6%	7.6%

Expense and utilization is based on the historical experience of Greater New York Endoscopy Surgical Center, based upon reported SPARCS data.

Below are the projected year one and year three utilization by payer source from the original limited life application #062405.

	Year One (2010)	Year Three (2012)
Commercial Fee for Service	45.0%	46.0%
Medicare Fee for Service	34.5%	34.5%
Medicaid Managed Care	7.0%	8.0%
Medicaid Fee for Service	3.0%	2.0%
Charity Care	4.0%	4.0%
Private	6.5%	5.5%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates a net income of $3,163,852 during the first and third year of operation subsequent to receiving permanent life. Revenues and expenses are based on current reimbursement methodologies for endoscopy surgery centers and historical experience of the operating facility. The budget appears reasonable.

BFA Attachment A, a financial summary of Greater Endoscopy Surgical Center, indicates the facility has maintained positive working capital and member's equity position. Also, the facility generated an average net income of $2,962,614 during 2012 and 2013.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2012-2013, Brooklyn Endoscopy Center Surgery Center

Public Health and Health Planning Council

Project # 141080-E
Upstate Orthopedics Ambulatory Surgery Center

County: **Onondaga**
Purpose: **Establishment**
Program: **Diagnostic and Treatment Center**
Acknowledged: **March 6, 2014**

Executive Summary

Description

Upstate Orthopedics Ambulatory Surgery Center, LLC, a free-standing Article 28 proprietary ambulatory surgery center, is requesting approval for permanent life. The original application, CON 072151, was approved by the Public Health Council with a conditional, limited life of five (5) years from December 7, 2009, the date the operating certificate was issued. Also, this application proposes that two new members be added to the current membership.

The facility, located at 6620 Fly Road, Suite 300, East Syracuse, continues to operate under the original 11 year lease.

The members are as follows before and after the approval of the proposed application:

	Current Membership	Proposed Membership
Stephen A. Albanese, MD	7.6982%	6.6711%
John P. Cannizzaro, MD	7.6982%	6.6711%
Timothy Damron, MD	7.6982%	6.6711%
Lisa Darin	7.6213%	6.6045%
Brian Harley, MD	7.6982%	6.6711%
Danielle Katz, MD	7.6982%	6.6711%
William F. Lavelle, MD	7.6982%	6.6711%
Jon B. Loftus, MD	7.6982%	6.6711%
Kathryn E. Palomino, MD	7.6982%	6.6711%
Matthew G. Scuderi, MD	7.6982%	6.6711%
Kevin J. Setter, MD	7.6982%	6.6711%
Mike H. Sun, MD	7.6982%	6.6711%
Richard A. Tallarico, MD	7.6982%	6.6711%
Ian Madom, MD	0%	6.6711%
Joshua Pletka, MD	0%	6.6711%

The proposed new members will purchase their respective membership into the practice by providing equity upon closing of their agreements. Ian Madom, MD, will purchase her membership for $125,000, using a bank loan, which a letter of interest has been submitted. Joshua Pletka, MD, will purchase his membership in the amount of $200,000 via personal assets.

DOH Recommendation

Contingent approval with a one-year extension to the operating certificate, from the date of the Public Health and Health Planning Council approval.

Need Summary

Based on CON 072151, UOASC projected 3,060 procedures in year 1 and 3,206 procedures in year 3. Based on the Annual Report 2010-13 submitted by the applicant, the number of total procedures was 2,010 in year 1 (2010) and 4,304 in year 3 (2012). The percent of Medicaid patients grew from 10.6 percent in 2010 to 12.7 percent in 2012. UOASC commits to serving all patients regardless of their ability to pay. In the past four years, UOASC has provided charity care to 84 patients totaling $59,000 in patient balances waived. Upon approval of this project, UOASC projects 4,975 procedures in year 1. There will be no changes in services.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Budget	Revenues:	$8,114,000
	Expenses:	6,463,500
	Net Income:	$1,650,500

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
<u>Approval with a one-year extension to the operating certificate from the date of Public Health and Health Planning Council approval, contingent upon</u>:

1. Submission of a plan to separate the number of visits for charity care from other payor categories. [RNR]
2. Submission of a plan, satisfactory to the Department, to improve Medicaid and charity care visits at or above the rate projected in CON 072151. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of an executed loan commitment for membership interest, acceptable to the Department. [BFA]
5. Submission of photocopies of any amendments to or restatements of the applicant's Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amendment to the Amended and Restated Operating Agreement of Upstate Orthopedics Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

Council Action Date
June 12, 2014

Need Analysis

Background

Upstate Orthopedics Ambulatory Surgery Center (UOASC), an Article 28 diagnostic and treatment center, is requesting permission to convert to permanent life following a five (5) year limited life. The facility is located at 6620 Fly Road, East Syracuse, 13057, in Onondaga County. It is also seeking approval to transfer 13.3422 percent ownership (6.6711% each) to two additional members.

Analysis

Upstate Orthopedics Ambulatory Surgery Center serves a total of 14 counties in the Central New York Region. More than 70 percent of the patients come from Onondaga County (43%), Oneida County (11%), Oswego County (10%), and Jefferson County (9%); patients also come from Madison, Cayuga, Cortland, Broome, Tompkins, St. Lawrence, Lewis, Herkimer, Chenango, Tioga, and Other Counties in the area.

The table below provides information on projections for years 1 and 3 based on CON 072151.

Projections	Year 1	Year 3
Total Visits	3,060	3,206

The following table depicts projected percentages by payor for Years 1 and 3 along with actual utilization figures for 2010 – 2013 based on CON 072151.

	Projections	Projections	Actual	Actual	Actual	Actual	% Actual	% Actual	% Actual	% Actual
Payor	Year 1	Year 3	2010	2011	2012	2013	2010	2011	2012	2013
Comm.-FFS	19.00%	19.00%	1061	1,962	2,115	2,187	52.8%	48.8%	49.1%	46.8%
Comm.MC	24.00%	24.00%								
Workers Comp.	10.00%	10.00%	293	607	593	659	14.6%	15.1%	13.8%	14.1%
Medicaid-FFS	8%	8%	45	67	73	62	2.2%	1.7%	1.7%	1.3%
Medicaid-MC	10.00%	10.00%	168	393	472	603	8.4%	9.8%	11.0%	12.9%
Medicare-FFS	7.00%	7.00%	227	534	562	649	11.3%	13.3%	13.1%	13.9%
Medicare-MC	5.00%	5.00%	57	117	153	167	2.8%	2.9%	3.6%	3.6%
No Fault	8.00%	8.00%	53	97	98	131	2.6%	2.4%	2.3%	2.8%
Private	5.00%	5.00%	7	13	15	15	0.3%	0.3%	0.3%	0.3%
Charity	4.00%	4.00%								
All Other	0.00%	0.00%	99	232	223	196	4.9%	5.8%	5.2%	4.2%
Total	100.00%	100.00%	2,010	4,022	4,304	4,669	100.0%	100.0%	100.0%	100.0%

The applicant has submitted annual reports for 2010 to 2013. The number of total and Medicaid visits continued to grow during this period. The number of total visits more than doubled from 2,010 total visits in 2010 to 4,669 total visits in 2013. Although the applicant did not meet the projected number of Medicaid visits at 18 percent, the number of Medicaid visits more than tripled from 213 visits in 2010 to 665 visits in 2013 or 14.2% of total visits. The applicant reports that the percent of Medicaid patients served is slightly lower than initially projected because the overall number of cases served is significantly higher than was projected; the applicant also reports that they have captured a larger market share of privately insured and Medicare patients than anticipated.

Per CON 072151, the projections for charity care were four (4) percent. The applicant reports that charity care patient write offs are reflected in one of the payor categories, often in ‘Self Pay’ or the ‘Commercial’ category. In the past four years, UOASC has provided charity care to 84 patients equating to over $59,000 in patient balances waived. However, this constitutes only 0.6% of visits for the period 2010 through 2013. According to the applicant, UOASC provides charity care to every uninsured or underinsured patient that is referred. The lack of uninsured patients is reflective of extensive efforts by local organizations and providers including UOASC to assist the uninsured in obtaining coverage through Medicaid and managed care organizations.

Upon approval of this project, UOASC projects 4,975 procedures in year 1 and 5,200 procedures in year 3 with 14.9 percent Medicaid visits (Medicaid FFS 1.4%, Medicaid MC 13.5%) and 0.5 percent charity care.

Conclusion

With some 14 percent of its service volume devoted to Medicaid clients, the UOASC has made a credible effort to reach the underserved in its service area. Nevertheless, this proportion falls short of the 18 percent Medicaid volume projected in UOASC's original CON application. In addition, UOASC's charity care volume of less than one percent does not even approach the originally projected four percent for that category of payment. While UOASC is to be commended for its efforts to assist the uninsured in obtaining Medicaid or other coverage, it seems doubtful that any such expanded coverage has left less than one percent of the population in UOASC's service area uninsured.

UOASC should be preserved as a source of ambulatory surgery services in the Central New York region, but one that serves a larger portion of Medicaid clients and the uninsured. Therefore, before permanent certification can be considered, a one-year extension of UOASC's limited life certification is recommended, to enable the facility to expand its services to these populations.

Recommendation

From a need perspective, contingent approval for a one year extension is recommended.

Program Analysis

Project Proposal

The Upstate Orthopedics Ambulatory Surgery Center is requesting permission to convert to permanent life following a five (5) year limited life approval. Additionally, the Center seeks approval to transfer 13.3422% of membership interest to two (2) new members. There will be no changes in services and staffing is expected to remain at 28.8 FTEs.

Character and Competence:

Upon approval, the LLC will consist of 14 physicians and one (1) non-physician as noted below:

Current Members	**Percentage Ownership**
Stephen A. Albanese, MD	6.6711%
John P. Cannizzaro, MD	6.6711%
Timothy Damron, MD	6.6711%
Lisa Darin	6.6044%
Brian Harley, MD	6.6711%
Danielle Katz, MD	6.6711%
William F. Lavelle, MD	6.6711%
Jon B. Loftus, MD	6.6711%
Kathryn E. Palomino, MD	6.6711%
Matthew G. Scuderi, MD	6.6711%
Kevin J. Setter, MD	6.6711%
Mike H. Sun, MD	6.6711%
Richard A. Tallarico, MD	6.6711%
Proposed New Members *(Subject to review)*	
Ian A. Madom, MD	6.6711%
Joshua D. Pletka, MD	6.6711%
Total	100%

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 healthcare 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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the current year, and years one and three of operation subsequent to receiving a permanent life, which is summarized below:

	Current Year (2013)	Year One	Year Three
Revenues:	$7,650,000	$7,960,000	$8,114,000
Expenses:			
Operating	$4,938,000	$5,134,750	$5,274,500
Capital	1,214,000	1,205,000	1,189,000
Total Expenses:	$6,152,000	$6,339,750	$6,463,500
Net Income:	$1,498,000	$1,620,250	$1,650,500
Utilization (procedures)	4,669	4,975	5,200
Cost per procedure	$1,317.62	$1,274.32	$1,242.98

Below is the actual year one and three utilization from the original limited life application #072151.

Utilization (procedures)	Year One (2010)	Year Three (2012)
Actual	2,010	4,304

Utilization by payer source during year one and three for project subsequent to receiving a permanent life is as follows:

	Year One & Third Year
Commercial Fee for Service	19%
Commercial Managed Care	24%
Medicare Fee for Service	7%
Medicare Managed Care	5%
Medicaid Fee for Service	8%
Medicaid Managed Care	10%
Charity Care	4%
Private Pay	5%
Workers Compensation	10%
No Fault	8%

Expense and utilization is based on the historical experience of Upstate Orthopedic Ambulatory Surgery Center, LLC.

Below is the projected year one and year three utilization by payer source from the original limited life application #072151.

	Year One & Year Three
Commercial Fee-for-Service	45.6%
Other: Workers Comp./No Fault	20.7%
Medicare Fee for Service	13.7%
Medicare Managed Care	4.1%
Medicaid Fee for Service	1.4%
Medicaid Managed Care	13.5%
Charity Care	0.5%
Private	0.5%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates a net income of $1,620,250 and $1,650,500 during the first and third year of operation subsequent to receiving permanent life. Revenues are based on current reimbursement methodologies for orthopedics ambulatory surgery centers and historical experience of the operating facility. The budget appears reasonable.

BFA Attachment A are the certified financial statements for Upstate Ambulatory Surgery Center, LLC, which indicates the facility has maintained a positive working capital position and a member's deficit equity position. The deficit equity position was due to startup costs of the new facility due to property, plant and equipment being purchased. The facility is growing the practice revenues and paying off the debt to have a positive member's equity position. Also, the facility generated an average net income of $662,681 during 2011 and 2012.

BFA Attachment B is the un-audited 2013 year-end financial summary for Upstate Orthopedics Ambulatory Surgery Center, LLC. The summary indicates a positive working capital position and a positive member's equity position. Also, the facility had a net income of $ 1,388,355.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2011-2012, Upstate Orthopedics Ambulatory Surgery Center, LLC.
BFA Attachment B	Un-audited Financial Summary – 2013, Upstate Orthopedics Ambulatory Surgery Center, LLC
BFA Attachment C	Proposed Member (Net-Worth Statement)

Public Health and Health Planning Council

Project # 141013-E
Ralph Lauren Center for Cancer Care and Prevention

County: **New York**
Purpose: **Establishment**
Program: **Diagnostic and Treatment Center**
Acknowledged: **January 22, 2014**

Executive Summary

Description
Ralph Lauren Center for Cancer Care and Prevention (RLCCCP), is a not-for-profit diagnostic and treatment center located at 1919 Madison Avenue, New York, NY (New York County) that was approved for limited life under CON number 062286. The applicant received an extension to their limited life under project 082140 as they attempted to attain financial viability. During this time period, the facility received additional grant monies totaling $2.8 million per year from Memorial Sloan Kettering and Polo/Ralph Lauren Foundations in order to help cover any shortfalls in the facility's overall operations.

At this time the applicant is requesting approval for indefinite life. Upon review of the applicants 2011 and 2012 certified financial statements and the proposed budget, it appears there is still uncertainty with respect to financial feasibility. Therefore, the Department recommends an extension of three years to the current operating certificate.

DOH Recommendation
Contingent approval for a three-year extension of the operating certificate, from the date of the Public Health and Health Planning Council approval.

Need Summary
Based on CON 082140, in year 1 (2011), RLCCCP projected 14,216 total visits with 43.5 percent Medicaid visits. RLCCCP had a total of 11,872 actual visits and 28.8 percent Medicaid visits in 2011; in 2012, RLCCCP had a total of 11,217 visits and 56.6 percent Medicaid visits. The percent of charity care projected was 7.7 percent vs. 6.7 percent actual in 2011 and 7.5 percent in 2012. There will be no changes in services.

Upon approval of this project, the RLCCCP projects 13,448 visits in year 1 and 14,826 visits in year 3; Medicaid visits will be 48.8 percent in years 1 and 3 and charity care will be 5.8 percent in year 1 and 4.8 percent in year 3.

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

Financial Summary
There are no project costs associated with this proposal.

<u>Budget</u>

Revenues:	$4,433,274
Expenses:	$8,040,450
Gain/Loss Prior to Other Operating Revenue Adjustment:	($3,607,176)
Other Revenue Adjustment	$3,568,617
Adjusted Gain/Loss:	$(38,559)

The applicant has not demonstrated the capability to proceed in a financially feasible manner, without support from an outside source to cover the projected losses. The facility is, however, in the process of receiving an additional letter of support from Memorial Sloan Kettering to cover the projected losses for Years 2 and 3. With this support the facility will have demonstrated the capability to proceed in a financially feasible manner for the next 3 years.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval for a three-year extension of the operating certificate, from the date of the Public Health and Health Planning Council approval, contingent upon:</u>

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of an executed letter of additional support for the projected Year 2 and Year 3 losses from Memorial Sloan Kettering, acceptable to the Department. [BFA]
3. Submission of an executed amendment to the Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of an organizational chart reflecting the applicant's legal structure, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed lease agreement between Maple Plaza Housing Development Fund Corporation and the applicant, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Incorporation of member Memorial Sloan Kettering Cancer Center, acceptable to the department. [CSL]
7. Submission of a photocopy of the adopted Bylaws of member Memorial Sloan Kettering Cancer Center, acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

1. The project must be completed within ninety (90) days from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

June 12, 2014

Need Analysis

Background

The Ralph Lauren Center for Cancer Care and Prevention (RLCCCP), an Article 28 diagnostic and treatment center, is requesting permission to convert to permanent life following a three (3) year limited life extension. The facility is located at 1919 Madison Avenue, New York, 10035, in New York County. RLCCCP was initially approved for limited life under CON 062286 and received an extension under CON 082140.

Analysis

The service area includes all five boroughs of New York City.

The table below provides data on actual utilization for 2011 and 2012.

RLCCCP	2011	2012
Total	11,872	11,217
Medicaid-FFS	6.8%	7.6%
Medicaid-MC	22.0%	49.0%
Medicare-FFS	15.0%	1.8%
Medicare-MC	2.6%	8.0%
Commercial	26.4%	18.1%
Self Pay/Other	20.5%	8.0%
Charity	6.7%	7.5%
Total	100.0%	100.0%

The table below provides data on projections upon approval of the proposed project.

	Year 1 (2014)	Year 2 (2015)	Year 3 (2016)	2014	2015	2016
Projections	Visits	Visits	Visits	% Visits	% Visits	% Visits
Medicaid-FFS	1,054	1,137	1,159	7.80%	7.90%	7.80%
Medicaid-MC	5,498	5,842	6,048	40.90%	40.60%	40.80%
Medicare-FFS	706	806	777	5.30%	5.60%	5.20%
Medicare-MC	2,133	2,302	2,346	15.90%	16.00%	15.80%
Commercial-FFS	2,473	2,734	2,720	18.40%	19.00%	18.40%
Self Pay/Other	800	863	1070	5.90%	6.00%	7.20%
Charity	784	705	706	5.80%	4.90%	4.80%
Total	13,448	14,389	14,826	100.00%	100.00%	100.00%

RLCCCP commits to serving all patients regardless of their ability to pay, and the source of payment.

Conclusion

The proposed project will continue the provision of needed services to the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description
The Ralph Lauren Center for Cancer Care and Prevention is requesting permission to convert to permanent life following a three (3) year limited life extension. There will be no changes in services, and staffing is expected to remain at 35.3 FTEs.

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

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

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget
The Statement of Operations, actual 2012 vs. projected for year one (2014) and Year Three (2016) are as follows:

	Current Year (2012)	Year One	Year Two	Year Three
Revenues:	$2,586,234	$4,004,233	$4,390,644	$4,433,274
Total Expenses:	$7,591,568	$7,935,232	$7,944,911	$8,040,450
Excess (Deficiency) of Revenue over Expenses prior to Other Operating Revenue Adjustment	($5,005,334)	($3,930,999)	($3,554,267)	($3,607,176)
Other Revenue	$4,139,971	$4,390,000	$3,501,725	$3,568,617
Adjusted Net Income/(Loss)	($865,363)	459,001	($52,542)	($38,559)
Visits:	11,217	13,448	14,389	14,826
Cost Per visit:	$676.79	$590.07	$552.15	$542.32

- Note: 2012 used as it's the latest certified financial statement provided

Upon review of the applicant's financial statements, it appears that they have been able to reduce their overall losses, but still have not been able to bring the facility to a positive operating or break-even financial position. A significant part of the reduction in losses comes from the applicant's receipt of the

$2.8 million dollars in grant funding from Memorial Sloan Kettering and Polo Ralph Lauren Foundation. If the facility was not to receive these monies, they would be financially distressed. With the operating performance improvements that the facility has achieved in the last few years, along with the applicants' significant level of service to underserved populations, the Department recommends an extension to the expiration of the operating certificate.

Utilization by payor source for the historical 2011 and 2012, and Year 1 and Year 3 projections are as follows:

	2011	2012	2014 Year 1	2015 Year 2	2016 Year 3
Medicaid Fee-For-Service	6.8%	7.6%	7.8%	7.9%	7.8%
Medicaid Managed Care	22.0%	49.0%	40.9%	40.6%	40.8%
Medicare Fee-For-Service	15.0%	1.8%	5.3%	5.6%	5.2%
Medicare Managed Care	2.6%	8.0%	15.9%	16.0%	15.8%
Commercial Insurance	26.4%	18.1%	18.4%	19.0%	18.4%
Self-Pay/Other	20.5%	8.0%	5.9%	6.0%	7.2%
Charity Care	6.7%	7.5%	5.8%	4.9%	4.8%

Capability and Feasibility

There are no issues of capability, as the facility is operating. The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. As shown above, Year 1 has a positive net income, while Year 2 and 3 show a small net loss for both years. To support the loss, the facility is in the process of receiving a document of additional support from Memorial Sloan Kettering stating they will support the projected losses shown for Years 2 and 3.

BFA Attachment A are the 2011-2012 certified financial summaries of Ralph Lauren Center for Cancer Care and Prevention. As shown on Attachment A, the facility had an average operational loss of $5,156,600 during the period shown, before grants and contributions, although it had an average positive working capital and net asset position during the period. With the grants during this same time period, the facility had an average net loss of $1,450,831. The facility, however, has had a net asset balance to cover these losses. Currently, the net asset balance as of 12/31/2012 is approximately $1,476,153.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues. The submitted budget indicates a net income of $459,001 in year 1 and a net loss of $52,542 in Year 2 and a net loss of $38,559 in Year 3, and assumes receipt of stated grant funds and other non-operating revenue, all of which are combined as other revenue. Revenues are based on current reimbursement methodologies for diagnostic and treatment services. The budget appears reasonable. Memorial Sloan Kettering is in the process of providing a document of additional support, to offset the projected losses shown for both Years 2 and 3.

The applicant has complied and is current with cost report requirements. There are currently no known outstanding Medicaid audit liabilities.

The applicant has demonstrated the capability to proceed in a financially feasible manner based on their ability to finance operating losses, their positive net asset position and the proposed grants they will be receiving from both Memorial Sloan Kettering of $1,000,000 per year for the next three years, and Polo/Ralph Lauren Foundation for $1,800,000 per year for the next three years, as well as the $1,000,000 Year 1 pledge from Mr. Ian Cooke.

Conclusion

From a financial perspective, with the proposed grants and the additional support for the years 2 and 3 losses, an extension of the current limited life for an additional three years is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial summary, Ralph Lauren Center for Cancer Care and Prevention

Public Health and Health Planning Council

Project # 132352-E

Lincoln Dialysis, LLC

County: **Queens**
Purpose: **Establishment**
Program: **Diagnostic and Treatment Center**
Acknowledged: **December 30, 2013**

Executive Summary

Description

Lincoln Dialysis, LLC requests approval to become the new operator of Flushing Manor Dialysis Center, LLC, a 6-station chronic renal dialysis center expanding to 12 stations in accordance with approved CON 102019, located at 36-17 Parsons Boulevard in Flushing.

Following is a summary of ownership of the facility before and after the proposed change:

Current Ownership

Flushing Manor Dialysis Center, LLC	
Ester S. Benenson	20%
Michael J. Benenson	20%
Sharon Benenson	20%
Amy L. Benenson	20%
Blanche S. Benenson	20%

Proposed Ownership

Lincoln Dialysis Center, LLC	
Bernard Fuchs	50%
Deana Hersh	25%
Richard Platschek	25%

Concurrently, CON 132356, CON 132349, and CON 132352 will be reviewed due to the Omnibus Sale Agreement, which also includes the sale and acquisition of the Queens-Long Island Certified Home Health Agency (CHHA). The CHHA will go before the Public Health and Health Planning Council at a later date.

DOH Recommendation

Contingent Approval

Need Summary

Queens County currently has a population of 2,272,771 with 3,609 residents needing dialysis treatment. Currently there are 622 total stations approved to be operational in Queens County but can only treat 2,799 patients according to the Department of Health's methodology. Thus, retaining the services of this facility are necessary to area residents needing ESRD treatment.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	$2,548,375
	Expenses:	$2,420,388
	Gain:	$ 127,987

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
Approval contingent upon:
1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of executed Articles of Organization, acceptable to the Department. The Article of Organization must specify that the Manager must be a member. The Articles of Organization must also the address of the entity’s principal office, which must be the same as that of the facility. [CSL]
5. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of evidence of site control, acceptable to the Department. [CSL]

Approval conditional upon:
1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity’s clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date
June 12, 2014

Need Analysis

Background

Lincoln Dialysis, LLC is submitting an application seeking approval to be established as the new operator of Flushing Manor Dialysis Center LLC, a 6 station chronic dialysis center which has been approved to be expanded to a 12 station facility through project 102019. The facility is located at 36-17 Parsons Boulevard, Flushing New York 11354, Queens County.

Analysis

The primary service area for Flushing Manor Dialysis Center LLC is Queens County, which had a population estimate of 2,272,771 in 2012. The percentage of the population aged 65 and over was 13.2%. The non-white population percentage was 72.89%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are listed below.

	Queens County	State Average
Ages 65 and Over:	13.2%	14.1%
Nonwhite:	72.8%	42.4%

*Source: U.S. Census 2013

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week (2.5 x 6 x 15 x 52 weeks). This projected 702 treatments per year is based on a potential 780 treatments x 52 weeks x 90% utilization rate = 702. The estimated average number of dialysis procedures each patient receives per year is 156.
- One hospital based station is calculated at 499 treatments per year per station. This is the result of 2.0 shifts per day x 6 days per week x 52 weeks x 80% utilization rate. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 556 free standing chronic dialysis stations operating in Queens County and 66 in the pipeline for a total of 622. This project will not add any net new chronic dialysis stations. The total stations (622) will be able to treat 2,799 patients.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	3350	3609	3884	4184
Free Standing Stations Needed	744	802	863	930
Existing Stations	556	556	556	556
Pipeline Stations	66	66	66	66
w/Approval of This CON	622	622	622	622
Unmet Need With Approval	122	180	241	308

*Based upon an estimate of a three percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2011.

Conclusion

The facility currently accommodates a population in need of access to dialysis stations in the service area. The 556 stations in Queens County currently serve a population of 2,272,771 residents. This facility is a community asset that provides needed services to residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Lincoln Dialysis, LLC seeks approval to become the new operator of Flushing Manor Dialysis Center, an existing six (6) station chronic renal dialysis center (expanding to 12 stations in accordance with approved CON 102019). There are no significant programmatic changes anticipated as a result of this proposal.

Character and Competence

The members of Lincoln Dialysis, LLC are:

Name	Percentage
Bernard Fuchs	50%
Richard Platschek (Manager)	25%
Deena Hersh	25%

Mr. Fuchs is the CEO and Chief Investment Officer of an investment company and has prior work experience as an electronics importer. Since 2007, Mr. Platschek's work experience includes sales of portable x-ray equipment. Prior to that, he worked as a purchasing agent for a nursing home. Ms. Hersh disclosed that she has no work history or healthcare experience and no ownership interest in health facilities.

Mr. Fuchs disclosed that he has 50% ownership interest in a nursing home in the Bronx and serves on the board at two nursing homes in Brooklyn. Additionally, Mr. Platschek has a 4.5% ownership interest in each of three (3) nursing homes in the Buffalo area.

Disclosure information was similarly submitted and reviewed for the Medical Director. Dr. Raichoudhury is board-certified in internal medicine and nephrology. He has spent nearly eight years in private practice in the Bronx and has also served as the Medical Director for Flushing Manor Dialysis.

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.
Mr. Fuchs disclosed an affiliation with Hopkins Center for Rehabilitation and Healthcare commencing in March 2011. In a Stipulation and Order dated 8/24/12, the Department fined Hopkins Center $4,000 for issues related to Quality of Care (Accidents) and Administration.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in operational ownership will be effectuated in accordance with an executed purchase agreement, the terms of which are summarized below:

Date:	August 21, 2013
Seller:	Flushing Manor Dialysis Center, LLC
Purchaser :	Kennedy Pavilion RH II, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	$4,000,000 for the operating interest.
Payment of Purchase Price:	$341,880 has been paid in cash and put into escrow with the balance of $3,658,120 to be paid at closing.

Kennedy Pavilion RH II, LLC will be renamed Lincoln Dialysis, LLC.

The proposed members have 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 interest, without releasing the transferor of its liability and responsibility.

Omnibus Sale Agreement

An Omnibus Sale Agreement has been executed between the sellers; Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Center, Flushing Manor Dialysis Center, LLC, FMNH, LLC d/b/a Flushing Manor Nursing and Rehabilitation Center, Flushing Manor Care Center, Inc. and Queens-Long Island Certified Home Health Agency, LLC and the buyers; Kennedy Pavilion RH I, LLC, Kennedy Pavilion RH II, LLC, Kennedy Pavilion RH III, LLC, Kennedy Pavilion RH IV, LLC and Kennedy CHHA, LLC, whereas each Operating Asset Purchase Agreement and Real Estate Purchase Agreement shall simultaneously close upon receipt of the Buyer of all necessary regulatory approvals and other closing conditions. The aggregate purchase price is $117,000,000 with the operational assets totaling $28,457,400.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	6-station to be expanded to 12-station chronic renal dialysis center located at 36-17 Parsons Boulevard, Flushing
Landlord:	3617 BH Parsons Realty, LLC
Tenant:	Kennedy Pavilion RH III, LLC
Terms:	26 years commencing on the execution of the lease with a ten year option to renew.
Rental:	Annual rent is equal to the Landlord's annual HUD debt service payment, HUD mortgage insurance premiums, real property taxes and property and liability insurance.
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance

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

Operating Budget

The applicant has submitted first year estimated operating budgets, in 2014 dollars, as summarized:

	First Year
Revenues	$2,548,375
Expense:	
Operating	$2,163,422
Depreciation and Interest	256,966
Total Expenses	$2,420,388
Excess Income over Expenses	$127,987
Utilization (Visits)	8,640
Cost per Visit	$280.14

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

	Year One
Medicaid	11.0%
Medicare	75.0%
Private Pay	14.0%

Expense and utilization assumptions are based on the historical experience of the existing dialysis center.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at $403,398 based on two months of first year expenses, and will be satisfied from the facility's existing cash and receivables, and additional members' equity. Net cash and receivables (minus accounts payable) were $235,104 at December 31, 2013. An affidavit from proposed applicant member, Bernard Fuchs, states that he is willing to contribute resources disproportionate to his ownership percentage. BFA Attachment C is the pro-forma balance sheet of Lincoln Dialysis Center, LLC as of the first day of operations. As shown, the facility will initiate operation with $1,272,073 members' equity. It is noted that assets include $4,000,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be negative $2,727,927.

The submitted budget projects a net income of $127,987 during the first year. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachments D and E, Financial Summary of Flushing Manor Dialysis Center for 2012 and 2013, respectively, the facility had a positive working capital position and a negative equity, and experienced $503,078 and $522,379 net loss from operations, respectively. The net operating loss is expected to become a break-even by the end of 2014, with the anticipated additional net revenues of $600,000 from the added 6 dialysis stations.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth of Proposed Members
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary of Flushing Manor Dialysis Center, LLC, Certified 2012
BFA Attachment E	Financial Summary of Flushing Manor Dialysis Center, LLC, Internal 2013

Public Health and Health Planning Council

Project # 131160-B
Highland View Care Center Operating Co. LLC d/b/a Highland View Care Center

County: **Bronx**
Purpose: **Establishment and Construction**
Program: **Residential Health Care Facility**
Acknowledged: **April 10, 2013**

Executive Summary

Description

Highland View Care Center Operating Co., LLC, d/b/a Highland View Care Center requests approval for the establishment and construction of a 385-bed nursing facility to be located in lease space at the former site of Kingsbridge Heights Rehabilitation and Care Center located at 3400 Cannon Place, Brooklyn. Currently, Kingsbridge Heights Rehabilitation and Care Center is a 400-bed nursing home. Also, as part of this transaction, there will be a real estate purchase agreement.

The facility is currently operated by Kingsbridge Heights Receiver, LLC, a 2009 Court appointed receiver, whose sole member is William Pascocello. With the submission of this application, the proposed operator will be seeking approval from the Court to be appointed by the Court as Receiver of the existing nursing facility while the project is proceeding to completion. There is no established operator in the existing facility and to date, the Court has not chosen to extend the current receivership. The current receivership was approved for only eighteen months and has continued for over three years.

The proposed members of Highland View Care Center Operating Co., LLC with ownership percentages is as follows:

Leo Friedman	50%
Esther Farkowitz	25%
Gabrielle Philipson	20%
Bent Philipson	5%

DOH Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance, to ensure timely completion of approved construction.

Need Summary

Currently, Kingsbridge has 378 residents with occupancy of 94.4 percent. Retaining the current residents and decertifying 15 RHCF beds will bring the occupancy up to 98.2 percent.

Program Summary

The proposed applicant will provide stability for Kingsbridge Heights Rehabilitation and Care Center which has been running under a Bronx County Supreme Court appointed receiver for a number of years. The proposed applicant plans to invest resources to improve services, enhance code compliance, and achieve operational efficiencies. The current facility contains resident rooms that do meet ADA accessibility standards. Refurbishments made to the existing plant will increase the ADA accessibility of resident rooms, bathing areas, and resident dining and recreation areas.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

The total project cost of $27,379,068 will be met as follows: Equity of $2,000,000, a personal loan from est rate of 6.00% for a twenty year term. The purchase Bent Philipson of $4,082,697 at 6% for a seven year term, and a bank loan of $21,296,371 at an interest rate of 6.00% for a twenty year term. The purchase price for the real estate is $30,000,000 and will be met as follows: $5,000,000 forgiveness for assuming Medicaid, New York State Department of Health and union liabilities of the prior operator of the Nursing Home; personal loan of $3,000,000 at an interest rate of 6% for a seven year term taken out by Bent Philipson, and a bank loan of $22,000,000 at an interest rate of 6% for a thirty year term.

Year Three Budget:

Revenues	$43,096,815
Expenses	41,520,100
Net Income	$ 1,576,716

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

<u>Approval with an expiration of the operating certificate five (5) years from its issuance, contingent upon</u>:

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 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]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
    - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above;
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
4. Submission of, and programmatic approval of final floor plans. Such plans will clearly identify resident rooms for which Condition 2 of this recommendation will apply. [LTC]
5. Submission of a list of room numbers for which Condition 2 of this recommendation will apply. [LTC]
6. Approval of a waiver to allow single bedded rooms sharing a toilet room with double bedded rooms to be counted as such for the 10% single bedded room requirement (10 NYCCR §713-3.4). [LTC]
7. Submission and approval of an acceptable name for the nursing home. [LTC]
8. Submission of a bank loan commitment for the real estate portion of the purchase price, acceptable to the Department. [BFA]
9. Submission of a bank loan commitment for the personal loan, acceptable to the Department. [BFA]
10. Submission of an executed lease rental agreement, acceptable to the Department. [BFA]
11. Submission of a bank loan commitment for the total project cost, acceptable to the Department. [BFA]

12. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
13. Submission of a repayment plan for outstanding Medicaid audit liabilities/assessments, acceptable to the Department. [BFA]
14. Submission of a photocopy of the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed amendment to applicant's operating agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of the executed Agreement of Lease between 3400 Cannon Place, LLC and the applicant, acceptable to the Department. [CSL]
17. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
18. Submission of an updated and fully completed Schedule 3 of the CON application, acceptable to the Department. [CSL]
19. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-**05 Outpatient.** [AER]

Approval conditional upon:

1. The project must be completed within five years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Restriction of admission to resident rooms at the facility that cannot accommodate wheelchair residents or be able to provide for safe transfers and utilization of assistive devices during transfers. Restrictions to admissions to such rooms will be limited to ambulatory residents who do not require the aforementioned mobility assistance. [LTC]
3. Submission and approval of the patient safety plan by the Metropolitan Area Regional Office, prior to the commencement of construction. The plan should identify the necessary measures to ensure residents will not be exposed to construction debris and seek to minimize the relocation of residents within the nursing home. [LTC]
4. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
5. The applicant shall commence construction by August 1, 2015 and complete construction by December 31, 2018. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), failure to meet the construction dates may constitute abandonment of the approval and this approval may be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 12, 2014

Need Analysis

Background

Kingsbridge Heights Rehabilitation and Care Center is an existing 400-bed facility located at 3400 Cannon Place, Bronx, NY 10463. The applicant is seeking approval to establish a new operator (Highland View Care Center Operating Co. LLC), decertify fifteen beds (bringing the bed count to 385), and undertake a major modernization project.

Analysis

As shown in Table 1, the NYC region has an unmet bed need number of 8,663.

Table 1: RHCF Need – NYC Region

2016 RHCF Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Kingsbridge Heights Rehabilitation and Care Center had a 96.1 percent occupancy rate for 2012. Utilization is slightly lower than the department's 97 percent planning optimum, but the facility has been recovering while in receivership and shown great improvement. Additionally, the applicant will be decertifying 15 beds, helping the facility reach the 97 percent planning optimum.

Currently, Kingsbridge has 378 residents with occupancy of 94.4 percent. Retaining the current residents and decertifying 15 RHCF beds will bring the occupancy up to 98.2 percent.

Additional renovations, to be completed, are expected to increase operating efficiencies and enhance both the residency and care provided at Kingsbridge

As seen below in Table 2, a detailed NYSDOH analysis of sixteen (16) RHCFs located within a two-mile radius reveals that area facilities could not absorb all discharged patients upon closure of Kingsbridge, deeming it a community resource. There are currently only a 168 vacant beds in Bronx County, and Kingsbridge has 378 patients that would need to be discharged, including 48 physical A and B patients.

Table 2: Occupancy Rates of Facilities within a 2-mile Radius

Facilities within 2-mile Radius of Kingsbridge	RHCF Capacity	2014 Occup. %	2012 Occup. %	Current Utilization of Beds	2012 Utilization of Beds	Current Vacant Beds
Bainbridge Nursing & Rehabilitation Center	200	93.30%	94.80%	190	190	10
Beth Abraham Health Services	520	97.50%	96.70%	507	503	13
Bronx Park Rehabilitation & Nursing Center	240	94.60%	98.40%	227	236	13
Fieldston Lodge Care Center	190	93.00%	97.40%	177	185	13
Hudson Pointe at Riverdale Center for Nursing & Rehabilitation	167	91.00%	93.10%	152	155	15
Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx	816	97.80%	97.50%	798	796	18
Manhattanville Health Care Center	200	97.50%	95.40%	195	191	5
Methodist Home for Nursing and Rehabilitation	120	94.20%	91.60%	113	110	7
Mosholu Parkway Nursing & Rehabilitation Center	122	99.20%	97.20%	121	119	1
Riverdale Nursing Home	146	90.60%	93.80%	137	137	9
Schervier Nursing Care Center	364	93.40%	95.90%	340	349	24

St Barnabas Rehabilitation & Continuing Care Center	144	99.00%	96.60%	143	139	1
St Patricks Home	264	92.80%	97.40%	245	257	19
Terrace Health Care Center	240	96.70%	98.50%	232	236	8
University Nursing Home	46	97.80%	95.10%	45	44	1
Wayne Center for Nursing & Rehabilitation	225	97.90%	94.00%	220	212	5
Totals	**4,004**			**3,842**	**3,858**	**162**

Kingsbridge Heights Rehabilitation and Care Center's utilization was lower than that of Bronx County and the NYC planning region for 2011, but increased in 2012 to exceed both, as shown in Table 3 below:

Table 3**: **RHCF Occupancy for Kingsbridge Heights Rehabilitation and Care Center, Bronx County, and NYC Region

	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Facility—Kingsbridge Heights Rehabilitation and Care Center	Did Not Report	87.8%	96.1%
County—Bronx	95.8%	94.3%	95.9%
Region—New York City (NYC)	95.4%	94.8%	94.8%

From 2011 to 2012, Kingsbridge Heights saw an 8.3% increase in its patient occupancy. Prior low utilization can partially be attributed to the facility being put into receivership in 2009 and the instability surrounding the facility.

Because this project is viewed as a request for net new beds, consideration of this application is subject to subdivision (f) of 10 NYCRR section 709.3, which states in part:

> Notwithstanding that there is an indication of need in a planning area for additional residential health care facility beds as determined in accordance with subdivision (d) or (e) of this section, there shall be a rebuttable presumption that there is no need for any additional residential health care facility beds in such planning area if the overall occupancy rate for existing residential health care facility beds in such planning area is less than 97% based on the most recently available data. It shall be the responsibility of an applicant in such instances to demonstrate that there is a need for additional residential health care facility beds despite the less than 97% occupancy rate in the applicant's planning area.

As noted, the RHCF occupancy rate in Bronx County and in the New York City region as a whole is less than 97 percent. The following local factors serve to rebut the presumption of no need for this application:

- Although this application is viewed as a request for net new beds, it is a fact that the facility in question is currently serving residents, with an occupancy rate of over 94 percent.
- The requested 15-bed reduction in this application would bring the facility's occupancy rate to over 98 percent.
- The facility's average Medicaid patient occupancy was 83.2% in 2012, more than double the Department's 75% planning optimum value of 32.7% for the New York City region. The facility is a significant source of RHCF care for the safety-net population in the region.
- Bronx facilities see a large in-migration population, indicating that many people from surrounding area come to the Bronx for RHCF care. Approximately one-third (31.6%) of the residents in facility nearby to Kingsbridge are from outside Bronx County.
- The applicant proposes to reduce its bed complement, in keeping with the need for rightsizing of the long-term care system.
- The applicant agrees to assume Kingsbridge's Medicaid liabilities, even though this application is viewed as a request for net new beds.

Should this application be disapproved, there would be insufficient capacity at other facilities in the area to accommodate Kingsbridge's residents.

Conclusion

Kingsbridge Heights Rehabilitation and Care Center has proven to be a significant source of care for the Medicaid population and the larger community. From a need perspective, contingent approval is recommended.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Kingsbridge Heights Rehabilitation and Care Center	Highland View Care Center
Address	3400 Cannon Place Bronx, NY 10463 Facility ID: 1234	Same
RHCF Capacity	400	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	LLC
Class of Operator	Proprietary	Proprietary
Operator	Kingsbridge Heights Care Center, Inc	Highland View Care Center Operating Co., LLC d/b/a Highland View Care Center Members: Leopold Friedman 50.0% Bent Philipson 5.0% Esther Farkovits 25.0% Gabrielle Philipson 20.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes:

Avalon Gardens Rehabilitation and Health Care Center	03/2004 to present
Bay Park Center for Nursing and Rehabilitation	12/2009 to present
Crown Center for Nursing and Rehabilitation	08/2010 to present
Diamond Hill Nursing and Rehabilitation Center	08/2010 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Pathways Nursing and Rehabilitative Center (formerly Hilltop)	08/2010 to present
Rosewood Rehabilitation and Nursing Center	08/2010 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	03/2004 to present
The Hamptons Center for Nursing	07/2008 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation & Nursing	07/2004 to present
Peninsula Center for Extended Care and Rehabilitation	01/2013 to present

Licensed Home Care Services Agency (LHCSA):

Ultimate Care, Inc.	02/2010 to present

Individual Background Review

Leopold Friedman is the Chief Executive Officer of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr.Friedman has health care facility interests with dates of ownership as follows:

Ultimate Care, Inc. (LHCSA)	02/2010 to present

Receivership:

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present

Bent Philipson lists his employment, since 1996, as executive managing partner at Woodmere Rehabilitation and Health Care Center in Woodmere, NY. Mr. Philipson discloses the following health facility interests:

Avalon Gardens Rehabilitation and Health Care Center	05/2003 to present
Bay Park Center for Nursing and Rehabilitation	12/2009 to present
Crown Center for Nursing and Rehabilitation	08/2010 to present
Diamond Hill Nursing and Rehabilitation Center	08/2010 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Pathways Nursing and Rehabilitative Center	08/2010 to present
Rosewood Rehabilitation and Nursing Center	08/2010 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	04/2003 to present
The Hamptons Center for Nursing	07/2008 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation & Nursing	07/2004 to present

Esther Farkovits is currently unemployed. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present

Gabrielle Philipson worked from 11/15/2009 to 04/07/2010 as an Administrative Assistant at Bay Park Center for Nursing & Rehabilitation. Ms. Philipson discloses no other employment. Ms. Philipson discloses no ownership interest in health care facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Avalon Gardens Rehabilitation & Health Care Center, LLC for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order NH-09-014 issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) – Quality of Care: Accidents
- The facility was fined $4,000 pursuant to a Stipulation and Order NH-12-034 issued July 16, 2012 for surveillance findings on July 29, 2011. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Practicable Potential and 415.26 Administration.

A review of Bay Park Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-11-009 issued March 2, 2011 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition Status.
- The facility was fined $18,000 pursuant to a Stipulation and Order NH-12-030 issued May 30, 2012 for surveillance findings on February 16, 2011. Multiple deficiencies were found under 10 NYCRR 415.4(b)(1)(i) - Free from Abuse; 10 NYCRR 415.4(b) - Development of Abuse Policies; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; 10 NYCRR 415.12(i)(1) - Quality of Care: Nutrition; and 10 NYCRR 415.26(c)(1)(iv) - Nurse Aide Competency.

A review of Crown Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined $28,000 pursuant to a Stipulation and Order NH-12-035 issued August 24, 2012 for surveillance findings on April 4, 2011 and February 17, 2011. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential; 10 NYCRR 415.12 - Quality of Care: Highest Practicable Potential; 10 NYCRR 415.12(c) - Quality of Care: Pressure Sores; 10 NYCRR 415.26(a)(1) – Administration; 10 NYCRR 415.26(b)(3)(4) - Governing Body; 10 NYCRR 415.15(a)(1)(2)(4) - Medical Director; and 10 NYCRR 415.27(a)(c)(3)(i,ii,iv,v)(4) - Quality Assurance.

A review of South Point Plaza Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $7,000 pursuant to a Stipulation and Order NH-05-050 issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) - Quality of Care: Environment; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores; and 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents.
- The facility was fined $2,000 pursuant to a Stipulation and Order NH-07-046 issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) - Comprehensive Care Plans.
- The facility was fined $10,000 pursuant to a Stipulation and Order NH-11-065 issued December 16, 2011 for surveillance findings on December 7, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) - Quality of Care: Pressure Sores.

A review of The Hamptons Center for Nursing for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-10-065 issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined $10,000 pursuant to Stipulation and Order NH-11-031 issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of operations for the Avalon Gardens Rehabilitation and Health Care Center, Bay Park Center for Nursing and Rehabilitation, South Point Plaza Nursing and Rehabilitation Center, Crown Center for Nursing and Rehabilitation and The Hamptons Center for Rehabilitation and Nursing for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Diamond Hill Nursing and Rehabilitation Center, Little Neck Care Center, Nassau Extended Care Facility, Park Avenue Extended Care Facility, Pathways Nursing and Rehabilitative Center, Rosewood Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Center, and Peninsula Center for Extended Care and Rehabilitation for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Ultimate Care, Inc., for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Program Review

Kingsbridge Heights Rehabilitation and Care Center is currently a 400 bed Skilled Nursing Facility located in the Kingsbridge Heights section of Bronx County. The facility is operating under a court order from the Bronx County Supreme Court and has been in receivership for approximately three years. The Court has indicated to the Department that it wishes to discontinue the Court appointed receivership and for the Department to facilitate the establishment of a permanent operator for the facility. This application is a result of efforts between interested parties to reach an agreement for site control of the facility and to establish an ownership group to stabilize operations at the facility. It is anticipated that the Bronx County Supreme Court will take action to place the applicant group, or a small subset thereof, as receiver of the facility prior to the formal change of ownership taking place.

The existing facility is of masonry construction and was constructed as two separate wings (east and west) linked at the ground floor by a central corridor. The east wing is 7 stories, plus a penthouse. The west wing is 6 stories, plus a penthouse. The main entrance to the facility is in the first floor west building, with the first floor of west and the first and second floor of east providing resident support services and administrative offices. Floors 2-6 of the west wing and floors 3-7 of the east wing are dedicated to resident care, with each resident floor in both wings comprised of a 40 bed unit. The penthouse in both wings house mechanical, storage, and staff support areas.

Resident quarters in the facility are confined and not conducive to staff providing safe transfers or utilization of assistive devices during transfers. The current 400 bed facility has 150 wheelchair residents, the majority of which require two person transfers. Currently some resident rooms are configured in a manner that does not permit use of a wheelchair or allow for safe transfers, with all resident room toilets inaccessible by wheelchair. The resident toilet rooms are sized so that they can only accommodate a toilet, with the sink located outside of the toilet room and within the resident bedroom. The east wing contains three 4-bedded rooms per resident floor, with all other rooms in the east and west wing being either 2-bedded or single rooms. Most of the units on each floor offer minimal opportunities for the residents to gather or socialize outside of their rooms. Each unit has a small (approx. 500 sq foot) room to use for recreation and other activities. Currently, residents dine in either the 1st floor west or 2nd floor east dining areas.

Physical Environment

The applicant will upgrade the infrastructure and physical plant in order to improve services, enhance code compliance, and achieve operational efficiencies. This will be achieved through eliminating the 4-bedded rooms in the facility, adding a new unit on the second floor of the east wing, and reconfiguring existing space within both wings of the facility. In order to accommodate the physical changes the facility will reduce its certified bed-count from 400 beds to 385 beds. The new 385 bed count will be comprised of a new 25-bed ADA accessible nursing unit on the second floor of the east wing, 34-bed units on floors 3-7 in the east wing, and 38-bed units on floors 2-6 of the west wing.

The new 25-bed unit on the second floor of the east wing is a large square with ADA accessible resident rooms and bathing suites on the outside perimeter and a central core consisting of a dining/recreation area and nurses station. There are 14 resident rooms on the floor, 3 single and 11 double bedded rooms, and 2 bathing rooms. All resident rooms in this unit have their own ADA accessible bathrooms. The 2 bathing rooms will allow residents to have a choice between a shower or tub bathing experience. The central core will allow for residents to dine on unit and can accommodate all unit residents in one sitting. Entry to the unit via the main elevators will welcome visitors in a lobby like environment that can also be conducive to socialization for the residents and visitors. The layout of this unit is more in line with modern nursing home design concepts than the other units in the facility.

Resident floors 3-7 in the east wing contain 19 resident rooms in a T-shape design with standard central corridors that offer little or no congregational space for the residents. This design will remain after renovation. The renovations proposed will focus on increasing ADA accessibility in the unit and provide the ability for all residents to dine on unit simultaneously. The small multipurpose room on the unit will be expanded and set up to achieve simultaneous resident dining. An ADA accessible toilet room was also added to this space. The central bathing room will be modified to be fully ADA accessible and offer residents a choice of tub or shower bathing. Eight (8) out of the 34 beds on the unit will have access to ADA accessible toilet rooms directly from the resident room. Each of these units contain 4 single bedded rooms, though these single bedded rooms share a toilet room with another room. Two of the single bedded rooms on the unit shares a bathroom with a double bedded room. These single bedded rooms will require a waiver if it is going to be used to count towards the 10% single bedded room requirement (10 NYCCR §713-3.4). Twelve (12) of the double rooms on each unit in the wing will remain in their current condition and will not be able to accommodate wheelchair residents or be able to provide for safe transfers and utilization of assistive devices during transfers.

Resident floors 2-6 in the west wing are of linear design and have double-loaded corridors with 21 rooms. This design will remain, and the renovations proposed will focus on increasing ADA accessibility in the unit and provide the ability for all residents to dine on unit simultaneously. The small multipurpose room on the unit will be expanded and set up so that all residents can dine on unit simultaneously. An ADA accessible toilet room was also added to this space. The central bathing room will be modified to be ADA accessible and offer residents a choice of tub or shower bathing. Twenty seven (27) of the 38 beds on the unit will have access to ADA accessible toilet rooms directly from the resident room. Each unit in the west wing contains 4 single bedded rooms, though these single bedded rooms share a toilet room with another room. One of the single bedded rooms on the unit shares a bathroom with a double bedded room. This single bedded room will require a waiver if it is going to be used to count towards the 10% single bedded room requirement (10 NYCCR §713-3.4). Four (4) of the double rooms on each unit in the wing will remain in their current condition and will not be able to accommodate wheelchair residents or be able to provide for safe transfers and utilization of assistive devices during transfers.

Large recreational areas for residents will be located on the 1st floor of the east and west wings. The storage and staff locker rooms in the first floor east wing will be relocated to the penthouse so that the recreational area can be expanded and an ADA accessible toilet can be added. A smoking room will be removed from the first floor west wing so that the recreational space can be enlarged. These 2 larger recreational areas will be used for residents to congregate for large central events such as holiday parties.

Project Review

Approval of the application will establish a permanent operator for the facility who will dedicate resources to refurbish the facility to improve services, enhance code compliance, and achieve operational efficiencies. ADA accessibility in the current plan is virtually non-existent. The new 25-bed nursing unit on the second floor east wing reflects a more modern approach to nursing home design and is fully ADA accessible. The new operator will undertake renovations to the remaining nursing units that will improve ADA accessibility for residents. Conditions will be placed on the approval that will ensure that admissions to the remaining non-ADA accessible rooms will be restricted to only ambulatory residents. In addition to ADA accessibility improvements, the operator will also expand on-unit dining capability and expand recreational areas on the first floor of each wing. All resident rooms, resident support, and common areas will be refurbished aesthetically to provide a warm and homelike environment.

The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the site, as summarized below:

Premises:	The premises located at 3400-3426 Cannon Place, Bronx, New York.
Seller:	C G Limited Partnership
Purchaser:	3400 Cannon Place, LLC
Purchase Price:	$30,000,000. The Parties acknowledged and agree that the Tenant's receipt of the Approval may require the assumption of the Medicaid, New York State Department of Health and union liabilities of the prior operator of the Nursing Home. As a material inducement to the Parties to enter into this Agreement, Seller has agreed to provide Purchaser with a credit at Closing in the amount of $5,000,000 in exchange for Tenant's agreement to assume the Liabilities, notwithstanding the amount of the Liabilities actually assumed by the Tenant.

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

The applicant's financing plan for the $30,000,000 purchase price is as follows:

Credit at Closing	$5,000,000
Personal Loan (6% interest rate for a seven year term)	$3,000,000
Bank Loan (6% for a thirty year term)	$22,000,000

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site where the nursing home will be situated, summarized below:

Premises:	For the premises located at 3400 Cannon Place, Bronx, New York
Lessor:	3400 Cannon Place, LLC
Lessee:	Highland View Care Center Operating Co., LLC
Term:	30 years
Rental:	$1,800,000 annually.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $27,379,068, further broken down as follows:

Renovation and Demolition	$16,142,872
Asbestos Abatement or Removal	69,940
Design Contingency	1,614,286
Construction Contingency	1,614,286
Architect/Engineering Fees	585,000
Other Fees (Consultant)	500,000
Moveable Equipment	3,314,080
Financing Costs	821,055
Interim Interest Expense	2,565,798
CON Fee	2,000
Additional Processing Fee	149,750
Total Project Cost	$27,379,068

The applicant's financing plan appears as follows:

Equity	$2,000,000
Personal Loan (6% interest rate for a seven year term)	$4,082,697
Bank Loan (6% interest rate for a twenty year term)	$21,296,371

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first and third years, summarized below:

	Year One	Year Three
Revenues:		
Medicaid Managed Care	$31,063,770	$31,605,524
Medicare Fee For Service	6,581,488	8,764,544
Private Pay	2,616,576	2,726,748
Total Revenues	$40,261,834	$43,096,815
Expenses:		
Operating	$35,300,130	$36,600,573
Capital	4,919,527	4,919,527
Total Expenses	$40,219,657	$41,520,100
Net Income	$42,177	$1,576,716
Utilization: (patient days)	133,499	139,120
Occupancy	95.00%	99.00%

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

- The capital budget component of Medicaid revenues is based on the interest and amortization reimbursement methodology.
- The case mix index for the nursing facility beds is 1.0691, which is based on historical experience.
- Utilization broken down by payor source, during the first and third years is as follows:

	Year One	Year Three
Medicaid Managed Care	84.50%	82.50%
Medicare	8.50%	10.50%
Private	7.00%	7.00%

Expense and utilization assumptions are based on the historical experience of Kingsbridge Heights Rehabilitation and Care Center, and taking into account the facility going from 400 beds to 385 beds.

Capability and Feasibility

The total project cost of $27,379,068 will be met as follows: Equity of $2,000,000 to be provided by the proposed members of Highland View Care Center Operating Co., LLC, a personal loan of $4,082,697 to the proposed members, and the remainder of $21,296,371 will be financed via a bank loan at an interest rate of 6% for a twenty year term. The real estate purchase price of $30,000,000 will be financed as follows: Forgiveness of $5,000,000 for assuming Medicaid, New York State Department of Health, and union liabilities of the prior operator of the nursing home; personal loan to the proposed members of $3,000,000, and $22,000,000 bank loan at an interest rate of 6% for a thirty year term.

Working capital requirements are estimated at $6,920,016, which is equivalent to two months of third year expenses. The applicant will finance $3,460,008 via a bank loan at an interest rate of 6% for a three year term. The remainder, $3,460,008, will be provided via a personal loan taken out by Bent Philipson. BFA Attachment A are the personal net worth statements of the members of Highland View Care Center Operating Co., LLC, which indicates the availability of sufficient funds for the equity contributions to meet the total project cost. The applicant submitted an affidavit indicating that the members are willing to contribute resources disproportionate to ownership percentages. Also, Bent Philipson has demonstrated the capability to pay back his personal loan. BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which indicates a positive net asset position of $10,558,798.

The submitted budget indicates a net income of $42,177 and $1,596,716 during the first and the third years after the project completion. Revenues are based on current reimbursement methodologies for nursing homes. The budget appears reasonable.

Staff noted that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

The applicant has indicated that the reason for the losses for Throgs Neck (BFA Attachment C) was due to the Department's Medicaid retroactive adjustment and the Department's elimination of the trend factors. The facility improved operations by reducing nursing expenses and overtime. The applicant has indicated that the reason for the negative working capital position and the negative net asset position is related party loans.

The applicant has indicated that the reason for the negative working capital position for Avalon Gardens (BFA Attachment C), is due to OMIG audits of approximately $1.7 million liabilities for prior years that were accrued. In 2013, according to internal financial statements, Avalon returned to substantial profitability and has substantially paid off the OMIG liability.

The applicant has indicated that the reason for the negative working capital position for Bayview Nursing (BFA Attachment C), is due to liabilities which include $700,000 in related party loans. Bayview's operations were significantly affected by Super Storm Sandy, which resulted in a very low census during that time. It took them time to recover from the impact of the storm. The nursing facility has recovered and is now operating at a census above 95%.

The applicant has indicated that the reason for the losses for Pathway Nursing (BFA Attachment C), were due to a 5% decrease in census due to changes in management in 2011 and survey related issues that negatively impacted the facility. The facility improved operations by reducing nursing expenses and overtime. The applicant has indicated that the reason for the negative working capital position and the negative net asset position is related party loans.

The applicant has indicated that the reason for the losses for the Park Avenue Facility (BFA Attachment C), was that the facility's day care reimbursement rates were reduced. The facility improved operations by reducing nursing expenses and overtime.

The applicant has indicated that the reason for the losses for Bay Park (BFA Attachment C), were due to the Department's Medicaid retroactive adjustment and the Department's elimination of the previous trend factors. The facility improved operations by reducing nursing expenses and overtime. The applicant has indicated that the reason for the negative working capital position and the negative net asset position is the result of related party loans.

The applicant has indicated that the reason for the negative working capital position for Throgs Neck (BFA Attachment C), is the result of the facility having related party loans of $388,000.

The applicant has indicated that the reason for the negative working capital position and the negative net asset position for Little Neck Care Center (BFA Attachment C), is related party loans. The applicant has indicated that the reason for the 2012 losses are the result of the following: a prior year Medicaid adjustment of almost $282,000; above average spending in the ancillary services and a reduction in the private pay census. The applicant has indicated that they implemented the following steps to improve operations: there was a reduction in the area of nursing services (approximately $60,000) and therapy and ancillaries (approximately $80,000) and there have been significant marketing efforts to increase occupancy of the nursing facility.

The applicant has indicated that the reason for the average losses from 2010 through 2012, is attributed to decreases in the facility's Medicaid rate, and an increase in the allowance for doubtful accounts of $800,000 due to the reserving of potential bad debts. The facility has improved operations by reducing nursing expenses and overtime.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial data for affiliated facilities
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 132306-E

Northwoods Rehabilitation and Extended Care Facility at Moravia

County: **Cayuga**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **December 6, 2013**

Executive Summary

Description

Northwoods Operating Associates, LLC d/b/a Northwoods Rehabilitation and Nursing Center at Moravia, requests approval to be established as the operator of Northwoods Rehabilitation & Extended Care Facility at Moravia, an existing 40-bed proprietary skilled nursing facility located at 7 Keeler Avenue, Moravia. The applicant entered into a transfer agreement dated November 4, 2013, with Howd LTC Management, LLC. Additionally, Northwoods Real Estate Associates, LLC will acquire the real estate from Howd Manor Group, LLC. The proposed real estate entity will have the same owners as the proposed operator.

The current and proposed operator are as follows:

Current		Proposed	
Howd LTC Management, LLC		Northwoods Operating Associates, LLC	
Members:		Members:	
Eugene Nachamkin	1%	Boruch Sheps	85%
Dianna Koehler	49%	Pamela Sheps	5%
Howard Krant	25%	Kenneth Rozenberg	10%
Scott Bialick	25%		

DOH Recommendation

Contingent Approval

Need Summary

Northwoods Rehabilitation & Extended Care Facility at Moravia's utilization was 83.7% in 2010, 87.1% in 2011, and 88.3% in 2012.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

The purchase price of $143,000 for the operation will be met as follows: Equity of $35,750 from the proposed members and $107,250 to be financed. The purchase price of $457,000 for the real estate will be met as follows: Equity of $114,250 from the proposed members and $342,750 to be financed.

Budget:

Revenues	$2,406,778
Expenses	2,355,469
Net Income	$51,309

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above;
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment for the operation purchase, acceptable to the Department. [BFA]
4. Submission of a loan commitment for the real estate purchase, acceptable to the Department. [BFA]
5. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
6. Submission of evidence, acceptable to the Department, that Kenneth Rozenberg is bound by the terms of the Operating Agreement. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Need Analysis

Background

Northwoods Operations Associates, LLC d/b/a Northwoods Rehabilitation and Nursing Center at Moravia seeks approval to become the established operator of Northwoods Rehabilitation & Extended Care Facility at Moravia. Northwoods Rehabilitation & Extended Care Facility at Moravia is an existing 40-bed Article 28 residential health care facility located at 7 Keeler Avenue, Moravia, 13118, in Cayuga County.

Analysis

There is currently a surplus of 27 beds in Cayuga County as indicated in Table 1 below. However, the overall occupancy for Cayuga County is 90.7% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Cayuga County

2016 Projected Need	502
Current Beds	529
Beds Under Construction	0
Total Resources	529
Unmet Need	-27

Table 2: Northwoods Rehabilitation & Extended Care Facility at Moravia/Cayuga County Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Northwoods Rehab & ECF at Moravia	83.7%	87.1%	88.3%
Cayuga County	90.0%	90.0%	90.7%

Northwoods Rehabilitation & Extended Care Facility at Moravia's (Northwoods) utilization was 83.7% in 2010, 87.1% in 2011, and 88.3% in 2012. The reason for the low utilization at this facility was due to the lack of dedicated admissions staff and lack of training on the part of the operator, which resulted in the facility's inability to accommodate higher acuity residents. The current operator of Northwoods does not accept residents who require IVs or who smoke, which has led to a low Case Mix Index (CMI) of 0.78 for residents. As noted by the applicant, of the 123 potential residents that sought admission to Northwoods over the past six months, 25 were turned down because they required either IV services or were smokers.

The new operator will work collaboratively with hospitals and other area entities to help reduce/prevent unnecessary and expensive hospital admissions. The new operator plans to immediately, upon approval of this project, begin admitted higher acuity patients who would otherwise not have been served by the facility. The new operator understands that the staff of the facility has already been trained and has the desire and willingness to take care of these higher acuity residents. By doing this, utilization at the facility will immediately increase.

Northwoods is the only RHCF within 26 minutes of the nearest RHCF facility in Cayuga County and 29 minutes from the nearest RHCF in Cortland County. The exact distances are as follows:

Cayuga County RHCFs	
Auburn Nursing Home	18.2 miles, 26 minutes
Auburn Senior Services, Inc. (Mercy Health & Rehab Center NH)	18.3 miles, 26 minutes
Finger Lakes Center for Living	19.2 miles, 28 minutes
Auburn Senior Services, Inc. (Cayuga County NH)	21.6 miles, 36 minutes

*Source: Google Maps, 2014

Cortland County RHCFs

Cortland Regional Nursing & Rehab	18.9 miles, 32 minutes
Cortland Park Rehab and Nursing	19.9 miles, 29 minutes
Crown Center for Nursing & Rehab	21.0 miles, 32 minutes

*Source: Google Maps, 2014

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Northwoods Rehabilitation & Extended Care Facility at Moravia's Medicaid admissions of 45.0% in 2011 and 8.7% in 2012 exceeded the Cayuga County 75% rates in 2011 and 2012 of 17.0% and 7.1%, respectively.

Conclusion

Approval of this application will help foster higher occupancy and fuller utilization of a facility that is a source of needed RHCF care in Cayuga County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Northwoods Rehabilitation and Extended Care Facility at Moravia	Northwoods Rehabilitation and Nursing Center at Moravia
Address	7 Keeler Avenue Moravia, NY. 13118	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Howd LTC Management LLC Members: Dianna Koehler 49% Howard Krant 25% Scott Bialick 25% Eugene Nachamkin 1%	Northwoods Operations Associates LLC Members: Boruch Sheps 85% Kenneth Rozenberg 10% Pamela Sheps 5%

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	05/2004 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	07/2008 to present
University Nursing Home	05/2004 to present
Wartburg Lutheran Home for the Aging	06/2008 to 05/2011
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	05/2004 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present

Nursing Home in Receivership

Daughters of Jacob Nursing Home	08/2013 to present

Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present

Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present

Emergency Medical Services

Senior Care Emergency Ambulance Services, Inc. (EMS)	05/2005 to present

Individual Background Review

Boruch Sheps has been a New York State Licensed Nursing Home Administrator since January 2013 and is considered to be in good standing. He has been employed at the Elant at Brandywine nursing home since May 2013. Prior to his employment at Elant at Brandywine, Mr. Sheps was employed as the administrator at Golden Gate Rehabilitation and Health Care from April 2013 through May 2013. Prior to his employment at Golden Gate, he was the assistant administrator at Dutchess Center for Rehabilitation and Health Care and Northern Metropolitan Residential Health Care Facility before becoming an Associate Administrator at Richmond Center for Rehabilitation and Health Care, a position he held for two months before becoming the administrator at Golden Gate. Mr. Sheps discloses no ownership interests in health facilities.

Kenneth Rozenberg is a licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He lists current employment as CEO at Bronx Center for Rehabilitation & Health Care since 1998. Mr. Rozenberg discloses extensive health care facility interests as follows:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Wartburg Lutheran Home for the Aging Receivership	06/2008 to 05/2011
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge–Chittenango Receivership	07/2008 to 04/2011
Corning Center for Rehabilitation (formerly Founders Pavilion)	07/2013 to present

Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Holliswood Center Receivership	11/2010 to 04/2013
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	04/2011 to present
Stonehedge- Rome Receivership	07/2008 to 04/2011
University Nursing Home	08/2000 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present
Waterfront Center Receivership	08/2011 to 12/2012
Williamsbridge Manor Nursing Home	11/1996 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Daughters of Jacob Nursing Home Company Inc. (Receiver)	08/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	05/2005 to present

Pamela Sheps is a New York State licensed speech language pathologist and is considered to be in good standing. Ms. Sheps was employed by Yeled V'Yalda an early childhood center as a speech therapist from March 2002 through June 2006. She resigned her position to focus on starting a family. Pamela Sheps discloses no ownership interests in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined $4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care (formerly known as Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters.
- The facility was fined $4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision, and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Center for Rehabilitation for the period identified above reveals:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals:

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

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Waterfront Health Care Center, and Chittenango Center for Rehabilitation and Health Care for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation and Healthcare, Wartburg Lutheran Home for the Aging, Rome Center for Rehabilitation and Health Care, Holliswood Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Richmond Center for Rehabilitation and Specialty Healthcare, Corning Center for Rehabilitation, Washington Center for Rehabilitation and Healthcare, Essex Center for Rehabilitation and Healthcare, and Daughters of Jacob Nursing Home Company for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the nursing home, summarized below:

Date:	November 4, 2013
Seller:	Howd LTC Management, LLC
Purchaser:	Northwoods Operations Associates, LLC
Assets Acquired:	Business and operation of the Facility, except for the Excluded Assets; all leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; all inventory, supplies and other articles of personal property, except foe the Excluded Assets; all transferable contracts, agreements, leases, undertakings, commitments and other arrangements; all residential funds held in trust; the name “Northwoods Rehabilitation & Extended Care Facility and any and all other trade names, logos, trademarks and service marks associated with the Facility; all security deposits and prepayments, if any, for future services held by Seller; all menus, policies and procedures manuals and computer software; all telephone numbers and telefax numbers used by

	the Facility; all employee and payroll records relating to the Facility; goodwill; copies of all other books and records relating to the Facility; all licenses and permits held or owned by Seller relating to the ownership or operation of the Facility and the Basic Assets; the Seller's Medicare and Medicaid provider numbers and provider agreements; all rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise, with respect to third party payments and all accounts receivable, regardless of when billed, relating to services rendered by the Facility at any time on and after the Closing Date.
Excluded Assets:	The real estate which is the subject of the Real Estate Contract; all insurance policies; all rights and interests of Seller under and pursuant to this agreement and any documents executed in connection with the Closing; all rate increases resulting from rate appeals, with respect to third party payments, which become effective or paid on or after the Closing for services rendered by the Facility prior to the Closing Date; all amounts due from third parties related to the Seller; and all accounts receivable of any nature, regardless of when billed, relating to services rendered by the Facility at any time prior to the Closing Date; all cash, deposits and cash equivalents held by Seller before the Closing Date; all payments or cash equivalent credits relating to the Facility resulting from claims, insurance premium rate reductions, or insurance or other dividends paid or accruing for services prior to the Closing Date and the van identified as follows 2012 Toyota Siena shall be redeemed by Seller.
Assumed Liabilities:	Buyer shall assume only the following liabilities at the Closing; all liabilities and obligations exclusively arising with respect to the operation of the Facility and/or the Basic Assets on and after the Closing Date.
Retained Liabilities:	Seller is retaining and shall remain liable for, any and all liabilities and obligations arising from or relating to the ownership or operation of the Facility prior to the Closing Date.
Purchase Price:	$143,000
Payment of Purchase Price:	$14,000 upon execution of this agreement and the remainder due at Closing.

Pamela Sleps has provided $14,000 in escrow for the operation purchase agreement.

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

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the site where the nursing home is located on, which is summarized below:

Date:	November 4, 2013
Seller:	Howd Manor Group, LLC
Purchaser:	Northwoods Real Estate Associates, LLC
Purchase Price:	$457,000
Payment of Purchase Price:	$45,000 upon execution of this agreement and the balance of the purchase price will be paid at Closing.

Pamela Sleps has provided $45,000 in escrow for the real estate purchase agreement.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site where the nursing home will be located, which is summarized below:

Date:	November 27, 2013
Premises:	The site located at 7 Keeler Avenue, Moravia, New York.
Lessor:	Northwoods Real Estate Associates, LLC
Lessee:	Northwoods Operations Associates, LLC
Term:	10 years
Rental:	$62,043 annually
Provisions:	The lessee shall be responsible for insurance, taxes and utilities

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year after the change in operator, summarized below:

	Per Diem	Total
Revenues:		
Medicaid Managed Care	$154.42	$1,543,130
Medicare Fee For Service	375.00	417,000
Private Pay	219.48	446,648
Total Revenues		$2,406,778
Expenses:		
Operating	$171.24	$2,250,198
Capital	8.01	105,271
Total Expenses	$179.25	$2,355,469
Net Income		$51,309
Utilization: (patient days)		13,140
Occupancy		90.00%
Breakeven Occupancy		88.12%

Utilization, broken down by payor source during the first year after the change in operator is summarized below:

Medicaid Managed Care	76.05%
Medicare Fee For Service	8.47%
Private Pay	15.48%

Expense assumptions are based on the 2012 experience with adjustments during the first year. Utilization assumptions are based on current 2012 historical experience by payor source. Utilization is projected to increase from 88.27% in 2012, to 90.00% during the first year after the change in operator.

The applicant has indicated that the reasons for the increase in the projected utilization are the result of the following: the applicant will initiate a Community Outreach Plan in order to ensure that the facility will be well utilized. Northwoods will develop a community outreach program that will inform surrounding hospitals, home health agencies, assisted living facilities and adult care facilities of the change in ownership of the facility. Cayuga County has three certified home health agencies, one long term home health care program, one hospice program, and four licensed home care services agencies serving the County. Additionally, Cayuga County has one acute care hospital and five adult care facilities within the county. The new operator will reach out to these facilities and also contact representatives of the local social service district, senior citizen centers, churches and other community groups and agencies to inform them of the change in ownership and to provide community education programs to better serve the community. The current operator of Northwoods does not currently admit residents who require intravenous therapy and only admits residents who require a lower level of care. The proposed operator of the facility will train its staff in order to be able to serve residents who require intravenous therapy and accept residents at a level that the Centers for Medicare and Medicaid Services and New York State expects from residential health care facilities. Likewise proposed operator will notify facilities/agencies in the region of its ability to take care of these higher level of residents.

Expenses are also decreasing during the first year when compared with 2012 as some of the facility's existing assets will become fully depreciated by year 1 of operations.

Capability and Feasibility

The operational purchase price of $143,000 will be met as follows: Equity of $35,750 from the proposed members and $107,250 financed at an interest rate of 6.00% for a ten year term. The real estate purchase price of $457,000 will be met as follows: $114,250 from the proposed members and $342,750 to be financed at an interest rate of 6.00% for a ten year term. The applicant has indicated that Pamela Sheps has contributed equity in escrow a total of $59,000.

Working capital requirements are estimated at $392,578, which appears reasonable based on two months of first year expenses. The applicant will finance $196,289 at an interest rate of 6.00% for a five year term. The remainder, $196,289, will be provided via equity from the proposed members personal resources. BFA Attachment A are the personal net worth statements of the proposed members of Northwoods Operating Associates, LLC, which indicates the availability of sufficient funds for the equity contribution. The applicant has submitted an affidavit indicating that the equity will be provided disproportionate to ownership interests. BFA Attachment C is the pro forma balance sheet of Northwoods Rehabilitation and Extended Care Facility at Moravia, which indicates a positive net asset position of $217,783 as of the first day of operation.

The submitted budget projects a net income of $51,309 during the first year after the change in operator. Revenues are based on current reimbursement methodologies for nursing homes. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment B is a financial summary of Northwoods Rehabilitation and Extended Care Facility at Moravia from 2010 through 2012. As shown, the facility had an average positive working capital position and an average positive net asset position from 2010 through 2012. The facility incurred an average operating net income of $5,865 from 2010 through 2012. The applicant has indicated that the reason for the 2012 losses are as follows: a reduction in the average census from 35 to 31; $134,406 in bad debts; and additional depreciation of over $14,500 for new equipment purchased for the facility. The current operator has taken several steps to improve operations including increasing the census of the facility and cost reduction strategies. The applicant achieved a net income of $370,862 in 2013.

BFA Attachment D are the financial summaries of the other facilities that the proposed members own. The facilities have maintained positive income from operations for the periods shown with the exception of Chittenango Center for Rehabilitation, which was due to the one-time audit recoupment.
Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary- Northwoods Rehabilitation and Extended Care Facility
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summaries of affiliated entities.

Public Health and Health Planning Council

Project # 132349-E
Lincoln Center for Rehabilitation and Healthcare, LLC

County:	**Queens**	***Program:***	**Residential Health Care Facility**
Purpose:	**Establishment**	***Acknowledged:***	**December 31, 2013**

Executive Summary

Description

Lincoln Center for Rehabilitation and Healthcare, LLC seeks to become the new operator of Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehabilitation Center, an existing proprietary business corporation and a 302-bed Residential Health Care Facility (RHCF), which includes a 20-ventilator dependent bed unit, located at 36-17 Parsons Boulevard in Flushing. Ownership of the facility operation before and after the requested change is as follows:

Current	
Flushing Manor Geriatric Center, Inc.	
Michael Benenson	17.3%
Sharon Sydney Benenson	17.3%
Amy Benenson	17.3%
Blanche Benenson	17.3%
Esther Benenson	30.8%

Proposed	
Lincoln Center for Rehabilitation and Healthcare, LLC	
Bernard Fuchs	50.0%
Deana Hersh	25.0%
Richard Platschek	25.0%

Richard Platschek has 4.5% membership interest as of October of 2012 in Williamsville Surburban Nursing Home, a 220-bed RHCF located in Williamsville,

Ridgeview Manor Nursing Home, a 120-bed RHCF located in Buffalo, and Sheridan Manor Nursing Home, a 100-bed RHCF located in Tonawanda.

Bernard Fuchs has a 6% membership interest in Hopkins Center for Rehab, a 288-bed RHCF located in Brooklyn, and as of January 19, 2012, a 25% membership interest in Bensonhurst Center for Rehab, a 200-bed RHCF located in Brooklyn.

CON 132355 and CON 132352 will be reviewed at the same time due to the Omnibus Sale Agreement.

DOH Recommendation

Contingent Approval

Need Summary

Dr. William O. Benenson Rehab Pavilion's utilization was 97.0% in 2010, 97.4% in 2011, and 98.3% in 2012, which meets or exceeds the Department's optimum planning goals. In 2013, RHCF utilization for this facility was 98.5%.

The change in ownership will not result in any change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this application.

BUDGET:	Revenues:	$38,638,255
	Expenses:	35,330,130
	Gain:	$ 3,308,125

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department. Included with the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed working capital loan, acceptable to the Department of Health. [BFA]
4. The 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]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   d) Implement the plan. The plan should include but not be limited to:
      - Information on activities relating to a-c above;
      - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
      - Other factors as determined by the applicant to be pertinent.

      The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
6. Submission and approval of an acceptable name for the facility. [LTC]
7. Submission of executed Articles of Organization, acceptable to the Department. The Article of Organization must specify that the Manager must be a member. The Articles of Organization must list the address of the entity's principal office, which must be the same as that of the facility. [CSL]
8. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of evidence of site control, acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

Council Action Date
June 12, 2014

Need Analysis

Project Description

Lincoln Center for Rehabilitation and Healthcare, LLC seeks approval to be established as the operator of Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehabilitation Center. Dr. William O. Benenson Rehab Pavilion is a 302-bed residential health care facility (RHCF) located at 36-17 Parsons Boulevard, Flushing, 11354, in Queens County. This facility consists of 282 RHCF beds and 20 ventilator-dependent beds.

Analysis

There is currently a need for 8,663 beds in the New York City Region as indicated in Table 1 below. However, the average occupancy for New York City is 94.8%, as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Dr. William O. Benenson Rehabilitation Pavilion's utilization was 97.0% in 2010, 97.4% in 2011, and 98.3% in 2012. The facility has continually met or exceeded the 97% optimum occupancy rate over the last five years.

Table 2: Dr. William O. Benenson Rehab Pavilion/Queens County/New York City Region Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Dr. William O. Benenson Rehab Pavilion	97.0%	97.4%	98.3%
Queens County	94.7%	94.4%	94.0%
New York City Region	95.4%	94.8%	94.8%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients' admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Dr. William O. Benenson Rehabilitation Pavilion's Medicaid admissions rate of 36.7% in 2011 and 35.2% in 2012 exceeded the Queens County 75% rates of 30.4% in 2011 and 29.7% in 2012.

Conclusion

Approval of this application will result in the maintenance of a necessary resource that provides services to both the Medicaid patient population and the larger community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Dr. William O. Benenson Rehabilitation Center	Lincoln Center for Rehabilitation and Healthcare, LLC
Address	36-17 Parsons Boulevard Flushing	Same
RHCF Capacity	302	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Flushing Manor Geriatric Center, Inc.	Kennedy Pavilion RH I, LLC Managing Member: Richard (Aryeh) Platschek 25.0% Members: Bernard Fuchs 50.0% Deena Hersh 25.0%

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Individual Background Review

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present

Bernard Fuchs is the CEO and Chief Investment Officer at Tiferes Investors LLC, an investment company located in Lawrence, New York. Bernard Fuchs discloses the following ownership interests in health facilities:

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Deena Hersh discloses no employment history and discloses no ownership interest in health facilities.

Character and Competence - Analysis

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

A review of Hopkins Center for Rehabilitation and Healthcare for the period reveals that the facility was fined $4,000 pursuant to a Stipulation and Order issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents; and 10 NYCRR 415.26 – Administration.

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Williamsville Suburban LLC, Ridge View Manor LLC, Sheridan Manor LLC, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, and Bensonhurst Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase and sale agreement, the terms of which are summarized below:

Date:	August 21, 2013
Seller:	Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Center
Purchaser :	Kennedy Pavilion RH I, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	$10,645,500 for the operating interest.
Payment of Purchase Price:	$909,872 has been paid in cash and put into escrow with The balance of $9,735,628 to be paid at closing.

Kennedy Pavilion RH I, LLC will be renamed Lincoln Center for Rehabilitation and Healthcare, LLC.

The proposed members have 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 interest, without releasing the transferor of its liability and responsibility.

Omnibus Sale Agreement

An Omnibus Sale Agreement has been executed between the sellers: Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Center; Flushing Manor Dialysis Center, LLC; FMNH, LLC d/b/a Flushing Manor Nursing and Rehabilitation Center; Flushing Manor Care Center, Inc.; and Queens-Long Island Certified Home Health Agency, LLC and the buyers: Kennedy Pavilion RH I, LLC; Kennedy Pavilion RH II, LLC; Kennedy Pavilion RH III, LLC; Kennedy Pavilion RH IV, LLC; and Kennedy CHHA, LLC, whereas each Operating Asset Purchase Agreement and Real Estate Purchase Agreement shall simultaneously close upon receipt of the Buyer of all necessary regulatory approvals and other closing conditions. The aggregate purchase price is $117,000,000 with the operational assets totaling $28,457,400.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 302-bed RHCF located at 36-17 Parsons Boulevard, Flushing
Landlord:	3617 BH Parsons Realty, LLC
Tenant:	Kennedy Pavilion RH I, LLC
Terms:	26 years commencing on the execution of the lease with a ten year option to renew.
Rental:	Annual rent is equal to the Landlord’s annual HUD debt service payment, HUD mortgage insurance premiums, real property taxes and property and liability insurance.
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance

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

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	$24,695,601
Medicare	10,079,624
Private Pay/Other	3,863,030
Total RHCF	$38,638,255
Expenses:	
Operating	$32,339,291
Capital	2,990,839
Total	$35,330,130
Net Income	$3,308,125
Total Patient Days	107,964

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Overall utilization is projected at 97.94%.
- Utilization by Payor source is anticipated as follows:

Medicaid	79.14%
Medicare	14.46%
Private/Other	6.40%

- Breakeven utilization is projected at 89.45%.
- The budgeted utilization is based on the 2012 historical Payor mix.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operations is $10,645,500 and will be paid by $2,129,100 of the proposed members' equity, with the remaining $8,516,400 to be financed through a mortgage with 4.5% interest rate over a 30 year amortization. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant.

Working capital requirements are estimated at $5,888,355 based on two months' of first year expenses and will be satisfied from the facility's existing cash and receivables and a bank loan. Net cash and receivables (minus accounts payable) were $4,243,401 at December 31, 2013, resulting in a need for additional equity of $1,644,954, which will come from a bank loan over 5 years at 6% interest. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant.

The submitted budget indicates that a net income of $3,308,125 would be maintained during the first year following change in ownership. DOH staff notes that the first year budget was based on 2012 historical occupancy of 98.5%, with a more conservative approach to payor mix. The 2013 payor mix is heavily skewed to private pay, which creates additional revenues that may not be achievable in the first year budget. BFA Attachment C presents the pro-forma balance sheet of Lincoln Center for Rehabilitation and Healthcare. As shown, the facility will initiate operation with $6,968,507 members' equity. It is noted that assets include $10,645,500 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be negative $3,676,993. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment D, financial summary of Flushing Manor Nursing Home, shows negative working capital, net equity, and a net loss from operations of $1,711,925 as December 31, 2013. The negative net equity in 2012 and the net loss in 2012 and 2013 were due to operational inefficiencies. The new operator intends to increase revenues by reducing staff without patient interruption, outsourcing contractual needs, and increasing utilization of the 10 vent beds most recently operationalized.

BFA Attachment E, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCFs had experienced negative working capital and net equity, and maintained positive net income for the period shown. The negative working capital and net equity for the affiliated homes were due to bankruptcy related liabilities and Medicaid payments being withheld.

BFA Attachment F, financial summaries of proposed member Bernard Fuchs's affiliated homes, shows the two RHCFs had positive net income, working capital and net equity for the period shown.

Based on the preceding and subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA-Attachment A	Organizational Chart
BFA-Attachment B	Net Worth of Proposed Members
BFA-Attachment C	Pro-forma Balance Sheet, Lincoln Center for Rehabilitation & Healthcare
BFA-Attachment D	Financial Summary, Flushing Manor Geriatric Center, 2011- November 30, 2013
BFA-Attachment E	Financial summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA-Attachment F	Financial summary of proposed member, Bernard Fuchs, affiliated Nursing Homes

Public Health and Health Planning Council

Project # 132355-E
Flushing Center for Rehabilitation and Healthcare, LLC

County:	**Queens**	***Program:***	**Residential Health Care Facility**
Purpose:	**Establishment**	***Acknowledged:***	**December 30, 2013**

Executive Summary

Description

Flushing Center for Rehabilitation and Healthcare, LLC is requesting to become the new operator of FMNH, LLC d/b/a Flushing Manor Nursing Home, an existing proprietary 227-bed Residential Health Care Facility (RHCF) and 131-slot Long Term Home Health Care Program (LTHHCP), located at 35-15 Parsons Boulevard and 36-25 Parsons Boulevard, respectively, in Flushing. Ownership of the facility operation before and after the requested change is as follows:

<u>Current</u>
FMNH, LLC

Name	Percentages
Michael Benenson	25.0%
Sharon Sydney Benenson	25.0%
Amy Benenson	25.0%
Blanche Benenson	25.0%

<u>Proposed</u>
Flushing Center for Rehabilitation and Healthcare, LLC

Name	Percentages
Bernard Fuchs	30.0%
Deana Hersh	35.0%
Richard Platschek	35.0%

Richard Platschek has 4.5% membership interest as of October of 2012 in Williamsville Suburban Nursing Home, a 220-bed RHCF located in Williamsville, Ridgeview Manor Nursing Home, a 120-bed RHCF located in Buffalo and Sheridan Manor Nursing Home, a 100-bed RHCF located in Tonawanda.

Bernard Fuchs has 6% membership in Hopkins Center for Rehab, a 288-bed RHCF located in Brooklyn and as of January 19, 2012, a 25% membership in Bensonhurst Center for Rehab, a 200-bed RHCF located in Brooklyn.

Concurrently, CON 132356, CON 132349, CON 132352 are being reviewed due to the Omnibus Sale Agreement, which also includes the sale and acquisition of the Queens-Long Island Certified Home Health Agency (CHHA). The CHHA will go before the Public Health and Health Planning Council at a later date.

DOH Recommendation

Contingent Approval

Need Summary

Flushing Manor Nursing Home's utilization was 95.5% in 2010, 92.0% in 2011, and 92.6% in 2012. As of December 4, 2013, utilization for this facility was 96.0%.

The change in ownership will not result in any change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this application.

Budget:	Revenues:	$27,941,283
	Expenses:	26,880,462
	Gain:	$ 1,060,821

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
     - Information on activities relating to a-c above;
     - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
     - Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission and approval of an acceptable name for the facility. [LTC]
4. Submission of an executed building lease, acceptable to the Department. [BFA, CSL]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule for both new and refinanced debt. [BFA]
6. Submission of executed Articles of Organization, acceptable to the Department. The Article of Organization must specify that the Manager must be a member. The Articles of Organization must also the address of the entity's principal office, which must be the same as that of the facility. [CSL]
7. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of evidence of site control, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Need Analysis

Background

Flushing Center for Rehabilitation & Healthcare, LLC seeks approval to be established as the operator of FMNH, LLC d/b/a Flushing Manor Nursing Home. Flushing Manor Nursing Home is a 227-bed residential health care facility (RHCF) located at 35-15 Parsons Boulevard, Flushing, 11354, in Queens County.

Analysis

There is currently a need for 8,663 beds in the New York City Region, as indicated in Table 1 below. However, the average occupancy for New York City is 94.8%, as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Flushing Manor Nursing Home's utilization was 95.5% in 2010, 92.0% in 2011, and 92.6% in 2012.

The applicant intends to achieve viability through a reduction in FTE's where over-staffing is indicated, by outsourcing where applicable in order to reduce costs, and by increasing the case mix of the residents.

Table 2: Flushing Manor Nursing Home/Queens County/New York City Region Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Flushing Manor NH	95.5%	92.0%	92.6%
Queens County	94.7%	94.4%	94.0%
New York City Region	95.4%	94.8%	94.8%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients' admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Flushing Manor Nursing Home's Medicaid admissions of 43.7% in 2011 and 37.8% in 2012 exceeded the Queens County 75% rates of 30.4% in 2011 and 29.7% in 2012.

Conclusion

Approval of this application will result in maintaining a necessary resource that provides services to both the Medicaid patient population and the community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Flushing Manor Nursing Home	Flushing Center for Rehabilitation and Healthcare, LLC
Address	35-15 Parsons Boulevard Flushing, NY. 11354	Same
RHCF Capacity	227	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	FMNH, LLC Michael Benenson 25% Sharon Sydney 25% Blanche Benenson 25% Amy Benenson 25%	Kennedy Pavilion RH III, LLC Managing Member: Richard (Aryeh) Platschek 35.0% Members: Bernard Fuchs 30.0% Deena Hersh 35.0%

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Individual Background Review

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present

Bernard Fuchs is the CEO and Chief Investment Officer at Tiferes Investors LLC, an investment company located in Lawrence, New York. Bernard Fuchs discloses the following ownership interests in health facilities:

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present

Deena Hersh discloses no employment history and discloses no ownership interest in health facilities.

Character and Competence - Analysis

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

A review of Hopkins Center for Rehabilitation and Healthcare for the period reveals that the facility was fined $4,000 pursuant to a Stipulation and Order issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents; and 10 NYCRR 415.26 – Administration.

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Williamsville Suburban LLC, Ridge View Manor LLC, Sheridan Manor LLC, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, and Bensonhurst Center for Rehabilitation and Healthcare for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase and sale agreement, the terms of which are summarized below:

Date:	August 21, 2013
Seller:	FMNH, LLC d/b/a Flushing Manor Nursing Home
Purchaser :	Kennedy Pavilion RH III, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Those associated with purchased assets
Purchase Price:	$9,103,900 for the operating interest.
Payment of Purchase Price:	$778,111 has been paid in cash and put into escrow with the balance of $8,325,789 to be paid at closing.

Kennedy Pavilion RH III, LLC will be renamed Flushing Center for Rehabilitation & Healthcare, LLC.

The proposed members have 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 interest, without releasing the transferor of its liability and responsibility.

Omnibus Sale Agreement

An Omnibus Sale Agreement has been executed between the sellers: Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Center; Flushing Manor Dialysis Center, LLC; FMNH, LLC d/b/a Flushing Manor Nursing and Rehabilitation Center; Flushing Manor Care Center, Inc.; and Queens-Long Island Certified Home Health Agency, LLC, and the buyers: Kennedy Pavilion RH I, LLC; Kennedy Pavilion RH II, LLC; Kennedy Pavilion RH III, LLC; KPRH IV Operations, LLC; and Kennedy CHHA, LLC, whereas each Operating Asset Purchase Agreement and Real Estate Purchase Agreement shall simultaneously close upon receipt of the Buyer of all necessary regulatory approvals and other closing conditions. The aggregate purchase price is $117,000,000 with the operational assets totaling $28,457,400.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 227-bed RHCF located at 35-15 Parsons Boulevard, Flushing
Landlord:	3515 BH Parsons Realty, LLC
Tenant:	Kennedy Pavilion RH II, LLC
Terms:	26 years commencing on the execution of the lease with a ten year option to renew.
Rental:	Annual rent is equal to the Landlord's annual HUD debt service payment, HUD mortgage insurance premiums, real property taxes and property and liability insurance.
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance

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

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

Revenues:	
Medicaid	$17,137,428
Medicare	5,770,000
Private Pay/Other	5,033,855
Total	$27,941,283
Expenses:	
Operating	$24,457,584
Capital	2,422,878
Total	$26,880,462
Net Income	$1,060,821
Total Patient Days	80,290
Total Visits	38,892

- Medicaid capital component includes lease rental payment.
- Medicare and private pay revenues are based on current payment rates.
- Medicaid rates are based on 2014 Medicaid pricing rates adjusted for CMI increase with no trend.
- Overall utilization is projected at 96.87%.
- Utilization by payor source is anticipated as follows:

Medicaid	71.57%
Medicare	11.77%
Private/Other	16.66%

- Breakeven utilization is projected at 93.2%.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operations is $9,103,900, and will be paid by $1,820,780 of the proposed members' equity, with the remaining $7,283,120 to be financed through a mortgage with 4.5% interest rate over a 30 year amortization. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant.

Working capital requirements are estimated at $4,480,077 based on two months' of first year expenses, and will be satisfied from the facility's existing cash and receivables and additional members' equity. Net cash and receivables ($4,833,952) minus accounts payable ($1,997,537) were $2,836,315 at December 31, 2013, resulting in a need for additional equity of $1,643,762 from the proposed members. An affidavit from proposed applicant member, Bernard Fuchs, states that he is willing to contribute resources disproportionate to his ownership percentage. Review of BFA Attachment B, net worth of proposed members, reveal sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of $1,060,821 would be maintained during the first year following change in ownership. BFA Attachment G is the budget sensitivity analysis based on December 31, 2013 current utilization of the facility, which shows the budgeted revenues would decrease by $37,406, resulting in a net income in year one of $1,023,415. In 2013, the facility was able to increase its occupancy to approximately 94.6% from the 92.8% recorded in 2012. The most recent reported rate on the NYSDOH website, as of March 19, 2014, is 94.3%. Mr. Fuchs and Mr. Platschek have considerable experience successfully turning around other RHCFs in New York State subsequent to acquisition. The applicant intends to implement at this facility, many of the strategies used by Mr. Fuchs and Mr. Platschek in those successful endeavors, to improve utilization percentages and realize high-quality and fiscally viable operations.

The applicant also expects that utilization will increase due to the six (6) additional dialysis stations that will be operated by a related entity at the site, which will bring more people to the facility, many of whom are most at risk for requiring skilled 24-hour-per-day nursing care due to their advanced debilitating chronic conditions. As an example, if the additional six (6) stations operate for 2.5 shifts per day, there will be 30 additional dialysis patients annually (conservatively assuming no patient turnover). If just three (3) of those patients require a nursing home stay for the traditional "Medicare first 100 days", utilization will increase to 95%. Minor incremental patient volume increases from the other programs will allow the applicant to reach approximately 97% occupancy. Finally, a profit of $1,060,821 is projected in Year 1, at the projected utilization percentage of 96.87%. If that percentage is reduced to the most recent percentage of 94.3%, it would be a reduction of 2,129 patient days. Multiplying that total by $298.19 (the projected average daily rate) equals $634,958. Even at the lower occupancy percentage, the facility would continue to break even. The budget appears reasonable.

BFA Attachment C presents the pro-forma balance sheet of Flushing Center for Rehabilitation & Healthcare. As shown, the facility will initiate operation with $6,540,410 members' equity. It is noted that assets include $9,103,900 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be negative $2,563,490.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of BFA Attachment D, financial summary of Flushing Manor Nursing Home, shows positive working capital, net equity and a net profit from operations of $848,862 as December 31, 2013. The negative net loss from operations in 2012 was due to lower utilization, which was corrected in 2013**.**

Review of BFA Attachment E, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCFs had experienced negative working capital and net equity, and maintained positive net income for the period shown. The negative working capital and net equity for the affiliated homes were due to bankruptcy related liabilities and Medicaid payments being withheld.

Review of BFA Attachment F, financial summaries of proposed member Bernard Fuchs's affiliated homes, shows the two RHCFs had positive net income for the period shown.

Based on the preceding and subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth of Proposed Members
BFA Attachment C	Pro-forma Balance Sheet, Flushing Center for Rehabilitation & Healthcare
BFA Attachment D	Financial Summary, Flushing Manor Nursing Home, 2011- July 31, 2013
BFA Attachment E	Financial summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA Attachment F	Financial summary of proposed member, Bernard Fuchs, affiliated Nursing Homes
BFA Attachment G	Budget Sensitivity Analysis

Public Health and Health Planning Council

Project # 132357-E
URNC Operating, LLC d/b/a Utica Rehabilitation & Nursing Center

County: **Oneida**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **December 31, 2013**

Executive Summary

Description

URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center, is seeking approval to be established as the new operator of St. Joseph Nursing Home Company of Utica, Inc., an existing 120-bed not-for profit residential health care facility (RHCF) located at 2535 Genesee Street, Utica (Oneida County).

URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center, entered into an Operations Transfer Agreement with St. Joseph Nursing Home on October 4, 2013, to sell and acquire the operating interests of the 120-bed facility. The purchase price for the operations of St. Joseph Nursing Home is $10. Ownership after the requested change is as follows:

<u>URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center</u>

Ephraim Zagelbaum	50.00%
Yechiel Zagelbaum	5.00%
Yoel Zagelbaum	5.00%
Alexander Barth	20.00%
Yehuda Walden	20.00%

A separate but related real estate company, URNC Realty, LLC, will acquire the facility's property. Ownership of the real estate after the requested change is as follows:

<u>URNC Realty, LLC</u>

Ephraim Zagelbaum	50.00%
Yechiel Zagelbaum	5.00%
Yoel Zagelbaum	5.00%
Alexander Barth	20.00%
Yehuda Walden	20.00%

BFA Attachment A presents a summary net worth statement of the proposed members of URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center. Several of the proposed members have ownership interest in the following RHCF facilities; Tarrytown Hall Care Center, Alpine Rehabilitation & Nursing Center, Norwich Rehab & Nursing Center, and Highland Rehab & Nursing Center.

DOH Recommendation

Contingent Approval

Need Summary

St. Joseph Nursing Home Company of Utica, Inc.'s utilization was 96.8% in 2010, 95.8% in 2011, and 93.7% in 2012. Current utilization, as of January 1, 2014, at this facility is 85.8%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

On October 4, 2013, an Operational Transfer Agreement was entered into between St. Joseph Nursing Home Company of Utica, Inc. and URNC Operating, LLC, d/b/a Utica Rehabilitation and Nursing Center to sell and acquire the operating interests of the 120-bed facility. The purchase price for the operations of St. Joseph Nursing Home is $10. There are no project costs associated with this proposal. A separate asset purchase agreement was entered into on October 4, 2013 by St. Joseph Nursing Home Company of Utica, Inc. and URNC Realty, LLC, a separate but related company.

Year 1 Budget	Revenues	$8,820,600
	Expenses	8,690,756
	Gain/(Loss)	$129,844

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
     - Information on activities relating to a-c above;
     - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
     - Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of an executed building lease, acceptable to the Department. [BFA]
4. Submission of an executed working capital loan, acceptable to the Department. [BFA]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
6. Submission of a photocopy of the executed Operating Agreement of URNC Operating, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of URNC Operating, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Dissolution or Certificate of Amendment of the Certificate of Incorporation of St. Joseph's Nursing Home Company, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Need Analysis

Background

URNC Operating, LLC seeks approval to become the established operator of St. Joseph Nursing Home Company of Utica, Inc., a 120-bed Article 28 residential health care facility located at 2535 Genesee Street, Utica, 13501, in Oneida County. Upon approval, the facility will do business as Utica Rehabilitation and Nursing Center.

Analysis

There is currently a surplus of 330 beds in Oneida County, as indicated in Table 1 below. The overall occupancy for Oneida County was 93.9% for 2012, as indicated in Table 2.

Table 1: RHCF Need – Oneida County

2016 Projected Need	2,276
Current Beds	2,606
Beds Under Construction	0
Total Resources	2,606
Unmet Need	-330

St. Joseph Nursing Home Company of Utica, Inc.'s utilization was 96.8% in 2010, 95.8% in 2011, and 93.7% in 2012. In contrast to many other nursing homes, this facility does not employ a Director of Admissions/Marketing, which hindered the facility's ability to maximize utilization. In addition, the facility does not provide extensive wound care, wound vac, tracheotomy or IV care services. The lack of these modernized and diversified services contributed to the facility's negative reputation in the community as a primarily long-term care facility.

The proposed operator plans to increase utilization by hiring an experienced Director of Admissions/Marketing, performing renovations to the facility, both physically and operationally, that will attract new residents while accommodating current residents. The facility will provide services not previously offered, including a new sub-acute rehabilitation program that will operate six to seven days a week. The operator will also actively pursue expansion of current partnerships with community hospitals and physicians to improve care for residents.

Table 2: St. Joseph Nursing Home Company of Utica, Inc./Oneida County Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
St. Joseph Nursing Home Company of Utica, Inc.	96.8%	95.8%	93.7%
Oneida County	94.3%	95.5%	93.9%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

St. Joseph Nursing Home Company of Utica, Inc.'s Medicaid admissions for 2011 and 2012 was 20.0% and 21.3%, respectively, which exceeds the Oneida County 75% rates in 2011 and 2012 of 18.3% and 19.8%, respectively.

Conclusion

Approval of this application will result in the maintenance of a community resource that provides needed services to the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	St Joseph Nursing Home Co of Utica	Utica Rehabilitation & Nursing Center
Address	2535 Genesee Street Utica, NY 13501 PFI: 0607	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	St Joseph Nursing Home Co of Utica Inc.	URNC Operating, LLC d/b/a Utica Rehabilitation & Nursing Center Members: Ephraim Zagelbaum 50.0% Alexander Barth 20.0% Yahuda Walden 20.0% Yechiel Zagelbaum 5.0% Yoel Zagelbaum 5.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

Individual Background Review

Ephraim Zagelbaum is a licensed New York State nursing home administrator with license in good standing. Mr. Zagelbaum is a managing partner at Personal Healthcare Management LLC since January 2013. Prior employment was as administrator at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present
Highland Rehabilitation and Nursing Center	02/2013 to present

Alexander Barth a licensed New York State nursing home administrator with license in good standing. Mr. Barth Zagelbaum is a managing partner at Personal Healthcare Management LLC since January 2013.Prior employment was as administrator at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth holds a current EMT license in good standing. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	01/2010 to present Medford
Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehab & Nursing Center	02/2013 to present

Yehuda Walden is a manager at Personal Healthcare, a healthcare company located in Tarrytown. Mr. Walden discloses the following health facility ownership interest:

Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehab & Nursing Center	02/2013 to present

Yechiel Zagelbaum is a pediatrician in private practice in Brooklyn since 2002. Dr. Zagelbaum is a New York State physician with license in good standing; and current certification in general pediatrics. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehab & Nursing Center	02/2013 to present

Yoel Zagelbaum is an attorney in good standing who serves as the President of Riverside Abstract, LLC, a title insurance company, located in Brooklyn. Mr. Zagelbaum is a U.S. patent attorney in good standing. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center	07/2009 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present

Tarrytown Hall Care Center	04/2008 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present
Highland Rehab & Nursing Center	02/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Highland Rehab & Nursing Center, Cambridge Rehabilitation and Nursing Center (MA), Rehab & Nursing Center at Everett (MA), and Medford Rehabilitation & Nursing Center (MA) for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

Date:	October 4, 2013
Transferor:	St. Joseph Nursing Home Company of Utica, Inc.
Transferee:	URNC, LLC d/b/a Utica Rehabilitation and Nursing Center
Purchase Price:	$10 Payable at closing
Assets Transferred:	All rights, title and interest in the patient trust funds and property, all resident contracts or other agreements with residents of the Facility to the extent assignable, excluding rights to payments of monies due to St. Joseph Nursing Home Company of Utica, Inc. related to the period prior to the closing date, all licenses, permits, accreditations, Medicaid and Medicare contracts, and other regulatory approvals, and all rights of older operator under any government or non-government provider agreements or any other third party payor programs, if any, issued by any federal, state, municipal or local governmental authority relating to the use, maintenance or operation of the facility running to, or in favor of, old operator, to the extent legally assignable (including all modifications thereto or renewals thereof, all guaranties or warranties then in effect, if any, with respect to the facility and the Personal Property, the trade name " St. Joseph Nursing Home", as well as any trademarks, logo-types or other similar descriptive items associated with such names, and all of the goodwill symbolized and associated with such name, to the extent permitted by the laws of the Roman Catholic Church and any other assets required to be assigned to New Operator pursuant to this

agreement

Assumed Liabilities:	None

Asset Purchase Agreement

The change in ownership of the real estate will be effectuated in accordance with an asset purchase agreement, the terms of which are summarized below:

Date:	October 4, 2013
Seller:	St. Joseph Nursing Home Company of Utica, Inc.
Purchaser:	URNC Realty, LLC
Purchased Assets:	Seller's right, title and interest in and to all assets of Seller other than the excluded assets, including but not limited to all of the tangible and intangible assets which comprise or are used or are held for use in connection with or are necessary to the operation of the business at the Nursing Home facility. The property consisting of those certain plots, pieces or parcels of land located in Utica, NY (Land), all of seller's buildings and all other structures, facilities or improvements presently or hereafter located in or on the land including without limitation, that certain 120-skilled bed nursing home facility commonly known as "St. Joseph Nursing home" and located at 2535 Genesee Street, Utica, NY, all other items of seller's personal property and fixtures, systems and equipment, attached or appurtenant to, located on or used in connection with the ownership, use, operation or maintenance of the Land, the improvements and/or the Nursing Home facility, except for excluded assets. All of the seller's right, title and interest, if any, in and to the land lying in the bed of any street or highway in front or adjoining the land to the center line thereof, any unpaid award for any taking by condemnation or any damage to the land or the improvements by reason of a change of grade of any street or highway, all easements, licenses, rights and appurtenances relating to any of the foregoing, any intangible property of seller, the warranties, the permits and the name of the nursing home facility(to the fullest extent permitted pursuant to the Canon law of the Roman Catholic Church) as well as any trademarks, logo-types or other similar descriptive items associated with such names, and all of the goodwill symbolized and associated with such names, and any other assets of the seller located at or used in connection with the Nursing Home facility.
Excluded Assets:	Seller's rights arising under this agreement or under any other agreement between purchaser and seller, all cash, cash equivalents, accounts receivable, unbilled services, investments or any other right to receive the payment of money as of the closing date, all rights to refunds from whatever source including without limitation, for taxes, fees, assessments and charges and those arising out of retrospective premium adjustments under insurance policies covering the Nursing home facility or the operations thereof for periods ending prior to the closing date all casualty, general liability and other insurance policies

	which cover seller, the nursing home facility or the operations thereof, corporate organizational documents, minute books, tax records and seals of seller and any and all books and records not related to any purchased assets, any personal property located in the chapel of the nursing home facility and used for worship by the Roman Catholic church, including, without limitation, any special vessels or other items used in the chapel or that may not be transferred to purchaser by reason of Canon Law or other rules of the Roman Catholic Church and all prepaid expenses Excluded assets shall also include the specific property of seller which shall be transferred to the New operator pursuant to the terms of the OTA.
Liabilities Assumed :	N/A
Purchase Price:	$4,135,000
Payment of Purchase Price:	$3,308,000 mortgage loan from M&T bank and $827,000 from members equity $215,000 has already been paid in escrow remaining amount due at closing is $612,000.

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

The members of the reality entity; URNC Realty, LLC, are as follows:

Proposed Members	Percentage Ownership
Ephraim Zagelbaum	50.00%
Yechiel Zagelbaum	5.00%
Yoel Zagelbaum	5.00%
Alexander Barth	20.00%
Yehuda Walden	20.00%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement. The terms of the draft agreement are summarized as follows:

Date:	To be Determined
Premises:	A 120-bed RHCF located at 2535 Genesee Street, Utica, New York
Lessor:	URNC Realty, LLC
Lessee:	URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center
Term:	10 years commencing with 10 additional (1) year extensions
Rental:	$438,865 per year ($36,572.08 per month)
Provisions:	Triple Net Lease

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

Operating Budget

Following is a summary of the submitted operating budget, presented in 2014 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$162.70	$5,321,787
Medicare	450.00	1,680,750
Private Pay/Other	317.00	1,493,076
Medicaid Assessment		324,987

Total	$8,820,600
Expenses:	
Operating	$7,989,356
Capital	701,400
Total	$8,690,756
Net Income	$129,844
Utilization: (patient days)	41,155
Occupancy	93.96%

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

- Overall utilization is projected at 93.96%, while utilization by Payor source is expected as follows:

Medicaid	79.48%
Medicare	9.08%
Private Pay/Other	11.44%

- Breakeven utilization is projected at 92.57%.

Capability and Feasibility

URNC Operating LLC, d/b/a Utica Rehabilitation and Nursing Center, will acquire the operating interest in the RHCF for $10 and URNC Realty, LLC, will acquire the RHCF real property for $4,135,000. Funding will be as follows: $827,000 in member equity, of which $215,000 has already been placed in escrow with $612,000 left to be funded, and the remaining $3,308,000 balance being financed through M&T bank. There is a relationship via similar members between URNC Realty, LLC (the landlord) and URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center (the nursing home operator). There are no project costs associated with this application.

Working capital requirements are estimated at $1,448,459, based on two months' of first year expenses**,** which $724,259 will be satisfied from the proposed member's equity, and the remaining $724,200 will be satisfied through a loan from M&T bank at 5.5% over 5 years**.** A letter of interest has been supplied by M&T bank**.**

BFA Attachment A is the Net Worth statement of the proposed members of URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center (the nursing home) and the proposed members of URNC Realty, LLC (Real Estate). The ownership is the same for both entities. The statement shows sufficient resources to cover both the purchase price of the operations and real estate, and the working capital requirements of the operations.

BFA Attachment B is the pro-forma balance sheet of URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center, which indicates positive members' equity of $790,342 as of the first day of operations.

BFA Attachment C is the pro-forma balance sheet of URNC Realty, LLC, which indicates positive members' equity of $827,000 as of the first day of operations.

The submitted budget indicates that a net income of $129,844 would be generated in the first year after the change in ownership. The following is a comparison of the 2012 historical and projected revenue and expense:

Projected Income	$8,820,600
Projected Expense	8,690,756
Projected Net Income	$129,844
Annual 2012 Income	$8,176,533
Annual 2012 Expense	9,010,733

Annual 2012 Net Income (Loss)	($834,200)
Incremental Net Income (Loss)	$964,044

It is estimated that the incremental net revenue for all payors will increase approximately $964,044 as the results of the following: Medicaid revenues are expected to increase by approximately $86,696 or approximately $2.65 per patient day as the result of an increase in the average daily rate, going from $160.05 per patient day in 2012 to $162.70 per patient day in 2014; Medicare revenues are expected to increase by approximately $232,384 or approximately $62.22 per patient day going from 387.78 per patient day in 2012 to 450.00 per patient day in 2014; and private pay revenues are expected to remain the same. Utilization is expected to remain the same from the current year 2012 at 93.96% through both years 1 and 3. The facility is also receiving a Medicaid Assessment of $324,987 for years 1 and 3**.**

Expenses are expected to decrease approximately $319,977 in year 1 and $334,643 in year 3, which represents reductions in administrative, fiscal and purchased services expenses based on the applicant's experience. The budget appears reasonable.

Staff Notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment D, St. Joseph Nursing Home for the years 2010 through 2012, the RHCF generated an average net loss of $343,531, had an average positive net asset position, and had an average positive working capital position. The losses at St. Joseph Nursing Home are due to the current owners of the facility not being able to adapt to the changing reimbursement and utilization modes. In addition, the facility has an extremely low CMI, which has adversely impacted the Medicaid rate. These factors lead to the decision to sell the facility to the proposed new owners. It should be noted that the proposed new owners are averaging over $35 more per patient day than St. Joseph. The new owners will bring their experience at their other facilities to bear in operating St. Joseph Nursing Home.

As shown on BFA Attachment E, Financial Summary for Tarrytown Hall Care Center, the facility had an average negative working capital position, an average positive net asset position, and generated an average net income of $500,131 during the period 2010 through 2012. The 2011 net loss was due to the facility receiving approximately $2.8 million from Medicaid for the base year and categorizing the money as an expense on the facility's books, and as revenue on the realty books. The 2011 Financial statements for the totality of Tarrytown's operations is included as part of BFA Attachment E. The $2.8 million is part of the total $3,987,500 elimination shown on the attached 2011 financial statements. The negative working capital is due to the facility receiving Medicaid Part B monies but categorizing them as liabilities, due to the fact that Medicaid can audit the Part B monies and take the monies back. The facility classifies these monies as current liabilities until the audit has occurred. If an audit does not occur, then the monies are then reclassified as income. For 2012, Medicaid has advised the facility that they will not be audited and therefore, some of the other current liability money will be reclassified as income. Also, a line of credit of approximately $744,000, which currently is classified as liability, may not be used and would therefore, not be an actual liability. Without these items, the Medicaid Part B, which for 2012, was $797,552, and the aforementioned line of credit, the facility would have had a positive average working capital position for 2010-2012.

As shown on BFA Attachment F, Financial Summary for Alpine Rehabilitation and Nursing Center, the facility had an average negative working capital position, an average positive net asset position, and generated an average net income of $162,102 during the period 2010 through 2012. The 2011 loss was due to two adjustments in the facility's Medicaid rate; one adjustment was in April 2011, with the facility receiving their revised Medicaid rates, which resulted in a reduction of over $80,000 dollars in revenue; and the second adjustment was in November of 2011, which reduced the rates by approximately $100,000 dollars. Due to the fact that the final adjustment happened so late, the facility was not able to act in time to reduce expenses to eliminate the operating loss for 2011, but they have taken these adjustments into consideration for 2012, which can been seen with the positive net income of $172,080 shown for 2012.

As shown on BFA Attachment G, Financial Summary for Norwich Rehabilitation & Nursing Center, the facility had an average negative working capital position, an average negative net asset position, and generated an average net loss of $44,804 during the period 2011 through 2012. The reason for the loss is due to the facility being acquired in 2011 and still attempting to recover from the financial struggles that plagued the previous owners. The new owners were able to turn the facility around by 2012 and made a profit of $146,570 by implementing the necessary systems and infrastructure needed to form a solid financial foundation to build ongoing forward, which would enable the facility to continue growing.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA-Attachment A	Net Worth of Proposed Members URNC Operating LLC d/b/a Utica Rehabilitation and Nursing Center and URNC Realty, LLC
BFA-Attachment B	Pro-forma Balance Sheet, URNC Operating, LLC d/b/a Utica Rehabilitation and Nursing Center (the Center)
BFA-Attachment C	Pro-forma Balance Sheet, URNC Realty, LLC
BFA-Attachment D	Financial Summary St. Joseph Nursing Home for 2010-2012
BFA-Attachment E	Financial Summary Tarrytown Hall Care Center 2010-2012
BFA-Attachment F	Financial Summary Alpine Rehabilitation and Nursing Center 2010-2012
BFA Attachment G	Financial Summary Norwich Rehabilitation & Nursing Center 2011-2012

Public Health and Health Planning Council

Project # 132360-E
NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation

County:	**Kings**	***Program:***	**Residential Health Care Facility**
Purpose:	**Establishment**	***Acknowledged:***	**January 2, 2014**

Executive Summary

Description

NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation is requesting approval to be established as the new operator of Cabs Nursing Home Company, Inc., an existing 157-bed not-for-profit residential health care facility (RHCF) located at 270 Nostrand Avenue, Brooklyn (Kings County). A separate realty entity, NNRC Properties, LLC, will acquire the facility's real property.

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

Proposed Operator	Membership
NNRC, LLC, d/b/a Nostrand Center for Nursing and Rehabilitation	
Joel Landau	33.3334%
Marvin Rubin	33.3333%
Solomon Rubin	33.3333%

Proposed Realty Operator	Membership
NNRC Properties, LLC	
Joel Landau	33.3334%
Marvin Rubin	33.3333%
Solomon Rubin	33.3333%

The proposed members have ownership interest in four RHCF facilities: Hamilton Park Multicare, LLC d/b/a Hamilton Park Nursing and Rehabilitation Center; Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare; Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Healthcare; and St Marks Brooklyn Associates, LLC d/b/a Crown Heights Center for Nursing and Rehabilitation.

DOH Recommendation

Contingent Approval

Need Summary

The proposed change of operator would result in the maintenance of an RHCF that serves as a needed community resource and maintains a high Medicaid enrollment.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative service or consulting agreements are proposed in this application.

Financial Summary

NNRC, LLC, d/b/a Nostrand Center for Nursing and Rehabilitation will acquire the RHCF operating assets for $5,000,000, which will be funded as follows: $500,000 from member's equity, which has already been paid into escrow, and a two year (up to) $5,000,000 promissory note issued by NNRC, Inc., carrying an adjustable interest rate, currently at 4.25%. The promissory note is secured by two year standby letter of credit from Skyline Capital with a 3% interest rate. NNRC Properties, LLC, the applicant's landlord, is purchasing the real property for $15,600,000, and its members will contribute $1,560,000 in equity along with entering into a $14,040,000 loan for 10 years at 5% interest rate with a 25 year amortization schedule. A letter of interest for the real property loan has been provided by Skyline Capital. There are no project costs associated with this proposal.

Budget:	Revenues:	$16,715,506
	Expenses:	14,760,653
	Gain/ (Loss)	$ 1,954,853

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
     - Information on activities relating to a-c above;
     - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
     - Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of an executed promissory note to purchase nursing home operations, acceptable to the Department. [BFA]
4. Submission of a letter of credit commitment to purchase nursing home operations, acceptable to the Department. [BFA]
5. Submission of a working capital commitment, acceptable to the Department. [BFA]
6. Submission of a real property loan commitment, acceptable to the Department. [BFA]
7. Submission of executed building lease, acceptable to the Department. [BFA]
8. Submission of a completed Schedule 3, acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
10. Submission of an executed Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
12. Submission of an executed Asset Purchase Agreement, acceptable to the Department. [CSL]
13. Submission of an executed Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
14. Submission of an executed Medical Affidavit, acceptable to the Department. [CSL]
15. Submission of an executed Lease Agreement that is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
June 12, 2014

Need Analysis

Background

NNRC LLC, seeks approval to become the new operator of Cabs Nursing Home Company, a 157-bed Article 28 residential health care facility located at 270 Nostrand Avenue, Brooklyn, 11205, in Kings County. Upon approval, the facility will be known as Nostrand Center for Nursing and Rehabilitation.

Cabs Nursing Home Company's utilization was 93.0% in 2010, 95.5% in 2011, and 96.7% in 2012. Current utilization, as of April 16, 2014, at this facility is 94.9%. The new operator plans to increase utilization in the following ways:

- Develop a program focusing on stroke patients, specifically designing services specific to the population and investing in equipment proven to benefit stroke patients;
- Develop a kosher kitchen within the facility in order to meet the dietary needs of many of the residents from the facility's service area; and
- Continue to develop positive working relationships with the community and discharge planners at area hospitals, including Maimonides Medical Center, NYU Langone Medical Center, Beth Israel, Wyckoff, Kingsbrook Jewish, and Brooklyn Hospital.

Analysis

There is currently a need for 8,863 beds in the New York City Region as indicated in Table 1 below. However, the overall occupancy for the New York City Region was 94.8% for 2012 as indicated in Table 2.

Table 1: RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Cabs Nursing Home Company's utilization was 93.0% in 2010, 95.5% in 2011, and 96.7% in 2012. It is the understanding of the applicant that the low utilization was due to the facility's inability to adapt to the constant changes in the healthcare industry and to identify the programming and service needs of the facility's service area.

Table 2: Cabs Nursing Home Company/Kings County/New York City Region Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Cabs Nursing Home Company	93.0%	95.5%	96.7%
Kings County	95.0%	94.3%	94.4%
New York City Region	95.4%	94.8%	94.8%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Cabs Nursing Home Company's Medicaid admissions for 2011 and 2012 was 99.0% and 98.7%, respectively, which exceeds Kings County 75% rates in 2011 and 2012 of 30.9% and 34.9%, respectively.

Conclusion

Approval of this application will result in the maintenance of a community resource that provides needed services to the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Cabs Nursing Home Company Inc.	Nostrand Center for Nursing and Rehabilitation
Address	270 Nostrand Avenue	Same
RHCF Capacity	157	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Cabs Nursing Home Company Inc.	NNRC LLC Managing Members: Joel Landau 33.33% Marvin Rubin 33.33% Solomon Rubin 33.33%

Character and Competence – Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present

<u>New Jersey Nursing Home</u>

Norwood Terrace Health Center	09/2003 to present

<u>Licensed Home Care Services Agency (LHCSA)</u>

True Care, Inc.	03/2011 to present

<u>Individual Background Review</u>

Joel Landau is the Director of Care to Care, LLC, a radiology benefit management company. He is also the owner of The Intelimed Group, a medical contracting and credentialing company and E-Z Bill, a medical billing company. Joel Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present

Marvin Rubin is a manager at the Hamilton Park Nursing and Rehabilitation Center. Marvin Rubin discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center	12/2012 to present
True Care, Inc.	03/2011 to present

Solomon Rubin is the controller for the Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center. He is also a manager at Hamilton Park Nursing and Rehabilitation Center. Solomon Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Linden Center for Nursing and Rehabilitation	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation	04/2013 to present
Norwood Terrace Health Center	2000 to present

Character and Competence - Analysis

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

A review of operations for the Linden Center for Nursing and Rehabilitation, Hopkins Center for Rehabilitation and Healthcare, Hamilton Park Nursing and Rehabilitation Center, and Crown Heights Center for Nursing and Rehabilitation for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed agreement to purchase the RHCF operating interest; the terms are summarized below:

Date:	November 22, 2013
Seller:	Cabs Nursing Home Company, Inc.
Purchaser:	NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation
Assets Transferred Operations:	Rights, title and interest in the assets free and clear of all liens. Assets include: equipment, assigned contracts, resident records, operating manuals, Medicare & Medicaid agreements and provider numbers, permits, business records, allowable deposits and warranties, and all other assets used in the operations including, tangible and intangible assets, and goodwill.
Excluded Assets:	The names “CABS Nursing Home” and “CNH Long Term Home Health Program”, tax losses, refunds, non-assigned contracts, pre-closing accounts receivable.
Assumed Liabilities:	Those accruing after closing date.
Purchase Price:	$5,000,000
Payment of Purchase Price:	$ 500,000 escrow deposit paid on signing $5,000,000 promissory note

The Asset Purchase Agreement (APA) provides that the $5,000,000 purchase price may be increased or decreased at the time of closing. As a result, the initial deposit $500,000 and the Promissory note in the principal amount of $5,000,000 will ensure that the Closing Payment will be satisfied at the time of closing. In the event the Closing Payment is less than $5,000,000 (above note), the buyer will receive a Closing Refund to reflect that amount, which the buyer can apply as a payment against the promissory note principal balance.

The purchase price is proposed to be satisfied as follows:

Equity – NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation, members paid into escrow	$500,000
Promissory Note issued by NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation, – 2 year terms, at Prime rate (currently 3.25% plus 1% or 4.25% adjusted quarterly)	$5,000,000

Skyline Capital has provided a letter of interest to provide a two year standby Letter of Credit at 3% to secure the promissory note.

BFA Attachment A are the proposed members’ net worth summaries for NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation and NNRC Properties, LLC, which reveal sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Marvin Rubin has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

Purchase/Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF real property, the terms are summarized below:

Date:	November 22, 2013
Seller Realty:	Cabs Nursing Home Company, Inc.
Purchaser Realty:	NNRC, Properties LLC
Assets Transferred Realty:	All rights, title and interest in parcel of land, building/s, improvements, fixtures, easements and appurtenances, located at 270 Nostrand Avenue, Brooklyn, New York and known as Block 1778 and Lot 55.
Purchase Price:	$15,600,000
Payment of Purchase Price:	$ 1,560,000 escrow $14,040,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity – NNRC Properties, LLC members	$1,560,000
Loan – 5% interest, 10-year terms with 25 year amortization	$14,040,000
Total	$15,600,000

The letter of interest for the loan has been provided by Skyline Capital. The members have provided an affidavit to personally fund the balloon payment, should terms acceptable to the Department of Health be unavailable at the time of refinancing. BFA Attachment A are the proposed members' net worth summaries for NNRC Properties, LLC and NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation, which reveal sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Marvin Rubin has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

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

Lease Agreement and Medicaid Capital Reimbursement

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

Premises:	157-Bed RHCF located at 270 Norstrand Avenue, Brooklyn
Owner/Landlord:	NNRC Properties, LLC
Lessee:	NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation
Term:	Twenty years with the intend of (1) renewal option with a 10-year term
Rent:	$1,500,000 per year 1st & 2nd years ($125,000 per month) & in the 3rd year rent increases to $1,800,000 per year
Provisions:	Triple net lease

The lease arrangement is a non-arm's length agreement. Currently, Medicaid capital cost is reimbursed based on the interest and depreciation reimbursement methodology. After the change in the ownership, capital reimbursement will be based on the return of and return on equity methodology. Based on depreciable asset value, the estimated real property's life is approximately nine years.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year and third years subsequent to the change in ownership. The budgets are summarized below:

	Per Diem	First Year Total	Per Diem	Third Year Total
Revenues:				
Medicaid	$184.86	$8,305,760	$200.00	$8,424,000
Medicare	600.00	5,052,000	650.00	6,571,500
Private Pay	400.00	1,124,000	430.00	1,689,900
Other Operating*		30,106		30,106
Total Revenues:		$14,511,866		$16,715,506
Expenses:				
Operating		$12,660,094		$12,433,216
Capital		2,092,602		2,327,437
Total Expenses:		$14,752,696		$14,760,653
Net Income (Loss):		$(240,830)		$1,954,853
Utilization (resident days)		56,160		56,160
Occupancy		98%		98%

*Office rent and vending machine revenue

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

- Medicaid revenues are based on the current rates.
- Medicare revenues are based on the current rates
- Private revenues are based on the current rates.
- Overall utilization is projected at 98%. Utilization for the years from 2006 through 2012 averaged 95.59% and on March 5, 2014 the facility reported on the DOH's Nursing Home Profile a 92.4% occupancy rate. The applicant states the occupancy rate has risen 3% since reporting on March 5, 2014. Additionally the facility intends to increase occupancy further through attracting the high local population by developing programs directed towards them and establishing a kosher kitchen through an administrative modification. These changes will help serve the local community and increase occupancy.
- Utilization by payer source for the first and third years is expected to average as follows:

	Year 1	Year 3
Medicaid	80.0%	75.0%
Medicare	15.0%	18.0%
Private/Other	5.0%	7.0%

- Breakeven point is estimated at 87.73% in the third year

By the third year the applicant expects to generate an operating surplus of $1,954,853. The areas that offers opportunities are: increasing the case mix index (CMI), currently Cabs Nursing Home Company, Inc. is at 0.80, which is the lowest CMI when compared to all other nursing homes in Kings County, and 37.5% lower than the 1.10 median CMI for Kings County. The applicant intends to develop a dedicated stroke unit, which should increase the rehabilitative services and help realign payers between Medicare and private pay patients

Capability and Feasibility

NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation proposes to acquire the operating interest of Cabs Nursing Home Company, Inc., a 157-bed RHCF, for $5,000,000. The members have contributed equity of $500,000 and will enter into (up to) $5,000,000 secured promissory note with Cabs Nursing Home Company, Inc. at the above stated terms.

Working capital is estimated at $2,458,783, and is based on two months of the first year expenses; half, or $1,229,392, will be satisfied from members equity. The remaining $1,229,391 will be satisfied through a 5 year loan at 5% from Skyline Capital. Review of BFA Attachment A, summary of net worth, reveals sufficient resources for working capital equity. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Marvin Rubin has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest.

BFA Attachments B is the pro-forma balance sheets for NNRC, LLC d/b/a Nostrand Center for Nursing and Rehabilitation and shows the entity will start off with equity in the amount of $1,729,392. The pro-forma balance sheet shows total assets includes $5,000,000 in intangible assets, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If intangible assets were eliminated from the equation, total net asset would become a negative $3,270,608.

The submitted budget indicates $1,954,853 surplus would be generated in the third year after the change in ownership. The following is a comparison of the 2012 historical and the projected revenues and expenses:

Projected Revenue	$16,715,506
Projected Expense	14,760,653
Projected Net Income	$1,954,853
Annual 2012 Operating Revenue*	$12,099,520
Annual 2012 Other Income**	205,502
Total Annual 2012 Revenue	$12,305,022
Annual 2012 Expense*	13,898,930
Annual 2012 Net Income (Loss)	($1,593,908)
Incremental Net Income (Loss)	$3,548,761

*The Long Term Home Health Care program (LTHHCP) isn’t being purchased by the applicant, therefore the revenue and expenses of $3,084,869 and $2,823,551, respectively, have been excluded from the 2012 numbers. ** The Other Income is primarily interest income and reimbursement of overhead.

It is estimated that incremental revenues will increase approximating $4,410,484, coming primarily from the following realignment of utilization: a drop of 7,863 in Medicaid inpatient days going from 49,963 or 90% to 42,120 or 75%, (reducing revenues $592,556); increase Medicare inpatient days going from 5,509 or 10% to 10,110 or 18% (increasing revenues $3,524,969); increasing private utilization by approximately 6%, which adds $1,653,467 to the revenue stream; and eliminating $175,396 in other income. The Department has determined the facility would still be profitable with achieving only 25% of the projected realignment by the third year.

The applicant projects expenses to climb by a net $861,723 primarily from the following: rent and depreciation and interest expenses are projected to increase by $1,803,357; offset by a $941,634 reduction in expenses, primarily from salaries, employee benefits, professional fees, purchased services, and other direct expenses. The budget was created taking into consideration the proposed new owners experience in operating similar facilities. The budget appears reasonable

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Cabs Nursing Home Company, Inc. for the period from 2010 through 2012, had an average positive working capital position of $2,981,591, average net asset position of $8,292,684, and generated an average loss of $724,382. The operating losses from 2010 -2012 were primarily due to a reduction in the Medicaid rate, a low CMI, and the recording a $786,266 allowance for bad debts in 2012. The applicant states the facility has one of the lowest Medicaid rates in Kings County.

As shown on BFA Attachment D, Hamilton Park Multicare, LLC d/b/a Hamilton Park Nursing and Rehabilitation Center for the period from 2011 through September 30, 2013, had an average negative working capital position of $1,723,559, average positive net asset position of $2,412,771, and generated an average operating surplus of $1,030,786. The negative working capital was the result of investing in capital improvements, which includes adding 50 beds to the facility. The working capital shortage is being rectified, as these beds are currently occupied and will generate an additional operating surplus. The average occupancy for the period was 97.64%.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, NNRC, LLC, d/b/a Nostrand Center for Nursing and Rehabilitation and NNRC Properties, LLC
BFA Attachment B	Pro-forma Balance Sheet, NNRC, LLC, d/b/a Nostrand Center for Nursing and Rehabilitation
BFA Attachment C	Financial Summary, Cabs Nursing Home Company, Inc.
BFA Attachment D	Financial Summary, Hamilton Park Multicare, LLC d/b/a Hamilton Park Nursing and Rehabilitation Center

Public Health and Health Planning Council

Project # 141029-E

Ontario Operations Associates LLC d/b/a Ontario Center for Rehabilitation and Healthcare

County: **Ontario**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Acknowledged: **January 22, 2014**

Executive Summary

Description

Ontario Operations Associates, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare requests approval to be established as the new operator of Ontario County Health Facility, an existing 98-bed not-for-profit residential health care facility (RHCF) located at 3062 County Complex Drive, Canandaigua, New York (Ontario County). A separate realty entity, Ontario Land Associates, LLC, will acquire the facility's real property.

The current sole member of Ontario County Health Facility is the County of Ontario, a municipal corporation of the State of New York.

Ownership of the operating interests of the proposed operator is as follows:

<u>Proposed Operator</u>
Ontario Operations Associates, LLC d/b/a
Ontario Center for Rehabilitation and Healthcare

Amir Abramchik	95%
Deborah Abramchik	5%

BFA Attachment A presents the proposed members' net worth statements. Amir Abramchik has ownership interest in five RHCF facilities: Chittenango Center, LLC d/b/a Chittenango for Rehabilitation and Health Care; Rome Center, LLC d/b/a Rome Center for Rehabilitation and Health Care; Fulton Center for Rehabilitation and Healthcare, LLC; SV Operating Three, LLC d/b/a Richmond Center for Rehabilitation and Specialty Healthcare, and Pavilion Operations, LLC d/b/a Corning Center for Rehabilitation and Healthcare.

DOH Recommendation

Contingent Approval

Need Summary

Ontario County Health Facility's utilization was 95.9% in 2010, 88.9% in 2011, and 87.4% in 2012. Current utilization, as of March 5, 2014, was 94.9%. The proposed operator plans to create outreach programs with both hospitals and managed long term care plans in the service area. The proposed operator will also focus on increased training to all staff members in order to ensure that the facility is capable of accepting and retaining hard to place residents, such as dementia patients and individuals with low case mix scores

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare will acquire the RHCF operating assets for $1,000,000, to be funded as follows: $100,000 from member's equity, which has been deposited into escrow, and a $900,000 loan, with a 20-year amortizing schedule at a 5% interest rate. There are no project costs associated with this proposal.

Budget:	Revenues:	$7,495,184
	Expenses:	7,359,410
	Gain/ (Loss)	$ 135,774

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

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Health Systems Management
<u>Approval contingent upon</u>:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
    - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above;
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment, acceptable to the Department. [BFA]
4. Submission of a working capital commitment, acceptable to the Department. [BFA]
5. Submission of executed building lease, acceptable to the Department. [BFA]
6. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Ontario Operations Associates, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Assumed Name of Ontario Operations Associates, LLC, acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

Council Action Date
June 12, 2014

Need Analysis

Background

Ontario Operations Associates, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare, seeks approval to become the established operator of Ontario County Health Facility, a 98-bed Article 28 residential health care facility located at 3062 County Complex Drive, Canandaigua, 14424, in Ontario County.

Analysis

There is currently a surplus of 82 beds in Ontario County as indicated in Table 1 below. The overall occupancy for Ontario County is 89.7% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Ontario County

2016 Projected Need	533
Current Beds	615
Beds Under Construction	0
Total Resources	615
Unmet Need	-82

Ontario County Health Facility's utilization was 95.9% in 2010, 88.9% in 2011, and 87.4% in 2012. It is the proposed operator's understanding that utilization has suffered over the years because the current operator has been limited in its ability to direct resources towards outreach programs.

Table 2: Ontario County Health Facility/Ontario County

Facility/County/Region	**% Occupancy 2010**	**% Occupancy 2011**	**% Occupancy 2012**
Ontario County Health Facility	95.9%	88.9%	87.4%
Ontario County	94.7%	91.8%	89.7%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Ontario County Health Facility's Medicaid admissions for 2011 and 2012 was 33.3% and 74.1%, respectively. This facility exceeded Ontario County 75% rates in 2011 and 2012 of 9.7% and 17.8%, respectively.

Conclusion

Approval of this application will result in the maintenance of a needed source of RHCF care for Ontario County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Ontario County Health Facility	Ontario Center for Rehabilitation and Healthcare
Address	3062 County Complex Drive Canandaigua, NY 14424 PFI: 0683	Same
RHCF Capacity	98	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Ontario	Ontario Operations Associates LLC d/b/a Ontario Center for Rehabilitation and Healthcare Members: Amir Abramchik 95.00% Deborah Abramchik 5.00% 100.00%

Character and Competence-Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehabilitation and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator, in good standing, in New York and New Jersey. Mr. Abramchik is employed by Centers for Specialty Care as the director of special projects since 2007. Prior employment was as administrator at Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Chittenango Center for Rehabilitation and Health Care	(2%)	05/2011 to present
Rome Center for Rehabilitation and Health Care	(2%)	05/2011 to present
Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(5%)	06/2013 to present

Deborah (Itzkowitz) Abramchick retired in 2005 as bookkeeper at Samuel Kunstler Textiles. Ms. Abramchick discloses no ownership interests in health care facilities

Character and Competence- Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, Fulton Center for Rehabilitation and Health Care, Richmond Center for Rehabilitation and Specialty Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed agreement to purchase the RHCF operating interest, the terms are summarized below:

Date:	December 6, 2013
Seller:	County of Ontario
Purchaser:	Ontario Operations Associates, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare
Assets Transferred Operations:	Rights, title and interest in the assets free and clear of all liens. Assets shall mean all assets, properties and rights used or usable in the operations of the Facility, tangible or intangible. Rights to continue to participate in the programs. To the extent transferable all contracts, licenses, certificates, and permits to operate relating to the operation of the facility. Documents necessary to operate the facility. Information related to providers for services and provider agreements. Inventory and supplies, transferrable business and marketing records. Computers and software programs, right to intellectual property, Medicare and Medicaid provider numbers, security deposits, resident funds, telephone and fax numbers.
Excluded Assets:	Cash, marketable securities, pre-closing accounts receivable, third party claims, refunds, loans receivable and retroactive rate increases.
Assumed Liabilities:	Those accruing after closing date.
Purchase Price:	$1,000,000
Payment of Purchase Price:	$ 100,000 escrow deposit paid on signing $ 900,000 at closing

The purchase price is proposed to be satisfied as follows:

Equity: Ontario Operations Associates, LLC, members paid into escrow	$ 100,000
Loan: 10 year terms, 20-year amortizing schedule at 5% interest rate	900,000
Total	$1,000,000

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

Ontario Land Associates, LLC will be the new owners of the real property and their members are as follows:

Ontario Land Associates, LLC	Membership
Daryl Hagler	50%
Kenneth Rozenberg	50%

Ontario Land Associates, LLC entered into a Land Sale Contract on December 6, 2013, with County of Ontario for the purchase of the nursing home's real property (98-bed RHCF located at 3062 County Complex Drive, Canandaigua, New York Ontario County) for $1,000,000. A deposit of $100,000 has been escrowed. At this time, Ontario Land Associates, LLC has not decided whether it will finance the real property purchase or use members' equity.

The applicant has noted that its members have other business relationships with Daryl Hagler and Kenneth Rozenberg.

Lease Agreement and Medicaid Capital Reimbursement

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

Date:	December 17, 2013
Premises:	98 Bed RHCF located at 3062 County Complex Drive, Canandaigua, New York 14424
Owner/Landlord:	Ontario Land Associates, LLC
Lessee:	Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare
Term:	Ten years with the intend of (1) renewal option with a 10-year term
Rent:	$400,000 per year ($33,333.33 per month)
Provisions:	Triple net lease

The lease arrangement is an arm's length agreement. Currently, Medicaid capital cost is reimbursed based on the interest and depreciation reimbursement methodology. After the change in the ownership, capital reimbursement will be based on the return of and return on equity methodology. Based on depreciable asset value, the estimated real property's life is approximately thirteen years.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year and third years subsequent to the change in ownership. The budgets are summarized below:

	Per Diem	**First Year Total**	**Per Diem**	**Third Year Total**
Revenues:				
Medicaid	$185.90	$5,409,552	$192.10	$5,708,674
Medicare	192.11	261,839	207.35	291,951
Private Pay	408.33	1,436,497	418.41	1,494,559
Total Revenues:		$7,107,888		$7,495,184

Expenses:		
Operating	$7,044,540	$6,852,510
Capital	509,721	506,900
Total Expenses:	$7,554,261	$7,359,410
Net Income (Loss):	$(446,373)	$135,774
Utilization (resident days)	33,981	34,697
Occupancy	95%	97.0%

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

- Medicaid, and Private revenues are based on the current rates
- Overall utilization is projected at 97%. Utilization for the years from 2006 through 2012 averaged 93.94% and for 2013, it averaged 82.78%.
- Utilization by payor source is anticipated as follows:

Medicaid	85.65%
Medicare	4.05%
Private/Other	10.30%

- Breakeven point is estimated at 95.5% in the third year

The applicant is committed to increase utilization through new and creative outreach programs with both hospitals and managed long term care plans in the service area. Further, the proposed operator states they are focused on the occupancy rate and will actively conduct outreach in order to maintain sufficient occupancy levels. Also, it is the applicants' understanding that the current operator (County of Ontario) was unable to direct resources towards outreach programs.

By the third year, the applicant expects to generate an operating surplus of $135,774. The areas that offer opportunities are: increasing the case mix index (CMI), currently at 0.9; create operating efficiencies though realigning staff and centralizing some administrative and clerical departments; increasing occupancy by 2%. Based on the applicants' experience, they believe the current CMI of .09 is lower than other similar facilities.

Capability and Feasibility

Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare proposes to acquire the operating interest of Ontario County Health Facility, a 98-bed RHCF, for $1,000,000. The members have already deposited $100,000 of equity into the escrow account and will enter into a loan with Greystone for $900,000 at the above stated terms.

Working capital is estimated at $1,259,044 and is based on two months of the first year expenses. Half, or $629,522 will be satisfied from members equity. The remaining $629,522 will be satisfied through a five year loan at 5% from Greystone. Review of BFA Attachment A, summary of net worth, reveals sufficient resources for working capital equity.

BFA Attachments B, the pro-forma balance sheets for Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare, shows the entity will start off with equity in the amount of $729,522. The pro-forma balance sheet shows total assets include $1,000,000 in intangible assets, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If intangible assets were eliminated from the equation, then total net asset would become a negative $270,478.

The submitted budget indicates a $135,774 surplus would be generated in the third year after the change in ownership. Following is a comparison of 2012 historical and projected revenues and expenses:

Projected Income	$ 7,495,184
Projected Expense	7,359,410
Projected Net Income	$135,774
Annual 2012 Operating Income	$6,555,482
Annual 2012 Non-Operating Income*	3,482,518
Total Annual 2012 Income	$10,038,000
Annual 2012 Expense	9,438,982
Annual 2012 Net Income (Loss)	$599,018
Incremental Net Income (Loss)	$(463,244)

*Contributions from County Subsidies of $2,000,000 and Intergovernmental Transfers (IGT) of $1,482,518.

Excluding Ontario County Health Facility's non-operating income of $3,482,518, it is estimated that incremental net revenue will increase approximately $939,702, coming from an increase in inpatient days of 3,359. The majority of the increase, or 2,880 inpatient days, is from added Medicaid inpatients days, at the current rate of $192.10 per day or $719,803; the remaining balance comes from 151 added Medicare inpatient days at $207.35 per day or $50,475, and an increase in private inpatient days of 328 at $418.41 per day, or $169,424.

The applicant projects expenses to decline by $2,079,572, primarily from reduction in the following: decline in fringe benefits of $1,091,466 going from 55.6% to 34%; a reduction in wages and salaries of $805,921 (staffing is expected to decline from 120.9 FTE to 70.6 FTE, a net reduction of -50.3 FTE's). The reduction is made up of the following: reduction in management of - 5.8 FTE; reduction in clerical of -29 FTE; reduction in aids, orderlies and attendants of -23.7 FTE; reduction in licensed practical nurses of -6.6 FTE; reduction in various of -2 FTE; an increase in registered nurses of 7 FTE; increase in infection control, environment, and food service of 9.8 FTE). The applicant expects to create operating efficiencies through realigning staff and centralizing some administrative and clerical departments. A reduction of $420,601 in expenses (primarily in purchase services and other direct expenses) was offset by increases in depreciation, rent, and interest expense brought the net reduction to $182,185. The budget was created taking into consideration the proposed new owners experience in operating similar facilities. The budget appears reasonable

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, Ontario County Health Facility, for the periods from 2010 through 2012, shows a surplus in years 2012 and 2011, and a loss in 2010. The key to whether the facility enjoyed positive results or a loss, stems from whether the facility received substantial added support from the County and from Intergovernmental transfers, which, when combined averaged $3,887,699 per year. The applicant states profitability is a challenge in the light of rising health care and pension costs coupled with diminishing reimbursements. Occupancy averaged 88.4% during this period. As for 2010, the facility experienced a loss, as they received only $165,000 in support.

As shown on BFA Attachment D, Chittenango Center, LLC d/b/a Chittenango for Rehabilitation and Health Care for the period from 2010 through 2012, the facility had an average negative working capital position of $132,674; average net asset position of $603,905, and generated an average operating surplus of $304,881. The $65,779 loss in 2012 was primarily due to a net reduction in the Medicaid rate, which totaled approximately $430,361for the year. The Medicaid rate adjustment was one the factors that the working capital turned negative. The average occupancy for the period was 97.84%.

As shown on BFA Attachment E, Rome Center, LLC d/b/a Rome Center for Rehabilitation and Health Care for the period from May 1, 2011 through 2012, the facility had an average negative working capital position of $23, 817, a positive average net asset position of $1,653,639, and generated an average operating surplus of $847,961. The negative capital arose because the members withdrew slightly more equity than they earned. The average occupancy for the period was 97.25%.

As shown on BFA Attachment F, Fulton Center for Rehabilitation & Healthcare, LLC for the period from April 1, 2012 (start of operations) through December 31, 2012, the facility had a negative working capital position of $1,438,371, positive net asset position of $464,157 and generated an operating surplus of $472,157. The negative capital is the results of investing in capital equipment. The average occupancy for the period was 90.90%.

As shown on BFA Attachment G, SV Operating Three, LLC d/b/a Richmond Center for Rehabilitation and Specialty Healthcare for the period from April 1, 2012 (start of operations) through December 31, 2012, the facility had a positive working capital position of $38,819, positive net asset position of $5,319,897 and generated an operating surplus of $764,047. The occupancy for the period was 94.77%.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA-Attachment A	Net Worth of Proposed Members, Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare
BFA-Attachment B	Pro-forma Balance Sheet, Ontario Operations Associates, LLC, LLC, d/b/a Ontario Center for Rehabilitation and Healthcare
BFA-Attachment C	Financial Summary, Ontario County Health Facility
BFA-Attachment D	Financial Summary, Chittenango Center, LLC d/b/a Chittenango for Rehabilitation and Health Care
BFA-Attachment E	Financial Summary, Rome Center, LLC d/b/a Rome Center for Rehabilitation and Health Care
BFA-Attachment F	Financial Summary, Fulton Center for Rehabilitation & Healthcare, LLC
BFA Attachment G	Financial Summary, SV Operating Three, LLC d/b/a Richmond Center for Rehabilitation and Specialty Healthcare

Public Health and Health Planning Council

Project # 141091-E

Atlantis Operating LLC d/b/a The Phoenix Rehab and Healing Center

County: **Kings** ***Program:*** **Residential Health Care Facility**
Purpose: **Establishment** ***Acknowledged:*** **March 6, 2014**

Executive Summary

Description

Atlantis Operating, LLC d/b/a The Phoenix Rehab and Healing Center requests approval for the change in operator of Atlantis Rehabilitation & Residential Health Care Facility, a 400-bed nursing home located in Kings County. There will be no change in services provided.

Concurrent with Atlantis Operating, LLC entering into the Asset Purchase Agreement, GPNZ Realty Co., LLC, a related party, will enter into an agreement with Atlantis Property, LLC for the sale and acquisition of the real property interests of the facility. Atlantis Property, LLC, as landlord and Atlantis Operating, LLC, as tenant, will enter into a lease for site control of the facility. Atlantis Operating, LLC, and Atlantis Property, LLC have common ownership.

The current and proposed operator is as follows:

Current		Proposed	
Atlantis Rehabilitation & Residential Health Care Facility, LLC		Atlantis Operating, LLC	
Members:		Members:	
Cheryl Guttmann	3.89%	Devorah Friedman	40.0%
Steven Neuman	6.71%	Sharon Einhorn	40.0%
Jeremy Newman	6.70%	Sanjay Ahuja	5.0%
Jonathan Newman	6.70%	Vanita Mudgil	2.5%
Betty Kreiger	3.00%	Namita Mohan	2.5%
Elias Pelman	2.00%	Harold Weinstein	2.5%
Ashira Ostrow	7.00%	Aaron Schlosser	2.5%
Ayeet Goldberg	7.00%	Israel Minzer	5.0%
Jonathan Pelman	7.00%		
Diane Rice	8.00%		
Brian Glattstein	9.00%		
Sharon Singer	9.00%		
Michele Klerer	4.80%		
Rachelli Levine	4.80%		
Ariella Weiss	4.80%		
Moshe Zakheim	4.80%		
Rena Zakeim	4.80%		

Several of the proposed members have ownership interest in additional RHCF facilities.

DOH Recommendation

Contingent Approval

Need Summary

Atlantis Rehabilitation & Residential Health Care Facility's utilization was 93.6% in 2010, 92.6% in 2011, and 95.8% in 2012. Current utilization, as of February 26, 2014, is 96.5%.

The change in ownership will not result in any change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

The purchase price for the acquisition of the operating interests of Atlantis Rehabilitation & Residential Health Care Facility, LLC is $29,250,000. The purchase price will be met as follows: Equity contributions of $5,850,000 and a mortgage of $23,400,000 at a rate of 5% for a term of 25 years. The purchase price for the acquisition of the real estate interests is $25,250,000. The real property purchase price will be met as follows: Equity of $5,050,000 and a mortgage of $20,200,000 at a rate of 5% for a term of 25 years.

Total Budget:

Revenues:	$ 41,955,187
Expenses:	41,015,296
Net Income:	$939,891

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
    - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
        - Information on activities relating to a-c above;
        - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of an executed mortgage bank loan, acceptable to the Department. [BFA]
4. Submission of an executed working capital loan, acceptable to the Department. [BFA]
5. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
6. Submission of an executed lease rental agreement, acceptable to the Department. [BFA]
7. Submission of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission of an executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a Restated Article of Organization, acceptable to the Department. [CSL]
10. Submission of an executed Lease Agreement, acceptable to the Department. [CSL]
11. Submission of an executed Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Need Analysis

Background

Atlantis Operating, LLC d/b/a The Phoenix Rehab and Healing Center seeks approval to become the established operator of Atlantis Rehabilitation & Residential Health Care Facility, a 400-bed residential health care facility located at 140 St. Edwards Street, Brooklyn, 11204, in Kings County.

Analysis

There is currently a need for 8,663 beds in the New York Region as indicated in Table 1 below. However, the overall occupancy for the New York Region is 94.8% for 2012 as indicated in Table 2.

Table 1: RHCF Need – New York Region

2016 Projected Need	51,071
Current Beds	42,330
Beds Under Construction	78
Total Resources	42,408
Unmet Need	8,663

Atlantis Rehabilitation & Residential Health Care Facility's utilization was 93.6% in 2010, 92.6% in 2011, and 95.8% in 2012. Utilization declined in 2011 due to the current operator's desire to bring in a different payor mix, which was unsuccessful. In 2012, the facility returned to its traditional admissions standards, resulting in increased utilization. The proposed operators plan to meet with local community leaders, hospitals, and physicians to determine need and will design programs specific to meeting those needs.

Table 2: Atlantis Rehabilitation & Residential Health Care Facility/Kings County/New York Region Occupancy

Facility/County/Region	% Occupancy 2010	% Occupancy 2011	% Occupancy 2012
Atlantis Rehabilitation & Residential Health Care Facility	93.6%	92.6%	95.8%
Kings County	95.0%	94.3%	94.4%
New York Region	95.4%	94.8%	94.8%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or Health Systems Agency percentage, whichever is applicable.

Atlantis Rehabilitation & Residential Health Care Facility's Medicaid admissions rates for 2011 and 2012 were 17.1% and 25.0%, respectively. This facilty did not exceed Kings County 75% rates in 2011 and 2012 of 30.9% and 34.9%, respectively and will be required to follow the contingency plan as noted below.

Conclusion
Approval of this application will result in the maintenance of a needed RHCF resource for the affected community.

Recommendation
From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Atlantis Rehabilitation and Residential Health Care Facility	The Phoenix Rehab and Healing Center
Address	140 St. Edwards Street Brooklyn, NY. 11204	Same
RHCF Capacity	400	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Atlantis Rehabilitation and Residential Health Care Facility, LLC Members: Brian Glattstein Sharon Singer Ashira Osrow Avelet Goldberg Jonathan Pelman Michelle Klerer Diane Rice Steven Neuman Jeremy Neuman Jonathan Neuman Cheryl Guttman Betty Krieger Elias Pelman Rachelli Levine Ariella Weiss Moshe Zakheim Rena Zakheim	Atlantis Operating, LLC Managing Members: Devorah Friedman 40.0% Sharon Einhorn 40.0% Members: Israel Minzer 5.0% Sanjay Ahuja 5.0% Vanita Mudgil 2.5% Namita Mohan 2.5% Harold Weinstein 2.5% Aaron Schlosser 2.5%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Dumont Center for Rehabilitation	08/2010 to present
Glengariff Health Care Center	09/2008 to present
Ramapo Manor Center for Rehabilitation & Nursing	05/2006 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
Sans Souci Rehabilitation & Nursing Center	10/2009 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Waters Edge at Port Jefferson for Rehabilitation and Nursing	09/2008 to present

Individual Background Review

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	09/2013 to present

Israel Minzer is the president of Healthcare Equipment and Parts, a diagnostic medical equipment supplier in Brooklyn, NY. Mr. Israel Minzer discloses the following ownership interests:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present

Sanjay Ahuja is the Chief Executive Officer of Glengariff Health Care Center, a nursing home located in Glen Cove, New York. Mr. Ahuja discloses the following ownership interests in health care facilities:

Glengariff Health Care Center	09/2008 to present
Waters Edge at Port Jefferson for Rehabilitation and Nursing	09/2008 to present
Ramapo Manor Center for Rehabilitation and Nursing	05/2006 to present

Vanita Mudgil discloses no employment history over the last 10 years. Ms. Mudgil discloses the following ownership interests in health care facilities:

Glengariff Health Care Center	09/2008 to present
Waters Edge at Port Jefferson for Rehabilitation and Nursing	09/2008 to present
Ramapo Manor Center for Rehabilitation and Nursing	05/2006 to present

Namita Mohan is a licensed nursing home administrator in New York State and is considered to be in good standing. She lists her employment as a member/manager of Glengariff Health Care Center. Ms. Mohan discloses the following ownership interests in health facilities:

Glengariff Health Care Center	09/2008 to present
Waters Edge at Port Jefferson for Rehabilitation and Nursing	09/2008 to present
Ramapo Manor Center for Rehabilitation and Nursing	05/2006 to present

Harold Weinstein is a vice president of Max Kahan, Inc., a precious metals refinement company located in New York, New York. Mr. Weinstein discloses the following ownership interest in health care facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present

Aaron Schlosser lists his employment as sales at Robert Klein Diamonds, a jewelry company located in New York, New York. Mr. Schlosser discloses the following ownership interest in health care facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present

Character and Competence – Analysis

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

A review of Sans Souci Nursing Home for the period reveals that the facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing, Glengariff Health Care Center, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, and Waters Edge at Port Jefferson for Rehabilitation and Nursing reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operations of Atlantis Rehabilitation and Residential Health Care Facility, which is summarized below:

Date:	January 6, 2014
Seller:	Atlantis Rehabilitation and Residential Health Care Facility, LLC
Purchaser:	Atlantis Operating, LLC
Assets Acquired:	Business and operation of the Facility; fixed equipment; non-fixed equipment; all inventory and supplies owned by the Company for use in the Facility; all resident records and other records of those residents who are being treated as of the Closing Date; all menus, policy and procedures manuals and compliance programs related to the operation of the Business; the Medicare and Medicaid provider agreements related to the Business; and all Permits by the Company that are necessary to operate the Facility and the Business; all prepaid expenses, credits, security deposits, deferred charges, advanced payments, prepayment and prepaid items of the Company; all computer software, programs, operating systems owned or leased by or licensed to the Company; all telephone numbers and facsimile numbers used by the Company; goodwill and other intangible assets of the Company and all warranties and guaranteeing made by or received from any person with respect to the Purchased Assets.
Excluded Assets:	Cash, deposits and cash equivalents; all of the accounts and loans receivable due to the Company; any vehicles owned by the Company; the Purchase Price and all rights of the Company pursuant to the Transaction Documents; all payments or cash equivalent credits relating to the Business resulting from claims, insured premiums rate reductions or insurance or other dividends paid or accruing for periods prior to the Closing Date; all rate increases and/or lump sum payments, resulting from rate appeals with respect to third party payments and any personnel records and other records that the Company is required by Law to retain in its possession.
Assumed Liabilities:	The accounts payable of the Company arising or incurred from the operation of the Facility and the Business prior to the Closing; liabilities and obligations related to the operation of the Facility; all of the liabilities and obligations of the Company arising under the Assumed Contracts; all Post Closing Date Healthcare Program Liabilities and all obligations as of the Closing under the Real Property Lease that arise on or after the Closing Date.
Liabilities Not Assumed:	All liabilities arising as a result of the conduct of any Business by the Company other than the Business; pre closing date payables, except the Assumed Accounts Payable; all cash receipts assessments relating to all revenue received by the Company before and after the Closing Date; all pre closing after the healthcare program liabilities; any liability arising from or relating to claims of medical malpractice of the Company and all workers compensation obligations of the Company.
Purchase Price:	$29,250,000
Payment of Purchase Price:	Member equity of $5,850,000, mortgage of $23,400,000.

The purchase price will be financed as follows: Equity of $5,850,000 and a mortgage of $23,400,000 at a rate of 5% for a term of 25 years. .

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

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the purchase of the real estate; which is summarized below:

Date:	January 6, 2014
Premises:	The premises located at 137-71st Avenue, Flushing, New York
Seller:	GPNZ Realty Co., LLC
Purchaser:	Atlantis Property LLC
Purchase Price:	$25,250,000

The purchase price for the acquisition of the real estate interests is $25,250,000. The purchase price will be met as follows: Equity of $5,050,000 and a mortgage of $20,200,000 at a rate of 5% for a term of 25 years. A letter of interest has been submitted. .

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site where the nursing home is situated, summarized below:

Date:	February 24, 2014
Premises:	The premises located at 137-71 71st Avenue, Flushing, New York.
Landlord:	Atlantis Property, LLC
Tenant:	Atlantis Operating LLC
Term:	30 years
Rental:	The base rent shall be equal to the landlord's debt service on its mortgage covering the demised premises and $240,000. The total base rent shall be equal to $20,000 per month.

Operating Budget

The applicant has submitted an operating budget, 2014 dollars, for the first year subsequent to change in ownership:

Revenues:		
Medicaid	$252.07	$26,100,134
Medicare	$605.00	$ 8,700,505
Private Pay	$300.00	$ 431,430
Commercial	$275	$6,723,118
Total Revenues:		$41,955,187
Expenses:		
Operating Expense		$36,224,282
Capital Expense		$ 4,791,014
Total Expense		$41,015,296
Net Income		$ 939,891
Utilization: (Patient Days)		143,926
Occupancy:		98.58%

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

- Expenses include lease rental.
- Medicaid, Medicare and Private Pay revenues are based on the current payment rates for 2013 with no increase.
- Overall utilization for year one is projected at 98.58%, which is the current occupancy rate through September 30, 2013, while utilization by payer source is expected as follows:

Medicaid	77%
Medicare	9%
Private Pay	1%
Commercial	13%

Capability and Feasibility

The operation purchase price for the facility is $29,250,000. The proposed operators will meet the purchase price via member equity of $5,850,000 and a mortgage in the amount of $23,400,000 at a rate of 5% for a term of 25 years. BFA Attachment A is the net worth of the proposed members indicating sufficient equity for the contribution. Also, a letter of interest from a financial institution for the operational portion of this purchase has been submitted. The real estate purchase price is $25,250,000. The purchase price will be met via equity of $5,050,000 from the proposed members and $20,200,000 in the form of a mortgage loan at a rate of 5% for a term of 25 years. A letter of interest from the bank has been submitted.

Working capital requirements are estimated at $6,835,883, which appears reasonable based on two-months of first year expenses. The applicant has submitted a letter of interest to finance $3,200,000 at an interest rate of 4.5% for a ten-year term. The remainder, $3,635,883, will be provided as equity by the proposed members of Atlantis Operations LLC. BFA Attachment A is the net worth statements of the proposed members of Atlantis Operations, LLC, which reveals the availability of sufficient funds for the equity contribution to meet the purchase price and the working capital requirement. It is noted that resources are not available in proportion to ownership percentages, and each proposed member provided an affidavit stating he or she is willing to contribute resources not in proportion to ownership percentages.

BFA Attachment B is the pro-forma balance sheet and Income Statement of Atlantis Rehabilitation Center, LLC, for 2010 thru 2012. As shown, the operating entity, subsequent to the change in operations, indicates a positive net income of $939,891 during the first year of operation.

Projected Revenue	$41,955,187
Projected Expenses	$41,015,296
Projected Net Revenue	$ 939,891
2012 Historical Income	$39,917,786
2012 Historical Expenses	$37,136,503
2012 Net Income	$ 2,781,283
Incremental Income	$2,037,401
Incremental Expenses	$3,878,793
Net Incremental Income (Loss)	($1,841,392)

The applicant has indicated that the incremental income during the first year is based on the following assumptions:

- Occupancy is increasing from 96.11% in 2012, to 98.58% during the first year after the change in operator.
- Medicaid utilization is decreasing by 6.73%, while Medicare and Private Pay utilization is increasing by 2.15% and 4.65% during the first year after the change in operator. The projected utilization is consistent with the 2013 utilization.

The applicant has indicated that the incremental expenses during the first year is based on the following assumptions:

- Salaries and Wages ($444,436) and Employee Benefits ($192,357) are increasing based on trending from 2012.
- The following expenses also are increasing from 2012: Professional Fees ($35,221); Medical and Surgical Supplies ($44,268); Non-med, non-surg supplies ($21,139); Utilities ($18,080); Purchased Services ($310,516) and Other Direct Expenses ($161,935).
- Interest/rent is increasing by $410,655 from 2012 due to interest expense on the operation purchase and additional lease rental payments due to the debt service on the real estate purchase interests.

As shown in Attachment B, the facility has an average negative working capital position and an average positive net asset position during the period shown. Also, the applicant achieved an average net income of $551,372 for the period shown.

BFA Attachment C is a financial summaries of the affiliated facilities.

- Bellhaven Center for Rehabilitation has maintained an average positive working capital position and average positive net asset position during the period shown. Also, the facility achieved an average net income of $3,053,970 during the period shown.
- Dumont Operating, LLC has maintained an average positive working capital position and an average positive net asset position during the period shown. Also, the facility achieved an average operating net income of $1,701,057 for the period shown.
- Ramapo Nursing Manor has maintained an average working capital position and average positive net asset position during the period shown. Also, the facility achieved an average net income of $2,093,091 during the period shown.
- Rockville Operating, LLC has maintained an average negative working capital position and average positive net asset position during the period shown. Also, the facility incurred a net income of $453,819 in 2012, and incurred a net loss of $375,479 and $101,573 during 2011 and 2010, respectively. Please note that this facility was under new ownership in 2012, at which there are not any current financials available.
- Westchester Park, LLC has maintained an average negative working capital position and average negative net asset position during the period shown. Also, the facility achieved an average operating income of $1,568,831 for the period shown.
- St. James Rehabilitation facility has maintained an average positive working capital position and positive net asset position. Also, the facility achieved an average operating income of $2,357,352 for the period shown.
- Glengariff Corporation has maintained an average positive working capital position and positive net asset position. Also, the facility achieved an average operating income of $1,238,207 for the period shown.

BFA Attachment E is the pro-forma balance sheet of Atlantis Operating, LLC, as of the first day of the change in operator. As shown, the applicant will initiate operations with a positive member's equity position of $10,246,683. It is noted that the assets include $19,291,065 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes.

BFA Attachment D is the pro-forma balance sheet of GPNZ Realty Company, LLC, as of the first day of the change in the real estate entity. As shown, the real estate entity will have a positive member's equity of $5,050,000 subsequent to the change in operator.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary, Atlantis Operating, LLC
BFA Attachment C	Financial Summaries Affiliated Facilities
BFA Attachment D	Pro-forma, Real Estate Entity (Atlantis Property, LLC)
BFA Attachment E	Pro-forma, Atlantis Operating, LLC

Public Health and Health Planning Council

Project # 141051-E
Oswego Health Home Care, Inc.

County: **Oswego**
Purpose: **Establishment**
Program: **Certified Home Health Agency**
Acknowledged: **February 12, 2014**

Executive Summary

Description
Oswego Health Home Care, LLC, a to-be-formed entity, requests approval to become the operator of the Certified Home Health Agency (CHHA) operated by Oswego Health Home Care, Inc. The CHHA is licensed to operate in Oswego County and the proposed operator will maintain and continue all currently certified services. The office location of the CHHA, 113 Schuyler Street in Fulton, will remain via a lease assignment. There are no construction and/or equipment costs associated with the request. BFA Attachment A is the organizational chart for Oswego Health Home Care, LLC.

The current and proposed operator of the CHHA is as follows:

Current
Oswego Health Home Care, Inc. (operator)
Oswego Health, Inc. - sole member

Proposed
Oswego Health Home Care, LLC
Members:

Oswego Health, Inc.	60%
Embracing Age, Inc.	40%

Embracing Age, Inc. is part of the family of health services provided by Franciscan Association in Syracuse. Oswego Health, Inc. will transfer all of the assets of Oswego Health Home Care, Inc. into Oswego Health Home Care, LLC. Embracing Age will purchase its 40% share of Oswego Health Home Care, LLC.

The new proposed operator intends on entering into an Administrative Services Agreement and Consulting Agreement with Health Care Management Administrators, an entity related to Embracing Age. The new proposed operator also intends on entering into a service agreement with St. Joseph's Hospital Health Center.

Oswego Health, Inc. and Affiliates, a not-for-profit corporation, was established in 1997, to further promote and support the charitable purposes of Oswego Hospital and Affiliates, OH Properties, Inc., Seneca Hill Manor, Inc., Springside at Seneca Hill, Inc., and Oswego Health Home Care, Inc. The Company serves as the sole member of each of these entities, and is also the sole shareholder of Ontario Medical Practice, P.C. and O.H. Services, Inc., both for-profit entities.

Embracing Age, Inc. was formed on July 30, 2012, for the intention of applying for charitable purposes.

DOH Recommendation
Contingent Approval

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

Program Summary
This proposal seeks approval of the change of ownership of Oswego Health Home Care, Inc. Oswego Health Home Care, LLC, requests approval to become the owner of the current Certified Home Health Agency (CHHHA) licensed to operate in Oswego County. The new proposed operator will maintain and continue all currently certified services. The CHHA will continue to operate out of 113 Schuyler Street in Fulton.

Financial Summary

The purchaser is assuming all the assets and liabilities. Embracing Age, Inc. will purchase their interests for $300,000 and will finance $300,000 at an interest rate of 5% for a six year term.

Budget:

Revenues	$3,970,236
Expenses	3,871,362
Excess of Revenues over Expenses	$ 98,874

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed contribution, assignment and assumption agreement, acceptable to the Department. [BFA]
2. Submission of an executed transfer and assignment agreement of membership interest, acceptable to the Department. [BFA]
3. Submission of an executed lease assignment, acceptable to the Department. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
5. Submission of an executed contract services agreement, acceptable to the Department. [BFA]
6. Submission of a photocopy of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed operating agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of Oswego Health, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Administrative Services and Consulting Agreement between the applicant and Health Care Management Administrators, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Contribution, Assignment and Assumption Agreement from Oswego Health Home Care, Inc. to Oswego Health, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Contribution, Assignment and Assumption Agreement from Oswego Health, Inc. to the applicant, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Transfer and Assignment Agreement of Membership Interest from Oswego Health, Inc. to Embracing Age, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 12, 2014

Program Analysis

Review Summary

Oswego Health Home Care, LLC, a to-be-formed entity, requests approval to become the owner of the Certified Home Health Agency (CHHHA) operated by Oswego Health Home Care, Inc. The CHHA is licensed to operate in Oswego County and the proposed operator will maintain and continue all currently certified services. The CHHA will continue to operate from 113 Schuyler Street in Fulton through a lease assignment.

The proposed operator, Oswego Health Home Care, LLC, has two members. Oswego Health, Inc., the current sole member of the current operator, will hold a 60 % membership. Embracing Age, Inc., a current entity part of the family of health services provided by Franciscan Associates in Syracuse, will be a 40% member. Oswego Health, Inc. will transfer all of the assets of Oswego Health Home Care, Inc. into Oswego Health Home Care, LLC. Embracing Age will purchase its 40% shares of Oswego Health Home Care, LLC through a Transfer and Assignment Agreement.

The proposed operator will be managed by a Board of Managers. This Board of Managers will have three members, two appointed by Oswego Health, Inc. and one appointed by Embracing Age, Inc. The new proposed operator intends on entering into an Administrative Services and Consulting Agreement with Health Care Management Administrators, an entity related to Embracing Age. The new proposed operator also intends on entering into service agreements with Oswego Health, Inc. and St. Joseph's Hospital Health Center.

Oswego Health and Embracing Age believe that transferring the certified home health agency to the proposed joint venture will; further the overall development of home health services in Oswego County, enhance the organization and overall delivery of home health services, and further the development of new programs and services to best meet the needs of patients needing home health care services in the Oswego County area, in a cost-effective manner.

The applicant proposes to continue to operate the CHHA from an office located at 113 Schuyler Street, Fulton, New York 13069 and serve Oswego County.

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

Nursing	Home Health Aide	Medical Supplies, Equipment, and Appliances
Physical Therapy	Medical Social Services	Speech Language Pathology
Nutritional	Occupational Therapy	

The proposed Board Members of Oswego Health, Inc. comprises the following individuals:

Atom Avery – Director
Owner/Operator, Avery Rental Property/Beacon Hotel/All Seasons Inn

Affiliations:
- Oswego Hospital (6/13--Present)
- Hospitals Home Health Care (6/13-Present)
- Seneca Hill Manor, Inc. (NH) (6/13-Present)

Barbara B. Bateman – Director
Senior Vice President, Alliance Bank

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (6/10–6/13)

Chris Burritt – Director
Owner, Burritt Motors

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (6/10–6/13)

Pamela D. Caraccioli – Director
Business Manager, Caraccioli & Associates, PLLC

Affiliations:
- Oswego Hospital (6/11-Present)
- Hospitals Home Health Care (6/11-Present)

- Seneca Hill Manor, Inc. (NH) (6/11-Present)

William Clark – Vice Chair
Owner, The Great Outdoors

Affiliations:
- Oswego Hospital (6/11-6/14)
- Hospitals Home Health Care (6/11-Present)
- Seneca Hill Manor, Inc. (NH) (6/11-Present)
- Albert Lindley Lee Memorial Hospital (1/01-5/09)

Harold J. Henning. Jr., MD – Director
Self Employed/Physician, Harold Henning, MD
Chief of Medical Staff, Oswego Hospital

Affiliations:
- Oswego Hospital (1/14-Present)
- Seneca Hill Manor, Inc. (NH) (1/14-Present)
- Oswego Health Home Care, Inc. (1/14-Present)

William Galloway – Director
Real Estate Broker, Century 21 Galloway Realty

Affiliations:
- Oswego Hospital (6/11-Present)
- Hospitals Home Health Care (6/11-Present)
- Seneca Hill Manor, Inc. (NH) (6/11-Present)

Bernie Henderson – Director
Retired

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (6/11–6/13)

Renato Mandanas, MD – Director
Physician, Renato Mandanas

Affiliations:
- Oswego Hospital (6/11–6/12)
- Hospitals Home Health Care (6/11–6/12)
- Seneca Hill Manor, Inc. (NH) (6/11–6/12)

Patricia Mears – Director
Corporate Secretary, Ernest Mears, D.D.S., P.C.

Peter K. Cullinan – Director
Emergency Plant Instructor, Human Performance Manager, EPS Specialist, EP Manager, Entergy Nuclear Northeast

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (6/10–6/13)

Adam C. Gagas – Treasurer
Principal, Breakwall Asset Management, LLC

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (6/11–6/13)

Ann C. Gilpin – President and CEO
President and CEO, Oswego Health

Affiliations:
- Oswego Hospital (1/07–6/12)
- Hospitals Home Health Care (1/07–6/12)
- Seneca Hill Manor, Inc. (NH) (1/07–6/12)

Ellen M. Holst, RN – Director
Senior Director/Administrator for Health & Nutrition, Oswego County Opportunities, Inc.

Affiliations:
- Oswego Hospital (6/11–6/12)
- Hospitals Home Health Care (6/11–6/12)
- Seneca Hill Manor, Inc. (NH) (6/11–6/12)
- Oswego County Department of Health (3/99-2011)

Mary E. McGowan, Esq. – Director
Attorney, Reynolds & McGowan, PLLC
Adjunct Professor, State University of New York at Oswego

Affiliations:
- Oswego Hospital (6/00-Present)
- Hospitals Home Health Care (6/11-Present)
- Seneca Hill Manor, Inc. (NH) (6/11-Present)

Rose Ann Parsons – Director
Managing Editor, Oswego County Weeklies

Affiliations:
- Oswego Hospital (6/02-Present)
- Hospitals Home Health Care (6/11-Present)Seneca Hill Manor, Inc. (NH) (6/11-Present)

Yvonne A. Petrella – Director
Dean of Extended Learning, SUNY Oswego

Affiliations:
- Oswego Hospital (6/11–6/12)
- Hospitals Home Health Care (6/11–6/12)
- Seneca Hill Manor, Inc. (NH) (6/11–6/12)

Thomas W. Schneider – Chair
President and CEO, Pathfinder Bank

Affiliations:
- Oswego Hospital (6/11-6/13)
- Hospitals Home Health Care (6/11-6/13)
- Seneca Hill Manor, Inc. (NH) (1/07–6/13)

Linda Terrell – Director
Owner, Harbor Towne Gifts

Affiliations:
- Oswego Hospital (6/11-Present)
- Hospitals Home Health Care (6/11-Present)
- Seneca Hill Manor, Inc. (NH) (6/11-Present)

Michael D. Stephens, MD – Director
Physician, Oswego Family Physicians

Affiliations:
- Oswego Hospital (9/13-Present)
- Seneca Hill Manor, Inc. (NH) (9/13-Present)
- Oswego Health Home Care, Inc. (9/13-Present)

Affiliations:
- Oswego Hospital (2/13-Present)
- Hospitals Home Health Care (2/13-Present)Seneca Hill Manor, Inc. (NH) (2/13-Present)

Ivan Proano, MD – Director
Physician, Ivan Proano, M.D.

Affiliations:
- Oswego Hospital (12/11-Present)
- Hospitals Home Health Care (12/11-Present)
- Seneca Hill Manor, Inc. (NH) (12/11-Present)

Mark Slayton, CPA – Director
Director of Finance/Oswego College Foundation, SUNY at Oswego

Affiliations:
- Oswego Hospital (6/11–6/12)
- Hospitals Home Health Care (6/11–6/12)
- Seneca Hill Manor, Inc. (NH) (6/11–6/12)

Scott VanGorder, DO – Director
Physician/Associate Medical Director, Northern Oswego County Health Services, Inc.

Affiliations:
- Oswego Hospital (6/13-Present)
- Hospitals Home Health Care (6/13-Present)
- Seneca Hill Manor, Inc. (NH) (6/13-Present)

The proposed Board of Directors of Embracing Age, Inc. comprises the following individuals:

Frank L. Smith, Jr., RT – Director
Vice President for Special Health Programs, St. Joseph's Health Center
Vice President for Corporate Development, St. Joseph's Health Center
President/CEO, Franciscan Companies

Affiliations:

Gregory Fernandez, CPA – Director
Vice President for Fiscal Affairs, Franciscan Management Services, Inc.

Affiliations:
- PACE of CNY (2012-Present)
- Lourdes Health Support, LLC (DME) (2006-Present)

- CNY Infusion Services, LLC (1999-Present)
- Independent Living Services, Inc. (1998-Present)
- St. Elizabeth Health Support Services, Inc. (DME) (2006–Present)
- Loretto Health Support, LLC (DME) (2006-Present)

April Stone, RN – Director
Owner, Manager, President, Empire Infusion, Inc.

Affiliations:
- Owner/President, Empire Infusion, Inc. (1994 – Present)
- Owner/Managing Member, CNY Infusion Services, LLC (1999–Present)

The proposed Board of Managers of Oswego Health Home Care, LLC comprises the following individuals:

Frank L. Smith, Jr., RT – Manager
(Previously Disclosed)

Patricia Mears – Manager
(Previously Disclosed)

Valerie Favata – Manager
(Previously Disclosed)

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

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

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

A Certificate of Good Standing has been received for the attorney affiliated with this application.

A seven year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Oswego Hospital
Oswego Health Home Care, Inc. (CHHA)
Seneca Hill Manor, Inc. (NH)
Franciscan Health Support, Inc. (LHCSA)
St. Joseph's Hospital Health Center
Hospitals Home Health Care (6/11-6/13)
Albert Lindley Lee Memorial Hospital (1/07-5/09)
Empire Infusion, Inc.
CNY Infusion Services, LLC
PACE of CNY

Oswego Hospital entered into a settlement agreement with the Office of Inspector General (OIG) and the Office of the New York State Medical Inspector General (OMIG) for alleged violations of provisions the Physician Self-Referral Law (Stark Law) and the Anti-Kickback Statute and they agreed to a settlement amount of $2,134,037. Most of the alleged violations involved the hospital's alleged failure to comply with Stark law requirements for recruitment arrangements, office leases, professional service arrangements, and the alleged provision of discounted employee benefit plan premiums to non-employed physicians.

St. Joseph's Hospital Health Center was fined six thousand dollars ($6,000.00) on May 27, 2008 for wrong side surgery. A brief description is as follows: Based on the findings of an investigation into the occurrence of a wrong sided surgery. A patient suffering from a right hip fracture had multiple fixation screws inserted into his left hip. The error was discovered in the recovery room and the patient underwent a second operation.

St. Joseph's Hospital Health Center was fined twenty-two thousand dollars ($22,000.00) on September 13, 2012 for fall/overdose. A brief description is as follows: Based on the investigation of two complaints. The first a patient with a known risk for falls who was left unattended in the bathroom and fell and a drug overdose patient who had an inadequate neurological assessment.

The information provided by the Division of Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations

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

The Information provided by the Bureau of Quality Assurance for Nursing Homes 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.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft contribution, assignment and assumption agreement, which is summarized below:

Assignor:	Oswego Health Home Care, Inc.
Assignee:	Oswego Health, Inc.
Purpose:	To transfer all of its liabilities and assets to Oswego Health, Inc.
Assignment Price:	$0

The applicant has submitted a draft transfer and assignment agreement of membership interest, which is summarized below:

Assignee:	Oswego Health, Inc.
Assignee:	Embracing Age, Inc.
Purpose:	The purchase of 40% of the ownership interest in Oswego Health Home Care, LLC
Purchase Price:	$300,000

Embracing Age, Inc. has submitted a letter of interest to finance $300,000 at an interest rate of 5% for a six year term.

Lease Rental Agreement

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

Premises:	2,200 square feet located at 113 Schuyler Street, Fulton, New York
Lessor:	Nellis and Peterson Properties
Lessee:	Oswego Health Home Care, LLC
Term:	Five years
Rental:	$30,000 annually ($13.63 per sq. ft.)

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which they will enter when the change in operator occurs, as summarized below:

Operator:	Oswego Health Home Care, LLC (OHHC)
Contractor:	Health Care Management Administrators, Inc. (HCMA)
Term:	Three years
Services Provided:	The Contractor will provide the following services: day to day management services to operate the CHHA under the direction of the Administrator; the administrator will be appointed by HCMA subject to the approval of OHHC; appoint representatives for the Committee; assist in the development of an annual marketing plan under the direction of the Committee; provide clinical leadership and supervision on an as needed basis for the OHHC CHHA's staff or contractors; oversee the development and implementation by OHHC or its contractees, subject to OHHC's approval, patient care policies and procedures ensuring that there is consistent evaluation/assessment, treatment and discharge planning for all patients by OHHC; oversee the development and implementation of a plan for efficient patient flow from hospital discharge, clinical assessment/intake, services required, supervising patient, with a goal of improved patient outcomes and satisfaction; arrange with St. Joseph's Hospital Health Center or an affiliate for nursing, physical therapy and speech therapy services as required to meet daily staffing needs of OHHC; meet regularly with the Administrator of OHHC regarding administration matters arising out of the OHHC CHHA; assist OHHC CHHA with the OHHC CHHA's compliance with all applicable requirements of the New York State Department of Health, the Joint Commission, the Conditions for Participation in Medicare, and other applicable regulatory agencies; assist in any Corporate Compliance activities, as necessary; HCMA will provide oversight for billing and collection services; assist committee, as necessary, with the review of the monthly financial statements; HCMA will provide medical records administration oversight services for OHHC or its contractees and review and provide recommendations for OHHC capital and operating budgets concerning the OHHC CHHA.
Compensation:	Annual Fee of $76,584.

The applicant will retain approval over the following functions relating to the CHHA:

- Approval of OHHC CHHA's operating and capital budgets.
- Independent control and physical possession of OHHC CHHA's books and records.
- Approval and adoption of any operating policies and procedures relating to OHHC CHHA.
- Adoption of policies effecting delivery of health care services at OHHC.
- Authority over disposition of assets and authority to incur debts.
- Approval of certificate of need applications filed or on behalf of OHHC CHHA.
- Approval of contracts for management or clinical services.
- Approval of debt necessary to finance the cost of compliance of operational or facility standards required by law.
- Authority to hire or fire the administrator.

Service Agreement

The applicant has submitted a draft contract services agreement, which is summarized below:

Parties:	St. Joseph's Hospital (St. Joseph's) and Oswego Health Home Care, LLC
Purpose:	St. Joseph's will provide OHHC with the services and staff as described in this Agreement with the goal of maximizing operating efficiencies and realizing cost containments for OHHC.
Services Provided:	Administration Nursing Support/On Call/Weekends; billing, home care coordination; intake/referral processing; education/orientation to new clinical staff and therapy service coordination.
Term:	1 year with one year renewal periods
Compensation:	$229,428 annually

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first year after the change in operator, which is summarized below:

Revenues:	
Medicaid Managed Care	$563,750
Medicare Fee For Service	2,243,681
Medicare Managed Care	617,040
Commercial/Other	545,765
Total Revenues	$3,970,236
Expenses:	
Operating	$3,819,244
Capital	52,118
Total Expenses	$3,871,362
Excess of Revenues over Expenses	$98,874
Visits	27,039
Hours	26,483

Expense and utilization assumptions are based on the historical experience of the current CHHA. Revenues are reflective of the current payment rates including the Medicaid Episodic Payment System.

Utilization, broken down by payor source during the first year after the change in operator is summarized below:

Medicaid Managed Care	19.44%
Medicare Fee For Service	45.36%
Medicare Managed Care	13.41%
Commercial/Other	19.79%
Charity Care	2.00%

Capability and Feasibility

The purchaser is assuming all of the assets and liabilities of the facility. Embracing Age, Inc. will purchase their interests for $300,000, of which they will finance $300,000 at an interest rate for 5% for a six year term.

Working capital requirements are estimated at $645,227, which appears reasonable based on two months of first year expenses. The applicant is assuming all of the assets and liabilities of the CHHA, inclusive of accounts receivable. The cash flow of the CHHA is not expected to be impacted by the change in ownership in any material amount. The cash flow of the new entity will closely resemble that of the current entity after the transaction period. BFA Attachment B is the pro-forma balance sheet of

Oswego Health Home Care, LLC as of the first day of operation after the change in operator, which indicates a positive net asset position of $790,000.

The submitted budget indicates an excess of revenues over expenses of $98,874 during the first year after the change in operator. Revenues are based on current payment rates, including the Medicaid Episodic Payment System. The applicant has indicated that the planned referral expansion efforts will be a continuation of those already in place. Oswego Hospital is the only hospital located in Oswego County. Oswego Health is currently the sole member of the existing agency and will be a 60% owner upon the change in ownership completion. As such, there is and will continue to be, a close working relationship between Oswego Hospital and the Agency. The applicant has indicated that they will employ 1.0 FTE's Home Care Coordinator assigned to Oswego Hospital. In addition, Embracing Age, Inc., the proposed 40% owner, has a close relationship to St. Joseph's Hospital Health Center. St. Joseph's Hospital Health Centers CHHA currently has 3.0 full time Home Care Coordinators that work at SJHHC, and 1.6 FTE's Home Care Coordinator assigned to SUNY Upstate Medical Center and Community General Hospitals. The Home Care Coordinators are responsible for identifying and facilitating the patient's transition from the hospital setting at home. Identified patients with Oswego County residency that could benefit from certified home health care are and will be referred to the Agency. There is also continued efforts to expand the referral base at the other local hospitals treating patients from Oswego County, as well as community based referral sources such as Physician Offices, Long Term Care Providers, Managed Care Providers and Medical Home Providers.

BFA Attachment C are the 2011 and 2012 certified financial statements of Oswego Health Home Care, Inc. As shown on Attachment C, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the entity incurred average losses of $226,266 from 2011 through 2012. The applicant has indicated that the reason for the losses were the result of insufficient staffing resources and not maximizing the referral base. The applicant established a steering committee that developed a turnaround plan that focused on recruiting staff and increasing referrals.

BFA Attachment D is the November 30, 2013 internal financial statements of Oswego Health Home Care, Inc. As shown on BFA Attachment D, the facility had a positive working capital position and a positive net asset position through November 30, 2013. Also, the entity incurred loss from operations of $9,843 through November 30, 2013. The applicant indicates that the reason for the loss was the result of not maximizing the referral base.

BFA Attachment E are the 2012 certified financial statements and the 2013 draft certified financial statements of Oswego Health, Inc. and Affiliates. As shown on Attachment E, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved average operating income of $779,985 from 2012 through 2013.

BFA Attachment F is the November 30, 2013 internal financial statements of Embracing Age, Inc. As shown, the entity had a negative working capital position and a negative net asset position through November 30, 2013. Also, the entity incurred losses of $199,619 through November 30, 2013. The applicant has indicated that the reason for the negative working capital position, negative net asset position and losses from operations, were due to the volume of subscribers not being large enough to support the fixed costs associated with promotion and startup of Embracing Age. The liabilities are all owed to affiliated companies. When cash flow improves, the liabilities will be paid.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of Oswego Health Home Care, LLC
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary- 2011 and 2012 certified financial statements of Oswego Health Home Care, Inc.
BFA Attachment D	November 30, 2013 internal financial statements of Oswego Health Home Care, Inc.
BFA Attachment E	Financial Summary- 2012 certified financial statements and the 2013 draft certified financial statements of Oswego Health, Inc. and Affiliates.
BFA Attachment F	November 30, 2013 internal financial statements of Embracing Age, Inc.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: April 3, 2013

SUBJECT: Proposed Dissolution of The Foundation for Planned Parenthood of Western New York, Inc.

The Foundation for Planned Parenthood of Western New York, Inc. ("the Foundation") requests Public Health and Health Planning Council approval of its proposed dissolution, in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

According to the Foundation's Chair, the Foundation has no assets or liabilities, and it has no plans to acquire assets in the future. As a practical matter, the Foundation is not currently operating to benefit its sole beneficiary, Planned Parenthood of Western New York, Inc.

Attached is a copy the proposed Certificate of Dissolution, a letter from the Foundation's Chair explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of the Foundation's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

March 10, 2014

Kelly Brunelle
United Corporate Services, Inc.
100 State Street, Suite 800
Albany, NY 12207

Re: Planned Parenthood of Western New York, Inc.

Dear Ms. Brunelle:

I am in receipt of your February 17, 2014 letter requesting the approval of the Public Health and Health Planning Council (PHHPC) to dissolve the above-named not-for-profit foundation. Pursuant to 10 NYCRR Part 650, please submit the following additional information:

- A letter explaining the public need for such dissolution.
- The proposed disposition of all assets of the corporation.
- The proposed plan of dissolution and distribution of assets.
- The petition proposed to be submitted to the court in support of the application for judicial approval of the proposed plan of dissolution and distribution of assets.

If you have any questions regarding the above, you may contact me at (518) 473-1403.

Sincerely,

Justin D. Pfeiffer
Senior Attorney
Bureau of House Counsel

THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.
2697 MAIN STREET
BUFFALO, NEW YORK 14214

March 26, 2014

New York State Department of Health
Public Health and Health Planning Council
Corning Tower
Empire State Plaza
Albany, New York 12237
Attn.: Justin D. Pfeiffer, Senior Attorney

Re: Request for Approval of Voluntary Dissolution of The Foundation for Planned Parenthood of Western New York, Inc.

Dear Mr. Pfeiffer:

This letter is being provided by The Foundation for Planned Parenthood of Western New York, Inc. (the "Company"), in response to your correspondence, dated March 10, 2014, addressed to United Corporate Services, Inc.

In connection with the Company's request for approval of its voluntary dissolution, please be advised that the Company has no assets and no liabilities. Therefore, to the extent such statement is required pursuant to 10 NYCRR § 650.1, the Company has no assets to dispose of.

The reason and public need for the dissolution of the Company is as follows: The Company has no assets and no liabilities, and no prospects for assets in the future. Accordingly, the Company is no longer operating, and no longer has any functional purpose to operate, for the benefit of its sole member, Planned Parenthood of Western New York, Inc.

In accordance with this request, enclosed for the consideration of the Public Health and Health Planning Council are the follow documents:

1. The proposed Certificate of Dissolution;

2. The proposed Plan of Dissolution (with Certification page) approved by the Company's Board of Directors at a special meeting of the Board of Directors of the Company duly held at 4:00 p.m. on the 11th day of December, 2013; and

3. 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.

The Company respectfully requests that its request for approval of its voluntary dissolution be granted.

Very truly yours,

THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.

By: Daniel R. Sharpe
Daniel Sharpe, Chairperson

Enclosures

PROPOSED CERTIFICATE OF DISSOLUTION

CERTIFICATE OF DISSOLUTION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

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

I, Daniel Sharpe, Chairperson of The Foundation For Planned Parenthood of Western New York, Inc., hereby certify:

FIRST: The name of the corporation is **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.** (the "Corporation"). The name under which the Corporation was formed is The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on the 3rd day of May, 2001.

THIRD: The names and addresses of each of the directors and officers of the Corporation and the title of each are as follows:

Name	Director/Title	Address
Daniel Sharpe	Director/Chairperson	2697 Main Street, Buffalo, NY 14214
Rev Jeremy Lopez	Director/Vice Chairperson	2697 Main Street, Buffalo, NY 14214
Carima El-Behairy	Director/Treasurer	2697 Main Street, Buffalo, NY 14214
David Brock	Director	2697 Main Street, Buffalo, NY 14214
Gerald Marchand	Director	2697 Main Street, Buffalo, NY 14214
J. Bradley Rauch	Director	2697 Main Street, Buffalo, NY 14214
Tara Vogel	Director	2697 Main Street, Buffalo, NY 14214
Ileah Welch	Director	2697 Main Street, Buffalo, NY 14214

FOURTH: Dissolution of the Corporation was authorized by the majority vote of the Board of Directors of the Corporation, followed by the written consent of the sole member of the Corporation.

FIFTH: The Corporation elects to dissolve.

SIXTH: At the time of dissolution, the Corporation is a Type B not-for-profit corporation.

SEVENTH: The Corporation filed with the Attorney General of the State of New York a certified copy of its Plan of Dissolution.

EIGHTH: The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution, the Corporation had no assets or liabilities.

NINTH: At the time of the authorization of the Plan of Dissolution, the Corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Dissolution of the Corporation this ____ day of _______________, 20___.

____

Daniel Sharpe, Chairperson

PROPOSED PLAN OF DISSOLUTION

CERTIFICATION
OF
PLAN OF DISSOLUTION

I, Daniel Sharpe, Chairperson of **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.**, a New York not-for-profit corporation (the "Corporation"), hereby certify under penalties for perjury that a special meeting of the Board of Directors of the Corporation was duly held at 4:00 p.m. on the 11th day of December, 2013 via telephone conference and the Plan of Dissolution attached hereto as **Exhibit A** (the "Plan") was duly submitted and passed by a majority vote of the Board of Directors and that, thereafter, the Plan was duly approved by the sole member of the Corporation by written consent.

____
Daniel Sharpe, Chairperson

Dated the ____ day of ______________, 20___.

#1877756.2

EXHIBIT A

Plan of Dissolution

PLAN OF DISSOLUTION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

The Board of Directors (the "Board") of **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.**, a New York not-for-profit corporation (the "Corporation"), at a special meeting duly convened on the 11th day of December, 2013, with notice being waived in accordance with New York law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted, by majority vote, the following Plan of Dissolution for a voluntary dissolution of the Corporation (the "Plan"), does hereby recommend to the sole member of the Corporation (the "Sole Member") for approval that the Corporation be dissolved in accordance with the following Plan:

1. Upon resolution of the Board adopting this Plan, the Board shall submit the Plan to the Sole Member for approval by written consent.

2. Attached hereto as **Exhibit A** is a copy of the Certificate of Incorporation of the Corporation (together with all amendments).

3. Approval of the dissolution of the Corporation is required to be obtained from the Public Health and Health Planning Council of the State of New York, which approval, when obtained, will be attached hereto as **Exhibit B.**

4. As of the date hereof, the Corporation has no assets or liabilities.

5. Within ten (10) days after the authorization of the Plan by the Sole Member (following due adoption of the Plan by the Board), a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to Section 1002(d) of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL").

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the N-PCL shall be attached thereto.

EXHIBIT A

Certificate of Incorporation

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT) TYPE: B COUNTY: ERIE

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FILED:05/03/2001 DURATION:PERPETUAL CASH#:010503000865 FILM #:010503000832

ADDRESS FOR PROCESS	EXIST DATE
THE CORPORATION 2697 MAN STREET BUFFALO, NY 14214	05/03/2001

REGISTERED AGENT

FILER	FEES	110.00	PAYMENTS	110.00
	FILING	75.00	CASH	0.00
DAMON & MOREY LLP	TAX	0.00	CHECK	0.00
1000 CATHEDRAL PLACE	CERT	0.00	CHARGE	0.00
298 MAIN STREET	COPIES	10.00	DRAWDOWN	110.00
BUFFALO, NY 14202-4096	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

DOS-1025 (11/89)

E-12

F010503000 832

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CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

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

THE UNDERSIGNED, being a natural person of the age of eighteen (18) years or over and desiring to form a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of New York, hereby certifies:

FIRST: The name of the corporation is THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

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 and shall be operated exclusively for the benefit of Planned Parenthood of Buffalo and Erie County, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereafter defined) (the "Affiliate"). To this end the corporation shall have the power:

(a) To operate exclusively for charitable purposes; specifically, to solicit, accept, receive, hold, invest, reinvest, apply, spend, administer, and manage any contributions, gifts, bequests, devises, benefits of trust (but not to act as a trustee of any trust) and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income and/or the principal thereof to or for the use or benefit of the Affiliate, its programs and purposes from time to time as may be deemed appropriate in the discretion of the Board of Directors of the corporation.

(b) To support the activities of, act in connection with, and further the purposes of, the Affiliate.

(c) In the event that the Board of Directors of the corporation shall determine that funds or property cannot be usefully held or distributed to the Affiliate, to hold or distribute such funds or property to or for the benefit of such other charitable organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Law) (the "Code") as the Board of Directors in its discretion shall determine.

1

(d) Do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, officers or directors or of any private individual, except to the extent permitted under Article 5 of the Not-for-Profit Corporation Law.

FOURTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

FIFTH: Nothing contained herein shall authorize the corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital services or health related services, or to operate a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law, or an adult care facility as defined in and covered by Article 7 of the Social Services Law.

SIXTH: Nothing herein shall authorize the corporation to engage in the practice of medicine or any other profession required to be licensed under Title VIII of the Education Law.

SEVENTH: Nothing contained herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities described in Sections 404 (a)–(n), (p)–(s) and/or (u) of the Not-for-Profit Corporation Law.

EIGHTH: The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

NINTH: Notwithstanding any other provision of this Certificate, the corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Code, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code.

TENTH: No part of the assets, income, profits or net earnings of the corporation shall be distributable to, or inure to the benefit of, any member, trustee, director or officer of the corporation, or any other private individual, except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and no member, trustee, director or officer of the corporation, or any other private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.

ELEVENTH: No substantial part of the activities of the corporation shall be devoted to the carrying on of propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided by Section 501(h) of the Code), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

2

TWELFTH: In the event of dissolution of the corporation, all of the assets and property of the corporation remaining after the payment of the corporation's liabilities shall be distributed to the Affiliate, provided that the Affiliate shall then qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York. If the Affiliate shall not so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York.

THIRTEENTH: In any taxable year in which the corporation is a private foundation as defined under Section 509 of the Code, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code;

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

(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

FOURTEENTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

Name	Address
David G. Brock	49 Northington Drive E. Amherst, New York 14051
Janet Wisbaum	180 Greenaway Road Eggertsville, New York 14226
Elizabeth Clark	One Marina Park South Buffalo, New York 14202
Robert W. Constantine	44 New Amsterdam Avenue Buffalo, New York 14216

3

FIFTEENTH; The office of the corporation is to be located in the County of Erie, State of New York.

SIXTEENTH: The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is c/o the corporation, 2697 Main Street, Buffalo, New York 14214.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation this 5th day of December, 2000.

Anthony L. Eugeni

Anthony L. Eugeni, Sole Incorporator
1000 Cathedral Place
298 Main Street
Buffalo NY 14202

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 22, 2001

Ms. Susan A. Benz
Damon & Morey LLP
Attorneys at Law
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096

Re: Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Ms. Benz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 16th day of March, 2001, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 5, 2000.

Sincerely,

Donna Peterson

Karen S. Westervelt for
Executive Secretary

5

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

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

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 03 2001

TAX $

BY:

DRAWDOWN

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DAMON & MOREY LLP
1000 CATHEDRAL PLACE
298 MAIN STREET
BUFFALO, NEW YORK 14202-4096

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N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS   ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)   COUNTY: ERIE
PURPOSES PROCESS NAME

SERVICE COMPANY: ** NO SERVICE COMPANY **   SERVICE CODE: 00

FILED:12/26/2006 DURATION:********* CASH#:061226000671 FILM #:061226000609

ADDRESS FOR PROCESS

NIXON PEABODY LLP
30 SOUTH PEARL STREET   SUITE 900
ALBANY, NY 12207

REGISTERED AGENT

FILER	FEES	90.00	PAYMENTS	90.00
	FILING	30.00	CASH	0.00
	TAX	0.00	CHECK	90.00
NIXON PEABODY LLP	CERT	0.00	CHARGE	0.00
30 SOUTH PEARL STREET	COPIES	10.00	DRAWDOWN	0.00
	HANDLING	50.00	OPAL	0.00
ALBANY, NY 12207			REFUND	0.00

DOS-1025 (11/89)

F061226000605

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, the undersigned, being the President of the Board of Directors of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), do hereby certify as follows:

1. The name of the Corporation is The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State on May 3, 2001. The Corporation is formed under the Not-for-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law and shall continue to be a Type B corporation after the filing of this Certificate of Amendment.

4. Paragraph FIRST of the Certificate of Incorporation of the Corporation is hereby amended to read in full as follows:

   "FIRST: The name of the Corporation is The Foundation for Planned Parenthood of Western New York, Inc."

5. The first full paragraph of Paragraph THIRD of the certificate of incorporation of the Corporation is hereby amended to read in full as follows:

"THIRD: The Corporation is organized and shall be operated exclusively for the benefit of Planned Parenthood of Western New York, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereinafter defined) (the "Affiliate"). To this end the Corporation shall have the power:"

6. This Certificate of Amendment of the Certificate of Incorporation was authorized by action of the board of directors and the members of the Corporation.

7. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom service of process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process is:

Nixon Peabody LLP
30 South Pearl Street, Suite 900
Albany, New York 12207

IN WITNESS WHEREOF, the undersigned subscribed this Certificate of Amendment and hereby affirm under penalties of perjury that its contents are true this 20th day of December, 2005.

J. Bradley Rauch
President

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ASSISTANT ATTORNEY GENERAL 11-16-06
DATE

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 19, 2006

Mr. Peter J. Millock, Esq.
Nixon Peabody LLP
Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207-3497

Re: Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15th day of September, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 20, 2005.

Sincerely,

Donna Peterson

Donna W. Peterson
Executive Secretary

/md

At the Special Term Part of the Supreme Court of the State of New York, held in and for the County of Erie, on the 15th day of December, 2006.

PRESENT

HON: JOHN A. MICHALEK, J.S.C., **Justice.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

For an Approval of Amendments to its Certificate of Incorporation Pursuant to §804 of the Not-For-Profit Corporation Law

ORDER
Index No.

The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), having duly made application for an order, pursuant to Section 804 of the Not-for-Profit Corporation Law, approving Amendments to the Certificate of Incorporation of said Corporation and authorizing the filing of a Certificate of Amendment in accordance with section 804 of the Not-for-Profit Corporation Law, and said application having regularly come to be heard,

Now upon reading of the Verified Petition of said Corporation, and the Certificate of Amendment designated as Exhibit B therein, and it appearing that the Attorney General of the State of New York has no objection to said amendments; and after due deliberation having been held thereon, and it appearing that the interests of said Corporation and the public interest will not be adversely affected by the proposed amendments, it is

ORDERED, that the amendments to the Corporation's Certificate of Incorporation exhibited therein be and the same are hereby approved and it is further

ORDERED that the aforesaid Certificate of Amendment is authorized to be filed by the Department of State in accordance with Section 803 of the Not-For-Profit Corporation Law, to which certificate a copy of this Order shall be annexed.

ENTER:

J.S.C.

JOHN A. MICHALEK, J.S.C.

GRANTED
DEC 1 5 2008

RICHARD F. BROWN

061226000609

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION OF

THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Eric

2006 DEC 26 PM 2:37

FILED

LCC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 26 2006
TAX $ —
BY: DML
Eric

NIXON PEABODY LLP
30 South Pearl Street
Albany, New York 12207
(518) 427-2650

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EXHIBIT B

Public Health and Health Planning Council Approval

(To be obtained.)

PROPOSED VERIFIED PETITION

In the Matter of the Application of
THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.
For Approval of Certificate of Dissolution pursuant to Section 1002 of the Not-for-Profit Corporation Law.

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Main Place Tower – Suite 300A
350 Main Street
Buffalo, New York 14202

Petitioner, THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC. (the "Corporation"), by Daniel Sharpe, Chairperson of the Corporation, for its Verified Petition alleges:

1. The Corporation, whose principal address is 2697 Main Street, Buffalo, New York 14214, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 3, 2001. Attached hereto as **Exhibit A** is a copy of the Certificate of Incorporation of the Corporation (together with all amendments).

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

Name	Director/Title	Address
Daniel Sharpe	Director/Chairperson	2697 Main Street, Buffalo, NY 14214
Rev Jeremy Lopez	Director/Vice Chairperson	2697 Main Street, Buffalo, NY 14214
Carima El-Behairy	Director/Treasurer	2697 Main Street, Buffalo, NY 14214
David Brock	Director	2697 Main Street, Buffalo, NY 14214
Gerald Marchand	Director	2697 Main Street, Buffalo, NY 14214
J. Bradley Rauch	Director	2697 Main Street, Buffalo, NY 14214
Tara Vogel	Director	2697 Main Street, Buffalo, NY 14214
Ileah Welch	Director	2697 Main Street, Buffalo, NY 14214

3. The purposes for which the Corporation was organized, as substantially set forth in its Certificate of Incorporation, as amended, are as follows: To operate exclusively for the benefit of Planned Parenthood of Western New York, Inc. (f/k/a Planned Parenthood of Buffalo and Erie County, Inc.), a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). To this end, the

Corporation has the power to: (a) operate exclusively for charitable purposes; specifically, to solicit, accept, receive, hold, invest, reinvest, apply, spend, administer, and manage any contributions, gifts, bequests, devises, benefits of trust (but not to act as a trustee of any trust) and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income and/or the principal thereof to or for the use or benefit of Planned Parenthood of Western New York, Inc., its programs and purposes from time to time as may be deemed appropriate in the discretion of the Board of Directors of the Corporation; (b) support the activities of, act in connection with, and further the purposes of, Planned Parenthood of Western New York, Inc.; (c) hold or distribute funds or property to or for the benefit of such other charitable organizations as shall qualify under Section 501(c)(3) of the Code as the Board of Directors in its discretion shall determine; and (d) do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its member, officers or directors or of any private individual, except to the extent permitted under Article 5 of the Not-for-Profit Corporation Law.

4. The Corporation is a Type B corporation.

5. A meeting of the Board of Directors of the Corporation was held on December 11, 2013 (notice being duly waived in accordance with New York law, a quorum being present at all times) at 4:00 p.m. at which a resolution was duly passed by the majority vote of the Directors of the Corporation adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A certified copy of the Plan of Dissolution, executed by the Chairperson of the Corporation, is attached hereto as **Exhibit B**.

6. The sole member of the Corporation, Planned Parenthood of Western New York, Inc. (the "Sole Member"), has approved the dissolution by written consent. A copy of the written consent of the Sole Member approving the dissolution is attached hereto as **Exhibit C**.

7. A certified copy of the Corporation's Plan of Dissolution was filed with the Office of the Attorney General.

8. The Corporation has no assets or liabilities and its final report showing zero assets and zero liabilities has been filed with the Attorney General.

9. Approval of the dissolution of the Corporation is required to be obtained from the Public Health and Health Planning Council of the State of New York, and such approval is attached hereto as **Exhibit D**.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003. A copy of the Certificate of Dissolution is attached hereto as **Exhibit E**.

[*Remainder of Page Left Intentionally Blank*]

WHEREFORE, the Corporation requests that the Attorney General approve the Certificate of Dissolution of THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC., a New York not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this ___ day of ______________, 20___ by:

____
Daniel Sharpe, Chairperson

VERIFICATION

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

Daniel Sharpe, being duly sworn, deposes and says:

I am the Chairperson of THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC., 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.

____
Daniel Sharpe, Chairperson

Sworn to before me this
____ day of ______________, 20___.

____
Notary Public

EXHIBIT A

Certificate of Incorporation

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT) TYPE: B COUNTY: ERIE

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FILED:05/03/2001 DURATION:PERPETUAL CASH#:010503000865 FILM #:010503000832

ADDRESS FOR PROCESS

THE CORPORATION
2697 MAN STREET
BUFFALO, NY 14214

EXIST DATE

05/03/2001

REGISTERED AGENT

STATE OF NEW YORK
DEPARTMENT OF STATE

FILER	FEES	110.00	PAYMENTS	110.00
	FILING	75.00	CASH	0.00
DAMON & MOREY LLP	TAX	0.00	CHECK	0.00
1000 CATHEDRAL PLACE	CERT	0.00	CHARGE	0.00
298 MAIN STREET	COPIES	10.00	DRAWDOWN	110.00
BUFFALO, NY 14202-4096	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

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E-12

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

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

THE UNDERSIGNED, being a natural person of the age of eighteen (18) years or over and desiring to form a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of New York, hereby certifies:

FIRST: The name of the corporation is THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

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 and shall be operated exclusively for the benefit of Planned Parenthood of Buffalo and Erie County, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereafter defined) (the "Affiliate"). To this end the corporation shall have the power:

(a) To operate exclusively for charitable purposes; specifically, to solicit, accept, receive, hold, invest, reinvest, apply, spend, administer, and manage any contributions, gifts, bequests, devises, benefits of trust (but not to act as a trustee of any trust) and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income and/or the principal thereof to or for the use or benefit of the Affiliate, its programs and purposes from time to time as may be deemed appropriate in the discretion of the Board of Directors of the corporation.

(b) To support the activities of, act in connection with, and further the purposes of, the Affiliate.

(c) In the event that the Board of Directors of the corporation shall determine that funds or property cannot be usefully held or distributed to the Affiliate, to hold or distribute such funds or property to or for the benefit of such other charitable organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Law) (the "Code") as the Board of Directors in its discretion shall determine.

(d) Do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, officers or directors or of any private individual, except to the extent permitted under Article 5 of the Not-for-Profit Corporation Law.

FOURTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

FIFTH: Nothing contained herein shall authorize the corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital services or health related services, or to operate a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law, or an adult care facility as defined in and covered by Article 7 of the Social Services Law.

SIXTH: Nothing herein shall authorize the corporation to engage in the practice of medicine or any other profession required to be licensed under Title VIII of the Education Law.

SEVENTH: Nothing contained herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities described in Sections 404 (a)–(n), (p)–(s) and/or (u) of the Not-for-Profit Corporation Law.

EIGHTH: The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

NINTH: Notwithstanding any other provision of this Certificate, the corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Code, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code.

TENTH: No part of the assets, income, profits or net earnings of the corporation shall be distributable to, or inure to the benefit of, any member, trustee, director or officer of the corporation, or any other private individual, except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and no member, trustee, director or officer of the corporation, or any other private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.

ELEVENTH: No substantial part of the activities of the corporation shall be devoted to the carrying on of propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided by Section 501(h) of the Code), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

2

TWELFTH: In the event of dissolution of the corporation, all of the assets and property of the corporation remaining after the payment of the corporation's liabilities shall be distributed to the Affiliate, provided that the Affiliate shall then qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York. If the Affiliate shall not so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York.

THIRTEENTH: In any taxable year in which the corporation is a private foundation as defined under Section 509 of the Code, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code;

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

(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

FOURTEENTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

Name	Address
David G. Brock	49 Northington Drive E. Amherst, New York 14051
Janet Wisbaum	180 Greenaway Road Eggertsville, New York 14226
Elizabeth Clark	One Marina Park South Buffalo, New York 14202
Robert W. Constantine	44 New Amsterdam Avenue Buffalo, New York 14216

3

FIFTEENTH: The office of the corporation is to be located in the County of Erie, State of New York.

SIXTEENTH: The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is c/o the corporation, 2697 Main Street, Buffalo, New York 14214.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation this 5th day of December, 2000.

Anthony L. Eugeni

Anthony L. Eugeni, Sole Incorporator
1000 Cathedral Place
298 Main Street
Buffalo NY 14202

459197 v1

4

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 22, 2001

Ms. Susan A. Benz
Damon & Morey LLP
Attorneys at Law
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096

Re: Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Ms. Benz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 16th day of March, 2001, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 5, 2000.

Sincerely,

Donna Peterson

Karen S. Westervelt for
Executive Secretary

5

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

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

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 03 2001
TAX $
BY:

DRAWDOWN

DAMON & MOREY LLP
1000 CATHEDRAL PLACE
298 MAIN STREET
BUFFALO, NEW YORK 14202-4096

010503000 865

010503000 837

E-12

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N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ERIE
PURPOSES PROCESS NAME

SERVICE COMPANY: ** NO SERVICE COMPANY ** SERVICE CODE: 00

FILED:12/26/2006 DURATION:********* CASH#:061226000671 FILM #:061226000609

ADDRESS FOR PROCESS

NIXON PEABODY LLP
30 SOUTH PEARL STREET SUITE 900
ALBANY, NY 12207

REGISTERED AGENT

FILER	FEES	90.00	PAYMENTS	90.00
	FILING	30.00	CASH	0.00
	TAX	0.00	CHECK	90.00
NIXON PEABODY LLP	CERT	0.00	CHARGE	0.00
30 SOUTH PEARL STREET	COPIES	10.00	DRAWDOWN	0.00
	HANDLING	50.00	OPAL	0.00
ALBANY, NY 12207			REFUND	0.00

DOS-1025 (11/89)

F061226000609

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD OF
BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, the undersigned, being the President of the Board of Directors of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), do hereby certify as follows:

1. The name of the Corporation is The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State on May 3, 2001. The Corporation is formed under the Not-for-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law and shall continue to be a Type B corporation after the filing of this Certificate of Amendment.

4. Paragraph FIRST of the Certificate of Incorporation of the Corporation is hereby amended to read in full as follows:

   "FIRST: The name of the Corporation is The Foundation for Planned Parenthood of Western New York, Inc."

5. The first full paragraph of Paragraph THIRD of the certificate of incorporation of the Corporation is hereby amended to read in full as follows:

"THIRD: The Corporation is organized and shall be operated exclusively for the benefit of Planned Parenthood of Western New York, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereinafter defined) (the "Affiliate"). To this end the Corporation shall have the power:"

6. This Certificate of Amendment of the Certificate of Incorporation was authorized by action of the board of directors and the members of the Corporation.

7. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom service of process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process is:

Nixon Peabody LLP
30 South Pearl Street, Suite 900
Albany, New York 12207

IN WITNESS WHEREOF, the undersigned subscribed this Certificate of Amendment and hereby affirm under penalties of perjury that its contents are true this 20th day of December, 2005.

J. Bradley Rauch
President

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ASSISTANT ATTORNEY GENERAL 11-16-06
DATE

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 19, 2006

Mr. Peter J. Millock, Esq.
Nixon Peabody LLP
Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207-3497

Re: Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15th day of September, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 20, 2005.

Sincerely,

Donna Peterson

Donna W. Peterson
Executive Secretary

/md

EXHIBIT A

Plan of Dissolution

PLAN OF DISSOLUTION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

The Board of Directors (the "Board") of **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.**, a New York not-for-profit corporation (the "Corporation"), at a special meeting duly convened on the 11th day of December, 2013, with notice being waived in accordance with New York law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted, by majority vote, the following Plan of Dissolution for a voluntary dissolution of the Corporation (the "Plan"), does hereby recommend to the sole member of the Corporation (the "Sole Member") for approval that the Corporation be dissolved in accordance with the following Plan:

1. Upon resolution of the Board adopting this Plan, the Board shall submit the Plan to the Sole Member for approval by written consent.

2. Attached hereto as **Exhibit A** is a copy of the Certificate of Incorporation of the Corporation (together with all amendments).

3. Approval of the dissolution of the Corporation is required to be obtained from the Public Health and Health Planning Council of the State of New York, which approval, when obtained, will be attached hereto as **Exhibit B**.

4. As of the date hereof, the Corporation has no assets or liabilities.

5. Within ten (10) days after the authorization of the Plan by the Sole Member (following due adoption of the Plan by the Board), a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to Section 1002(d) of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL").

6. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the N-PCL shall be attached thereto.

EXHIBIT A

Certificate of Incorporation

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT) TYPE: B COUNTY: ERIE

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FILED:05/03/2001 DURATION:PERPETUAL CASH#:010503000865 FILM #:010503000832

ADDRESS FOR PROCESS

THE CORPORATION
2697 MAN STREET
BUFFALO, NY 14214

EXIST DATE

05/03/2001

REGISTERED AGENT

FILER	FEES	110.00	PAYMENTS	110.00
	FILING	75.00	CASH	0.00
DAMON & MOREY LLP	TAX	0.00	CHECK	0.00
1000 CATHEDRAL PLACE	CERT	0.00	CHARGE	0.00
298 MAIN STREET	COPIES	10.00	DRAWDOWN	110.00
BUFFALO, NY 14202-4096	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

DOS-1025 (11/89)

E-12

F010503000 832

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CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

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

THE UNDERSIGNED, being a natural person of the age of eighteen (18) years or over and desiring to form a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of New York, hereby certifies:

FIRST: The name of the corporation is THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

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 and shall be operated exclusively for the benefit of Planned Parenthood of Buffalo and Erie County, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereafter defined) (the "Affiliate"). To this end the corporation shall have the power:

(a) To operate exclusively for charitable purposes; specifically, to solicit, accept, receive, hold, invest, reinvest, apply, spend, administer, and manage any contributions, gifts, bequests, devises, benefits of trust (but not to act as a trustee of any trust) and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income and/or the principal thereof to or for the use or benefit of the Affiliate, its programs and purposes from time to time as may be deemed appropriate in the discretion of the Board of Directors of the corporation.

(b) To support the activities of, act in connection with, and further the purposes of, the Affiliate.

(c) In the event that the Board of Directors of the corporation shall determine that funds or property cannot be usefully held or distributed to the Affiliate, to hold or distribute such funds or property to or for the benefit of such other charitable organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Law) (the "Code") as the Board of Directors in its discretion shall determine.

(d) Do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, officers or directors or of any private individual, except to the extent permitted under Article 5 of the Not-for-Profit Corporation Law.

FOURTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

FIFTH: Nothing contained herein shall authorize the corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital services or health related services, or to operate a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law, or an adult care facility as defined in and covered by Article 7 of the Social Services Law.

SIXTH: Nothing herein shall authorize the corporation to engage in the practice of medicine or any other profession required to be licensed under Title VIII of the Education Law.

SEVENTH: Nothing contained herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities described in Sections 404 (a)-(n), (p)-(s) and/or (u) of the Not-for-Profit Corporation Law.

EIGHTH: The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

NINTH: Notwithstanding any other provision of this Certificate, the corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Code, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code.

TENTH: No part of the assets, income, profits or net earnings of the corporation shall be distributable to, or inure to the benefit of, any member, trustee, director or officer of the corporation, or any other private individual, except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and no member, trustee, director or officer of the corporation, or any other private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.

ELEVENTH: No substantial part of the activities of the corporation shall be devoted to the carrying on of propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided by Section 501(h) of the Code), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

2

TWELFTH: In the event of dissolution of the corporation, all of the assets and property of the corporation remaining after the payment of the corporation's liabilities shall be distributed to the Affiliate, provided that the Affiliate shall then qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York. If the Affiliate shall not so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York.

THIRTEENTH: In any taxable year in which the corporation is a private foundation as defined under Section 509 of the Code, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code;

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

(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

FOURTEENTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

Name	Address
David G. Brock	49 Northington Drive E. Amherst, New York 14051
Janet Wisbaum	180 Greenaway Road Eggertsville, New York 14226
Elizabeth Clark	One Marina Park South Buffalo, New York 14202
Robert W. Constantine	44 New Amsterdam Avenue Buffalo, New York 14216

3

FIFTEENTH: The office of the corporation is to be located in the County of Erie, State of New York.

SIXTEENTH: The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is c/o the corporation, 2697 Main Street, Buffalo, New York 14214.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation this 5th day of December, 2000.

Anthony L. Eugeni
Anthony L. Eugeni, Sole Incorporator
1000 Cathedral Place
298 Main Street
Buffalo NY 14202

459197 v1

4

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 22, 2001

Ms. Susan A. Benz
Damon & Morey LLP
Attorneys at Law
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096

Re: Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Ms. Benz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 16th day of March, 2001, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of the Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 5, 2000.

Sincerely,

Donna Peterson

Karen S. Westervelt (for)
Executive Secretary

5

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

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

DAMON & MOREY LLP
1000 CATHEDRAL PLACE
298 MAIN STREET
BUFFALO, NEW YORK 14202-4096

061226000609

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION OF

THE FOUNDATION FOR PLANNED PARENTHOOD
OF BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Eric

FILED

2006 DEC 26 PM 2:37

1.CC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 2 6 2006
TAX $ -
BY: DML

Eric

NIXON PEABODY LLP
30 South Pearl Street
Albany, New York 12207
(518) 427-2650

6 061226000671

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ERIE
PURPOSES PROCESS NAME

SERVICE COMPANY: ** NO SERVICE COMPANY ** SERVICE CODE: 00

FILED:12/26/2006 DURATION:********* CASH#:061226000671 FILM #:061226000609

ADDRESS FOR PROCESS

NIXON PEABODY LLP
30 SOUTH PEARL STREET SUITE 900
ALBANY, NY 12207

REGISTERED AGENT

FILER	FEES	90.00	PAYMENTS	90.00
	FILING	30.00	CASH	0.00
	TAX	0.00	CHECK	90.00
NIXON PEABODY LLP	CERT	0.00	CHARGE	0.00
30 SOUTH PEARL STREET	COPIES	10.00	DRAWDOWN	0.00
	HANDLING	50.00	OPAL	0.00
ALBANY, NY 12207			REFUND	0.00

DOS-1025 (11/89)

F061226000609

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION FOR PLANNED PARENTHOOD OF

BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, the undersigned, being the President of the Board of Directors of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), do hereby certify as follows:

1. The name of the Corporation is The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State on May 3, 2001. The Corporation is formed under the Not-for-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law and shall continue to be a Type B corporation after the filing of this Certificate of Amendment.

4. Paragraph FIRST of the Certificate of Incorporation of the Corporation is hereby amended to read in full as follows:

   "FIRST: The name of the Corporation is The Foundation for Planned Parenthood of Western New York, Inc."

5. The first full paragraph of Paragraph THIRD of the certificate of incorporation of the Corporation is hereby amended to read in full as follows:

"THIRD: The Corporation is organized and shall be operated exclusively for the benefit of Planned Parenthood of Western New York, Inc., a New York not-for-profit corporation exempt from tax under Section 501(c)(3) of the Code (as hereinafter defined) (the "Affiliate"). To this end the Corporation shall have the power:"

6. This Certificate of Amendment of the Certificate of Incorporation was authorized by action of the board of directors and the members of the Corporation.

7. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom service of process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process is:

Nixon Peabody LLP
30 South Pearl Street, Suite 900
Albany, New York 12207

IN WITNESS WHEREOF, the undersigned subscribed this Certificate of Amendment and hereby affirm under penalties of perjury that its contents are true this 20th day of December, 2005.

J. Bradley Rauch
President

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

11-16-06

ASSISTANT ATTORNEY GENERAL DATE

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 19, 2006

Mr. Peter J. Millock, Esq.
Nixon Peabody LLP
Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207-3497

Re: Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15th day of September, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of The Foundation for Planned Parenthood of Buffalo and Erie County, Inc., dated December 20, 2005.

Sincerely,

Donna Peterson

Donna W. Peterson
Executive Secretary

/nd

At the Special Term Part of the Supreme Court of the State of New York, held in and for the County of Erie, on the 15th day of December, 2006.

PRESENT

HON: JOHN A. MICHALEK, J.S.C., **Justice.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of **THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.** For an Approval of Amendments to its Certificate of Incorporation Pursuant to §804 of the Not-For-Profit Corporation Law	**ORDER** Index No.

The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), having duly made application for an order, pursuant to Section 804 of the Not-for-Profit Corporation Law, approving Amendments to the Certificate of Incorporation of said Corporation and authorizing the filing of a Certificate of Amendment in accordance with section 804 of the Not-for-Profit Corporation Law, and said application having regularly come to be heard,

Now upon reading of the Verified Petition of said Corporation, and the Certificate of Amendment designated as Exhibit B therein, and it appearing that the Attorney General of the State of New York has no objection to said amendments, and after due deliberation having been held thereon, and it appearing that the interests of said Corporation and the public interest will not be adversely affected by the proposed amendments, it is

ORDERED, that the amendments to the Corporation's Certificate of Incorporation exhibited therein be and the same are hereby approved and it is further

ORDERED that the aforesaid Certificate of Amendment is authorized to be filed by the Department of State in accordance with Section 803 of the Not-For-Profit Corporation Law, to which certificate a copy of this Order shall be annexed.

ENTER:

J.S.C.

JOHN A. MICHALEK, J.S.C.

GRANTED
DEC 1 5 2000

RICHARD F. BROWN

10137425.1

F061226000609

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION OF

THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Emc

FILED

2006 DEC 26 PM 2:37

1.CC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 2 6 2006
TAX $ ________
BY: ________

Emc

NIXON PEABODY LLP
30 South Pearl Street
Albany, New York 12207
(518) 427-2650

6 061226000671

EXHIBIT B

Public Health and Health Planning Council Approval

(To be obtained.)

EXHIBIT C

Written Consent of Sole Member

WRITTEN CONSENT
OF THE
SOLE MEMBER
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

THE UNDERSIGNED, being the sole member (the "Sole Member") of **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.**, a New York not-for-profit corporation (the "Corporation"), hereby takes the following actions and consents to the adoption of the following resolutions without a meeting:

WHEREAS, the Board of Directors of the Corporation, at a special meeting duly convened on the 11th day of December, 2013, notice being duly waived in accordance with New York law, a quorum being present at all times, duly adopted a Plan of Dissolution of the Corporation (the "Plan"), pursuant to which the Corporation will carry out a simplified voluntary dissolution of the Corporation in accordance with Article 10 of the Not-for-Profit Corporation Law of New York and all other applicable laws of the State of New York ("Applicable Law"); and

WHEREAS, the Sole Member has been presented with the Plan and deems it advisable and in the best interests of the Corporation that that Plan be adopted and the Corporation be liquidated and dissolved in accordance with the Plan and Applicable Law.

NOW, THEREFORE, be it:

> **RESOLVED**, that the Plan be, and it hereby is, approved, authorized and adopted in all respects and the activities and transactions contemplated by the Plan and the Plan Documents (as hereinafter defined), be, and they hereby are, approved, authorized and adopted; and be it further
>
> **RESOLVED**, that the Corporation be dissolved and that all of the Corporation's rights, franchises and privileges whatsoever be surrendered and cancelled in accordance with the Plan and Applicable Law; and be it further
>
> **RESOLVED**, that the Corporation be, and hereby is, authorized and empowered to consummate the transactions contemplated by the Plan and, in connection therewith, to execute and deliver any and all documents as shall be required in connection with the consummation of the transactions contemplated by the Plan, including, without limitation, a Certification of the Plan, a Certificate of Dissolution, Form CT-247 and a Verified Petition to the New York Attorney General for approval of the Certificate of Dissolution (collectively, the "Plan Documents"), each containing

such terms and conditions as the officer of the Corporation executing the same shall deem appropriate or necessary in his or her sole judgment and discretion; and each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to execute the Plan Documents in the name and on behalf of the Corporation and to deliver the same once executed, the execution and delivery thereof to be deemed conclusive evidence of the approval by the Corporation of the terms, conditions and provisions thereof; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all actions as shall be required in connection with the consummation of the transactions contemplated by the Plan, including, without limitation: (i) obtaining the approval of any and all government agencies or officers, including, without limitation, the approval of the Public Health and Health Planning Council of the State of New York; (ii) filing the Plan and all necessary attachments with the New York Attorney General within ten (10) days of the approval of the Plan pursuant hereto; (iii) submitting a Verified Petition and all necessary attachments to the New York Attorney General for approval of the Certificate of Dissolution; and, (iv) upon obtaining all required consents and approvals therefor, filing a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law; and be it further

RESOLVED, that each officer of Corporation be, and each of them hereby is authorized, empowered and directed to do or cause to be done all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as he or she may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions; and be it further

RESOLVED, that any acts of the officers and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has duly executed this Written Consent as of the ____ day of ________________, 20___.

PLANNED PARENTHOOD OF WESTERN NEW YORK, INC., Sole Member

By:________________________________
Name: ________________
Title: CEO

[Signature Page to Written Consent of Sole Member]

EXHIBIT D
Approval of Public Health Council

(To be obtained.)

EXHIBIT E

Certificate of Dissolution

CERTIFICATE OF DISSOLUTION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

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

I, Daniel Sharpe, Chairperson of The Foundation For Planned Parenthood of Western New York, Inc., hereby certify:

FIRST: The name of the corporation is **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.** (the "Corporation"). The name under which the Corporation was formed is The Foundation for Planned Parenthood of Buffalo and Erie County, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on the 3rd day of May, 2001.

THIRD: The names and addresses of each of the directors and officers of the Corporation and the title of each are as follows:

Name	Director/Title	Address
Daniel Sharpe	Director/Chairperson	2697 Main Street, Buffalo, NY 14214
Rev Jeremy Lopez	Director/Vice Chairperson	2697 Main Street, Buffalo, NY 14214
Carima El-Behairy	Director/Treasurer	2697 Main Street, Buffalo, NY 14214
David Brock	Director	2697 Main Street, Buffalo, NY 14214
Gerald Marchand	Director	2697 Main Street, Buffalo, NY 14214
J. Bradley Rauch	Director	2697 Main Street, Buffalo, NY 14214
Tara Vogel	Director	2697 Main Street, Buffalo, NY 14214
Ileah Welch	Director	2697 Main Street, Buffalo, NY 14214

FOURTH: Dissolution of the Corporation was authorized by the majority vote of the Board of Directors of the Corporation, followed by the written consent of the sole member of the Corporation.

FIFTH: The Corporation elects to dissolve.

SIXTH: At the time of dissolution, the Corporation is a Type B not-for-profit corporation.

SEVENTH: The Corporation filed with the Attorney General of the State of New York a certified copy of its Plan of Dissolution.

EIGHTH: The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution, the Corporation had no assets or liabilities.

NINTH: At the time of the authorization of the Plan of Dissolution, the Corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Dissolution of the Corporation this ____ day of ________________, 20___.

____

Daniel Sharpe, Chairperson

At the Special Term Part of the Supreme Court of the State of New York, held in and for the County of Erie, on the 15th day of December, 2006.

PRESENT

HON: JOHN A. MICHALEK, J.S.C., **Justice.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

THE FOUNDATION FOR PLANNED PARENTHOOD OF BUFFALO AND ERIE COUNTY, INC.

For an Approval of Amendments to its Certificate of Incorporation Pursuant to §804 of the Not-For-Profit Corporation Law

ORDER

Index No.

The Foundation for Planned Parenthood of Buffalo and Erie County, Inc. (the "Corporation"), having duly made application for an order, pursuant to Section 804 of the Not-for-Profit Corporation Law, approving Amendments to the Certificate of Incorporation of said Corporation and authorizing the filing of a Certificate of Amendment in accordance with section 804 of the Not-for-Profit Corporation Law, and said application having regularly come to be heard,

Now upon reading of the Verified Petition of said Corporation, and the Certificate of Amendment designated as Exhibit B therein, and it appearing that the Attorney General of the State of New York has no objection to said amendments, and after due deliberation having been held thereon, and it appearing that the interests of said Corporation and the public interest will not be adversely affected by the proposed amendments, it is

ORDERED, that the amendments to the Corporation's Certificate of Incorporation exhibited therein be and the same are hereby approved and it is further

ORDERED that the aforesaid Certificate of Amendment is authorized to be filed by the Department of State in accordance with Section 803 of the Not-For-Profit Corporation Law, to which certificate a copy of this Order shall be annexed.

ENTER:

J.S.C.

JOHN A. MICHALEK, J.S.C.

GRANTED

DEC 1 5 2008

CLERK

RICHARD F. BROWN

10137425.1

5

EXHIBIT B

Plan of Dissolution

CERTIFICATE OF DISSOLUTION
OF
THE FOUNDATION FOR PLANNED PARENTHOOD
OF WESTERN NEW YORK, INC.

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

<u>Filed By</u>:
DAMON MOREY LLP
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202

#1876115.2

CERTIFICATION
OF
PLAN OF DISSOLUTION

I, Daniel Sharpe, Chairperson of **THE FOUNDATION FOR PLANNED PARENTHOOD OF WESTERN NEW YORK, INC.**, a New York not-for-profit corporation (the "Corporation"), hereby certify under penalties for perjury that a special meeting of the Board of Directors of the Corporation was duly held at 4:00 p.m. on the 11th day of December, 2013 via telephone conference and the Plan of Dissolution attached hereto as **Exhibit A** (the "Plan") was duly submitted and passed by a majority vote of the Board of Directors and that, thereafter, the Plan was duly approved by the sole member of the Corporation by written consent.

____
Daniel Sharpe, Chairperson

Dated the ____ day of _____________, 20___.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: May 5, 2014

SUBJECT: Proposed Restated Certificate of Incorporation of AC Center, Inc.

Attached is the proposed Restated Certificate of Incorporation of AC Center, Inc. This not-for-profit corporation seeks approval to change its corporate name to "Trillium Health, Inc." The Public Health Council established the corporation under the name Community Health Network, Incorporated as the operator of a diagnostic and treatment center in Monroe County in 1990. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated March 12, 2014 from Joseph G. Casion, attorney for the corporation. As explained in that letter, the name change is "intended to connote the organization's commitment to (i) providing integrated and personalized primary and secondary health services and (ii) access to a full continuum of supportive programs in order to (iii) meet the comprehensive health and social needs of its diverse and underserved populations with chronic illnesses." To that end, the purposes of the corporation are also amended to delete specific references to HIV/AIDS and replace them with more general references to chronic conditions, thereby more accurately reflecting the community it endeavors to serve. Further amendments effectuated by the Restated Certificate of Incorporation do not require the Council's approval.

The Department has no objection to the proposed name change, and the proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments

RESTATED CERTIFICATE OF INCORPORATION
OF
AC CENTER, INC.

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

FIRST: The name of the Corporation is AC Center, Inc. The Corporation was formed under the name Community Health Network, Incorporated.

SECOND: The Certificate of Incorporation was filed by the State of New York Department of State on January 22, 1990.

THIRD: 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 Section 201 of the Not-For-Profit Corporation Law.

FOURTH: The Certificate of Incorporation of the Corporation is hereby amended to effect the amendments specified below:

A. Paragraph 1. of the Certificate of Incorporation is hereby amended to change the name of the Corporation, so that said Paragraph 1 shall provide in its entirety as follows:

1. The name of the Corporation is Trillium Health, Inc.

B. Paragraph 3. of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is hereby amended so that said provision shall provide in its entirety as follows:

3. The purposes for which the Corporation is formed are:

(a) The Corporation is formed and shall be operated exclusively for charitable, educational and scientific purposes in order to provide integrated health care, support programs, pharmacy services, health education and prevention to underserved, diverse individuals with unmet medical and social needs in a welcoming, accepting environment for comprehensive primary and specialty care generally in connection with their diagnosed chronic conditions and treatment plans for illnesses such as HIV/AIDS, hypertension, diabetes, hepatitis, etc. for the benefit of such individuals and the entire community.

(b) Specifically, without limitation on the foregoing, the purposes of the Corporation shall be:

(1) To operate a diagnostic and treatment center providing multidisciplinary primary, chronic illness and related care in a community-based practice setting;

(2) To provide medical care to patients with the full spectrum of acute conditions and chronic

illnesses, with emphasis on early intervention in the care and follow-up of asymptomatic persons;

(3) To develop a network of community-based physicians and health care providers, and to impart concepts of care to physicians and other health care professionals;

(4) To collaborate in research activities with universities and other organizations engaged in medical research; and

(5) To collaborate with other community agencies, providers and programs to improve care in the State of New York, including Rochester, New York and its surrounding area.

(c) Nothing herein shall authorize the Corporation to operate or maintain an institution of higher learning or to grant degrees. Nothing herein shall authorize the Corporation to provide professional training in the profession of medicine or any other profession required to be licensed by Title VIII of the Education Law.

C. Paragraph 6. of the Certificate of Incorporation, which sets forth the names and addresses of the initial directors of the Corporation is hereby deleted in its entirety pursuant to Section 805(5)(c) of the Not-for-Profit Corporation Law which states a restated certificate of incorporation need not include statements as to the incorporator or incorporators, or the first directors.

D. Paragraph 7. of the Certificate of Incorporation, which sets forth the address of the Corporation, is hereby amended and renumbered due to the deletion of the existing Paragraph 6, as stated above, so that said provision shall provide in its entirety as follows:

6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process is: 259 Monroe Avenue, Rochester, NY 14607.

FIFTH: The Certificate of Incorporation of the Corporation is hereby restated to set forth its entire text as amended heretofore as follows:

CERTIFICATE OF INCORPORATION

OF

TRILLIUM HEALTH, INC.

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

1. The name of the Corporation is Trillium Health, Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is not formed, conducted or operated for purposes of pecuniary profit or financial gain. The Corporation is a Type B Corporation under Section 201 of the Not-for-Profit Corporation Law.

3. The purposes for which the Corporation is formed are:

(a) The Corporation is formed and shall be operated exclusively for charitable, educational and scientific purposes in order to provide integrated primary and specialty health care, support programs, pharmacy services, health education and prevention to underserved, diverse individuals with complex, unmet medical and social needs in a welcoming, accepting environment in connection with their diagnosed chronic conditions and treatment plans for illnesses such as HIV/AIDS, diabetes, cancer, etc. for the benefit of such individuals and the entire community.

(b) Specifically, without limitation on the foregoing, the purposes of the Corporation shall be:

(1) To operate a diagnostic and treatment center providing multidisciplinary chronic illness and related care in a community-based practice setting;

(2) To provide medical care to patients with the full spectrum of chronic illnesses, with emphasis on early intervention in the care and follow-up of asymptomatic persons;

(3) To develop a network of community-based physicians and health care providers, and to impart concepts of chronic illness and related care to physicians and other health care professionals;

(4) To collaborate in research activities with universities and other organizations engaged in chronic illness research; and

(5) To collaborate with other community agencies, providers and programs to improve chronic care in the State of New York, including Rochester, New York and its surrounding area.

(c) Nothing herein shall authorize the Corporation to operate or maintain an institution of higher learning or to grant degrees. Nothing herein shall authorize the Corporation to provide professional training in the profession of medicine or any other profession required to be licensed by Title VIII of the Education Law.

4. (a) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member, trustee, director of officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(b) No substantial part of the activities of the Corporation shall be carrying on propaganda or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition of any candidate for public office.

(c) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986. The Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or (ii) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States internal revenue law).

(d) In the event the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to one or more organizations which are then qualified under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States internal revenue law) to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

5. The office of the Corporation in the State of New York shall be located in the County of Monroe.

6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process is: 259 Monroe Avenue, Rochester, NY 14607.

SIXTH: This Amended and Restated Certificate of Incorporation was authorized by the Board of Directors of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law and the By-laws of the Corporation.

Jay Rudman

Jay Rudman, President and Chief Executive Officer

HSE

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

March 12, 2014

Michael M. Stone, Assistant Counsel
Bureau of House Counsel
New York State Department of Health
Corning Tower, 24th Floor
Empire State Plaza
Albany, New York 12237-0031

RECEIVED
MAR 17 2014
Bureau of House Counsel
NYS Division of Legal Affairs

Re: AC Center, Inc.

Dear Mr. Stone:

We are writing in response to your e-mail of February 19, 2014, a copy of which is attached, (1) requesting further explanation for the reason for the proposed name change of AC Center, Inc. to Trillium Health, Inc. and (2) summarizing the changes to the corporate purposes.

The rationale for both changes, name and purposes, is essentially the same. As advances in health care have led to a prolonged life expectancy for individuals with HIV/AIDS, and those individuals require different services depending on a variety of circumstances and may have developed other chronic conditions in some cases, the organization feels it has the requisite expertise to expand its mission to care for its traditionally underserved population beyond just treatment for HIV/AIDS.

Accordingly, the organization would like to change its name, which was derived from its predecessor organizations, AIDS Rochester and Community Health, and still generally associated with HIV/AIDS to Trillium Health. "Trillium" is a three-petaled flower above a whorl of three leaves, native to North American, and is intended to connote the organization's commitment to (i) providing integrated and personalized primary and secondary health services and (ii) access to a full continuum of supportive programs in order to (iii) meet the comprehensive health and social needs of its diverse and underserved population with chronic illnesses.

Similarly, the organization wishes to change its corporate purposes to delete specific references to HIV/AIDS in several places and replace them with references to chronic conditions more generally so that the organization can continue to serve its existing population and others in the community suffering from such conditions in the most comprehensive, patient-centered and efficient manner.

I hope that the foregoing provides you with the information you require. Enclosed is a copy of our petition and the proposed Restated Certificate of Incorporation which sets forth the amendments to the corporate name and purposes. Please note that the third page of the Restated

1600 BAUSCH & LOMB PLACE ROCHESTER, NY 14604-2711 PHONE: 585.232.6500 FAX: 585.232.2152

ROCHESTER, NEW YORK • BUFFALO, NEW YORK • ALBANY, NEW YORK • NAPLES, FLORIDA

Certificate should state "Certificate of Incorporation of Trillium Health, Inc." (rather than "Certificate of Incorporation of AC Center, Inc.") as that would be the corporate name following approval and filing. The corrected Restated Certificate is enclosed.

Please contact me if you have any questions.

Respectfully submitted,

Harter Secrest & Emery LLP

Joseph G. Casion
Partner

DIRECT DIAL: 585.231.1407
E-MAIL: JCASION@HSELAW.COM

:cas

cc: Audrey Cooper, Assistant Attorney General

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: April 3, 2014

SUBJECT: HCWNY Foundation, Inc.

HCWNY Foundation, Inc. ("the Foundation") requests that the Public Health and Health Planning Council ("PHHPC") approve the attached proposed Application for Authority. Public Health Law § 2801-a(6) and Not-for-Profit Corporation Law §§ 404(o) and 1304 require that the application for authority of a not-for-profit foundation that solicits contributions on behalf of an Article 28 facility must be approved by PHHPC.

The Foundation's proposed beneficiary is the Hemophilia Center for Western New York, an Article 28 facility. In addition to the proposed executed Application for Authority, the following documents and information are attached in support of the Foundation's request for approval:

1) A copy of the Foundation's Certificate of Incorporation in the State of Delaware;
2) A copy of the Foundation's proposed bylaws;
3) A letter, dated March 6, 2014, from a representative of the Article 28 beneficiary acknowledging that it will accept funds and other donations from the Foundation;
4) A letter, dated March 31, 2014, from the applicant's attorney providing: (a) a generalized description of the fundraising activities to be undertaken by the Foundation; (b) information regarding the Foundation's proposed Board of Directors; and (c) a statement identifying the organizational relationship between the Foundation and the Article 28 beneficiary.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

APPLICATION FOR AUTHORITY

OF

HCWNY FOUNDATION, INC.

Under Section 1304 of the
Not-for-Profit Corporation Law

The undersigned, Michael Cimato, being the President of HCWNY Foundation, Inc., does hereby certify as follows:

FIRST: The name of the corporation is HCWNY Foundation, Inc.

SECOND: The Certificate of Incorporation of the corporation was filed on September 13, 2013 in the State of Delaware.

THIRD: The corporation is a foreign corporation as defined in subparagraph (a)(7) of Section 102 (Definitions) of the Not-for-Profit Corporation Law. It shall be a Type B corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law.

FOURTH: The purposes that the corporation shall pursue in New York are the following charitable purposes: to solicit, receive, and maintain funds and other property and to grant, convey or lease such funds and other property exclusively to Charitable Organizations, as defined below, for use by such Charitable Organizations in activities that further Charitable Purposes, as defined below. As used in this Article Fourth, "Charitable Organizations" means (a) corporations, trusts, funds, foundations or community chests organized and operated exclusively for Charitable Purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and which do not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office, and (b) specifically includes Hemophilia Center of Western New York, Inc., a New York not-for-profit corporation that is formed for Charitable Purposes. As used in this Article Fourth, "Charitable Purposes" means charitable purposes within the meaning of the law of the State of New York and Section 501(c)(3), or any successor section, of the Internal Revenue Code of 1986, as amended, or any successor statute.

FIFTH: The activities the corporation proposes to conduct in New York State, in addition to holding meetings of its directors and maintaining bank accounts, are: maintaining an administrative office and soliciting, receiving, and maintaining real and personal property.

SIXTH: Nothing in Articles Fourth or Fifth, or in any other provision, of this Application for Authority (1) shall directly or indirectly authorize the corporation to have any of the purposes or conduct any of the activities described in paragraphs (a) through (s) and (u) through (w) of Section 404 of the Not-for-Profit Corporation Law or (2) shall authorize the corporation to establish, operate, or maintain a hospital, home care services agency, hospice, health maintenance organization, or comprehensive health services plan, as provided for by Articles 28, 36, 40, and 44 of the Public Health Law, respectively; provide hospital service or related service; establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law; or solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.

SEVENTH: The corporation is authorized to conduct all of the purposes and the activities enumerated in Articles Fourth and Fifth above in the State of Delaware, the jurisdiction of incorporation of the corporation.

EIGHTH: The office of the corporation within the State of New York is to be located in the County of Erie.

NINTH: The Secretary of State of the State of New York is designated as 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 or her is c/o William C. Moran & Associates, Inc., 6500 Main Street, Suite 5, Williamsville, New York 14221.

TENTH: The corporation has not, since its incorporation, done any act in this state, except as set forth in paragraph (b) of section 1301 of the Not-for-Profit Corporation Law.

Dated: 2/18, 2014

Michael Cimato, President

APPLICATION FOR AUTHORITY

OF

HCWNY FOUNDATION, INC.

Under Section 1304 of the Not-for-Profit Corporation Law

Filed by:

Susan J. Facer, Esq.
William C. Moran & Associates, P.C.
Attorneys at law
6500 Main Street, Suite 5
Williamsville, NY 14221

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "HCWNY FOUNDATION, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTH DAY OF FEBRUARY, A.D. 2014.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS AN EXEMPT CORPORATION.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "HCWNY FOUNDATION, INC." WAS INCORPORATED ON THE THIRTEENTH DAY OF SEPTEMBER, A.D. 2013.

5398867 8300C

140149075

SECRETARY OF STATE · 1776 · DELAWARE · 1970

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 1119940

DATE: 02-07-14

COVER SHEET

660221

INCORPORATING SECTION
P.O. BOX 898
FRANCHISE TAX SECTION
P.O. BOX 7040
UNIFORM COMMERCIAL CODE
P.O. BOX 793
DOVER, DELAWARE 19903

STATE OF DELAWARE
DEPARTMENT OF STATE
Jeffrey W. Bullock, Secretary
DIVISION OF CORPORATIONS
JOHN G. TOWNSEND BUILDING
DUKE OF YORK STREET
DOVER, DELAWARE 19901

INCORPORATING SECTION
GENERAL INFORMATION
302/739-3073
NAME RESERVATION
302/739-6900
900/420-8042
FRANCHISE TAX SECTION
302/739-4225
UNIFORM COMMERCIAL CODE
302/739-4279

****

SRV#: 131088577 Agent: 9030670 File#: 5398867 Package#: 000660221
Priority: 6 Mail Code E Date: 09/16/13

User: SDOCSAS

Comments:

Attn:

Agent: AGENTS AND CORPORATIONS, INC.
1201 ORANGE ST STE 600
ONE COMMERCE CENTER
WILMINGTON DE 19801

Items Included:	Item Type	Copies	
	Invoice	001	
	Image	001	

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State of Delaware
Secretary of State
Division of Corporations
Delivered 03:55 PM 09/13/2013
FILED 03:51 PM 09/13/2013
SRV 131088577 - 5398867 FILE

CERTIFICATE OF INCORPORATION

OF

HCWNY FOUNDATION, INC.

Under the Delaware General Corporation Law

FIRST: The name of the corporation is HCWNY Foundation, Inc.

SECOND: The corporation is a non-profit corporation and shall not have any capital stock. The Hemophilia Center of Western New York, Inc. shall be the sole member of the corporation.

THIRD: The corporation is formed exclusively for Charitable Purposes, as hereinafter defined, and for the following specific charitable purposes:

(a) To operate exclusively for the benefit of, perform the functions of, and to carry out the purposes of the Hemophilia Center of Western New York, Inc.;

(b) To solicit, receive and maintain funds and other assets for Charitable Purposes, as hereinafter defined, and to that end (i) to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons or corporations, any property, whether real, personal, tangible or intangible, or any undivided interest therein, without limitation as to amount or value; (ii) to sell, convey or otherwise dispose of any such property; (iii) to invest, reinvest, or deal with the principal or income thereof, all in such manner as, in the judgment of the directors, will best promote the purposes of the corporation without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, this certificate of incorporation or any laws applicable thereto, and (iv) to the fullest extent permitted by applicable law, to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations if in the sole judgment of the board of directors such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes of the corporation

(c) Without limiting the foregoing, to make gifts, grants, leases, or other use or dispositions of property to or for Charitable Purposes, as hereinafter defined, in accordance with (to the extent applicable) the terms of gifts, bequests or devises to the corporation not inconsistent with the corporation's purposes as set forth in this certificate of incorporation or in accordance with determinations made by the board of directors pursuant to this certificate of incorporation; and

(d) To do any other act or thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of the corporation's directors or officers.

As used in this Article Third, "Charitable Purposes" means charitable or educational purposes as those terms are used under applicable state law and in Section 501(c)(3), or any successor section, of the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code").

FOURTH: (A) Notwithstanding any other provision of this certificate, the corporation is organized exclusively for charitable purposes as specified in Section 501(c)(3), or any successor section, of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3), or any successor section, of the Code, or by a corporation, contributions to which are deductible under Section 170(c)(2), or any successor section, of the Code.

(B) No part of the net earnings of the corporation shall inure to the benefit of any member, director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(C) No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h), or any successor section, of the Code), and the corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

FIFTH: (A) The income of the corporation shall be distributed at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942, or any successor section, of the Code; and

(B) The corporation and its directors shall not: (i) engage in any act of self-dealing as defined in Section 4941(d), or any successor section, of the Code; (ii) retain any excess business holdings as defined in Section 4943(c), or any successor section, of the Code; (iii) make any jeopardizing investments so as to subject the corporation to tax under Section 4944, or any successor section, of the Code; or (iv) make any taxable expenditures as defined in Section 4945(d), or any successor section, of the Code.

SIXTH: Upon dissolution of the corporation, whether voluntary or involuntary, after payment of all debts and liabilities of the corporation of whatsoever kind or nature, its remaining funds and other property and rights shall be distributed, granted, conveyed and assigned for one or more exempt purposes within the meaning of Section 501(c)(3), or any successor section, of the Code.

SEVENTH: The name and address of the incorporator of the corporation is:

Susan J. Facer, Esq.
6500 Main Street, Suite Five
Williamsville, New York 14221

EIGHTH: The address of its registered office in the State of Delaware is 1201 Orange Street, Suite 600, Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is Agents and Corporations, Inc.

NINTH: No director shall be liable to the corporation for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

Dated: September 12, 2013

/s/Susan J. Facer, Esq.
Susan J. Facer, Esq.
Sole Incorporator

Adopted January 27, 2014

BY-LAWS
OF
HCWNY FOUNDATION, INC.

A non-profit corporation formed under
the Delaware General Corporation Law

ARTICLE I
MEMBERS

Section 1. Members. The sole member of HCWNY Foundation (the "Corporation") shall be Hemophilia Center of Western New York, Inc., a New York not-for-profit corporation, or its successor (the “Sole Member”). References in these by-laws to “members” or the “membership” shall be deemed to be a reference to the Sole Member. No additional members shall be admitted except by the Sole Member.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Management of Corporate Affairs. Except as otherwise provided by law, the certificate of incorporation of the Corporation or these by-laws, the activities, property and affairs of the Corporation shall be managed by the Board of Directors.

Section 2. Number and Qualifications. The Board of Directors shall consist of not less than three and not more than seven individuals, and the size of the Board shall be deemed fixed at the number of directors elected by the Sole Member at each annual meeting. Directors shall be elected at the annual meeting of the Sole Member. All of the directors shall be at least eighteen (18) years of age.

Section 3. Election and Term of Office. Except as otherwise provided by law or these by-laws, each director of the Corporation shall be elected at an annual meeting of the Sole Member, which meeting, for the purposes of these by-laws, shall be deemed the annual meeting, and shall hold office until the next annual meeting of the Sole Member and until his or her successor has been elected and qualified.

Section 4. Honorary Directors. The Sole Member may elect honorary directors for such periods and in such numbers as the Board may determine. Honorary directors shall be given notice of all Board meetings but shall not be required to attend, shall not be counted for the purpose of a quorum, and shall not vote or have any liability with respect to any action taken by the Board of Directors.

Section 5. Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board of Directors for any reason may be filled by a vote of a majority of the directors then in office, although less than a quorum exists. If any such newly created directorships or vacancies occurring in the Board of Directors for any reason shall not be filled prior to the next annual meeting of the Sole Member, they shall be filled by vote of the Sole Member at the annual meeting.

Section 6. Resignation. Any director of the Corporation may resign at any time by giving his or her resignation to the President, the Vice President or the Secretary. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Removal. Any director may be removed with or without cause by the Sole Member.

Section 8. Contracts with Corporation. No member of the Board shall be interested, directly or indirectly, in any contract for furnishing supplies thereto, unless authorized by the concurring vote of a majority of the entire Board not including the vote of each such interested director.

Section 9. Compensation. No director of the Corporation shall receive, directly or indirectly, salary, compensation or emolument from the Corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation.

Section 10. Special Advisors. From time to time, the Board of Directors may designate as special advisors a chosen number of outstanding persons from the community who are interested in the objectives of the Corporation to assist the Corporation in its operations. Selection as a special advisor shall not confer upon those selected any right to vote or to participate in the management of the Corporation, nor any liability with respect thereto.

ARTICLE III

Meeting of Directors

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at the main office of the corporation, except as otherwise fixed by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called at any time by the President, or in his or her absence or disability, the Vice-President, and must be called by such officer on written request by one-third of the entire Board of Directors. Such request shall state the purpose or purposes for which the meeting is to be called. Each special meeting of the Board of Directors shall be held at such time and place as the person calling the meeting shall determine and the notice of the meeting shall specify.

Section 3. Annual Meeting. The annual meeting of the Board of Directors shall be the held in the same month of each year as the annual meeting of the Sole Member.

Section 4. Notice of Meetings. Notice of each regular or special meeting of the Board of Directors stating the time and place thereof shall be given by the President, the Vice-President or the Secretary to each member of the Board not less than three (3) days before the meeting, by mailing the notice, postage prepaid, addressed to each member of the Board at his or her residence or usual place of business, or not less than two (2) days before the meeting, be delivering the notice to each member of the Board personally, by facsimile, by e-mail, or by telephone.

Section 5. Quorum and Action by Board. At all meetings of the Board of Directors, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum shall be required for the transaction of business and shall consist of not less than one-third of the entire Board, and the vote of a majority of the directors present at the time of a vote, if a quorum is present at such time, shall decide any question that may come before the meeting. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Section 6. Procedure. The order of business and all other matters of procedure at every meeting of the directors may be determined by the person presiding at the meeting.

Section 7. Action Without a Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board 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 or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 8. Presence at the Meeting by Telephone. One or more members of the Board of Directors or any committee thereof may participate in a 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. Participation in a meeting by such means shall constitute presence in person at the meeting.

ARTICLE IV

COMMITTEES OF DIRECTORS

Section 1. Designation of Committees. The Board of Directors, by resolution or resolutions adopted by a majority of the entire Board, may designate from among its members an executive committee and other committees, each consisting of three or more directors with one director being designated as the committee chairman, and may designate one or more directors as alternate members of any such committee who may replace any absent member or members at any meeting of such committee. In the interim between meetings of the Board of Directors, the executive committee shall have all the authority of the Board of Directors except as otherwise provided by law and shall serve at the pleasure of the Board of Directors. Each other committee designated shall have such a name as may be provided from time to time in the resolution or resolutions of the Board of Directors, shall serve at the pleasure of the Board of Directors and shall have, to the extent provided in such resolution or resolutions, all the authority of the Board of Directors except as otherwise provided by law.

Section 2. Acts and Proceedings. All acts done and power and authority conferred by the executive committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be specified as being, an act under the authority of the Board of Directors. The executive committee and each other committee shall keep regular minutes of its proceedings and report its actions to the Board of Directors when required.

Section 3. Meetings of Committees. Committees of directors shall meet at such times and places as the chairmen of the committees shall determine and the notice of the meeting shall specify. Meetings of committees of directors shall be governed by the provisions of Sections 4, 5, 6, 7 and 8 of Article III of these by-laws, which govern meetings of the entire Board of Directors.

ARTICLE V

OFFICERS

Section 1. Officers. The Sole Member, at the annual meeting of the Sole Member, shall appoint or elect a President, Vice-President, a Secretary, and a Treasurer. The Sole Member may from time to time elect or appoint such additional officers as it may determine. Such additional officers shall have such authority and perform such duties as the Sole Member may from time to time prescribe.

Section 2. Term of Office. The President, Vice President, the Secretary and the Treasurer shall, unless otherwise determined by the Sole Member, hold office until the next annual meeting of the Board of Directors and until their successors have been elected or appointed and qualified. Each additional officer appointed or elected by the Sole Member shall hold office for such term as shall be determined from time to time by the Sole Member and until his or her successor has been elected or appointed and qualified. Any officer, however, may be removed or have his or her authority suspended by the Sole Member at any time, with or without cause. If the office of any officer becomes vacant for any reason, the Sole Member shall have the power to fill such vacancy.

Section 3. Resignation. Any officer may resign at any time by notifying the Board of Directors, the President or the Secretary of the Corporation in writing. Such resignation shall take effect at the time specified therein unless otherwise specified in such resignation, the acceptance thereof shall not be necessary to make it effective.

Section 4. Duties of Officers May Be Delegated. In case of the absence or disability of an officer of the Corporation, or for any other reason that the Board may deem sufficient, the Board, except where otherwise provided by law, may delegate, for the time being, the powers or duties of any officer to any other officer, or to any member of the Board.

Section 5. The President. The President shall be the chief executive and administrative officer of the Corporation and shall have the general powers and duties of supervision and management of the Corporation and shall perform all such other duties as usually pertain to the office or are properly required by the Board of Directors. The President shall preside at all meetings of the Board of Directors.

Section 6. The Vice-President. The Vice-President shall, in the absence or at the request of the President, perform the duties and exercise the powers of the President. The Vice-President shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board of Directors.

Section 7. The Secretary. The Secretary shall issue notices of all meetings of directors where notices of such meetings are required by law or these by-laws. The Secretary shall attend all meetings of the Board of Directors and keep minutes thereof. The Secretary shall affix the corporate seal to and sign such instruments as require the seal or the Secretary's signature and shall perform such other duties as usually pertain to the office or are properly required by the Board of Directors.

Section 8. The Treasurer. The Treasurer shall have the care and custody of all the moneys and securities of the Corporation. The Treasurer shall cause to be entered in the books of the Corporation to be kept for that purpose full and accurate accounts of all moneys received and paid on account of the Corporation. The Treasurer shall make and sign such reports, statements and instruments as may be required of him or her by the Board of Directors or by the laws of the United States or of any state or country, and shall perform such other duties as usually pertain to the office or as are properly required of the Treasurer by the Board of Directors.

Section 9. Officers Holding Two or More Offices. Any two or more offices, except those of President and Secretary, may be held by the same person, but no officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 10. Compensation. No officer of the Corporation shall receive, directly or indirectly, salary compensation or emolument from the Corporation, except [reasonable compensation for services actually performed and] reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnification. Each director and officer of the Corporation, whether or not then in office, and any person whose testator or intestate was such a director or officer, shall be indemnified by the Corporation for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the General Corporation Law of the State of Delaware or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Corporation shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a director or officer only if such action or proceeding (or part thereof) was authorized by the Board of Directors. Notwithstanding anything to the contrary in this Article, the corporation shall not provide any indemnification for any liability or expense of the director or officer if providing such indemnification would constitute "self dealing" under applicable provisions of the United States Internal Revenue Code of 1986 and regulations promulgated thereunder, as such law or regulations may be amended from time to time.

Section 2. Advancement of Expenses: Expenses incurred by a director or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article may be paid by the Corporation in advance of the final disposition of such action or proceeding upon (a) the receipt of an undertaking by or on behalf of such director or officer to repay such advancement in case such director or officer is ultimately found not to be entitled to indemnification as authorized by this Article and (b) approval by the Board of Directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then by vote of a majority of the entire Board of Directors. To the extent permitted by law, the Board of Directors, shall not be required to find that the director or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Corporation makes any advance payment of expense hereunder.

Section 3. Availability and Interpretation: To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article (a) shall be available with respect to events occurring prior to the adoption of this Article, (b) shall continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the director or officer, (or, if applicable, at the sole discretion of the testator or intestate of such director or officer seeking such rights), on the basis of applicable law in effect at the time of such rights are claimed and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the director or officer form whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article shall not be deemed exclusive of any other rights to which any director or officer of the Corporation or other person may now or hereafter be otherwise entitled, whether contained in the certificate of incorporation, these by-laws, a resolution of the Board of Directors or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any director or officer of the Corporation or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article shall remain fully enforceable. Any payments made pursuant to this Article shall be made only out of funds legally available therefor.

ARTICLE VII

CORPORATE FINANCE

Section 1. Corporate Funds. The funds of the Corporation shall be deposited in its name with such banks, trust companies or other depositories as the Board of Directors may from time to time designate. All checks, notes, drafts and other negotiable instruments of the Corporation shall be signed by such officer or officers, agent or agents, employee or employees as the Board of Directors from time to time may designate. No officers, agents or employees of the Corporation, alone or with others, shall have the power to make any checks, notes, drafts or other negotiable instruments in the name of the Corporation or to bind the Corporation thereby, except as provided in this section.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless otherwise provided by the Board of Directors.

Section 3. Loans to Directors and Officers. No loans shall be made by the Corporation to its directors and officers.

Section 4. Gifts. The Board of Directors, the executive committee or any authorized officer, employee or agent of the Corporation may accept on behalf of the Corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the Corporation.

Section 5. Voting of Securities Held by the Corporation. Stocks or other securities owned by the Corporation may be voted in person or by proxy as the Board of Directors or the executive committee shall specify. In the absence of any direction by the Board of Directors or executive committee, such stocks or securities shall be voted by the President as he or she shall determine.

Section 6. Income from Corporation Activities. All income from activities of the Corporation shall be applied to the maintenance, expansion or operation of the lawful activities of the Corporation.

ARTICLE VIII

CORPORATE SEAL

Section 1. Form of Seal. The seal of the Corporation shall be in such form as may be determined from time to time by the Board of Directors.

ARTICLE IX

AMENDMENTS

Section 1. Procedure for Amending By-Laws. By-Laws of the Corporation may be adopted, amended or repealed only by the Sole Member.

HCWNY FOUNDATION, INC.
936 Delaware Avenue
Buffalo, New York 14209
Phone: (716) 896-2470

March 6, 2014

New York State Public Health and Health Planning Council
c/o Justin D. Pfeiffer, Senior Attorney
New York State Department of Health
Bureau of House Counsel
Corning Tower, Room 2482
Albany, New York 12237-0026

Ladies and Gentlemen,

RE: Contributions from HCWNY Foundation, Inc.

On behalf of the Hemophilia Center of Western New York, Inc. (the "Center"), I acknowledge that the Center will accept funds raised for it by HCWNY Foundation, Inc.

Laurie Reger

Laurie Reger, Executive Director
Hemophilia Center of Western New York, Inc.

WILLIAM C. MORAN & ASSOCIATES, P.C.
ATTORNEYS AT LAW
6500 MAIN STREET
SUITE FIVE
WILLIAMSVILLE, NEW YORK 14221

Michael A. de Freitas
Susan J. Facer
William J. Hardy
David P. Lazenski
William C. Moran

(716) 633-6500
Fax (716) 633-3370

March 31, 2014

New York State Public Health and Planning Council
c/o Justin D. Pfeiffer, Senior Attorney
New York State Department of Health
Bureau of House Counsel
Corning Tower, Room 2482
Albany, NY 12237-0026

Dear Mr. Pfeiffer:

RE: HCWNY FOUNDATION, INC.
<u>Application for Authority to Conduct Business in NY</u>

HCWNY Foundation, Inc. (the "Foundation") is a newly incorporated Delaware non-profit corporation formed to solicit, receive, and maintain funds and other property and make grants for charitable organizations and specifically for the Hemophilia Center of Western New York, Inc. The Hemophilia Center of Western New York, Inc. provides diagnostic and health maintenance services to persons with hemophilia under an Article 28 operating certificate from the Department of Health.

The information you requested is attached or described below.

1) Proposed Application for Authority of HCWNY Foundation, Inc. – attached.

2) Copies of <u>both</u> Foundation's certificate of incorporation <u>and</u> bylaws – attached.

3) Letter from the Hemophilia Center of Western New York, Inc. acknowledging it will accept funds raised by the Foundation – attached.

4) <u>General description of Foundation's fundraising activities</u>: the Foundation will pursue personal solicitation; direct mail and email solicitation; grant writing; and fundraisers such as golf outings.

5) Specified information concerning the Foundation's directors:

A) Michael Cimato

Home address: 104 Shimwood Court, Getzville, NY 14068

Employed by Fiserv Automotive Solutions, 6400 Main Street, Suite 100, Williamsville, NY 14221

Position: National Sales Executive

Past and Present Affiliations with Charitable and other Non-Profit Organizations:

Coach, Amherst Lighting Softball

B) Michael Tuberdyck

Home address: 132 Slade Avenue, West Seneca, NY 14224

Self-employed by New Visions Photography, 132 Slade Avenue, West Seneca, NY 14224

Position: Owner/principle

Past and Present Affiliations with Charitable and other Non-Profit Organizations:

Board Member, Hemophilia Foundation of Upstate New York, Mary Gooley Chapter

C) *Mary Haggerty*

Home address: 85 Coronation Drive, Amherst, NY 14226

Employed by: Grand Island School District, 1100 Ransom Road, Grand Island, NY 14072

Position: Principal

Past and Present Affiliations with Charitable and other Non-Profit Organizations:

Rotary International, NYS Reading Association, Niagara Frontier Reading Council, Council for Exceptional Children

6) Description of relationship between the Foundation and the Center: Article FIRST of the Foundation's certificate of incorporation provides that the Hemophilia Center of Western New York shall be the sole member of the Foundation. As sole member of the Foundation the Hemophilia Center of Western New York elects the directors of the Foundation and, thus, controls the foundation. This relationship is comparable to that of a parent and subsidiary relationship. Article I, Section 1 of the Foundation's by-laws also states that the Hemophilia Center of Western New York shall be the sole member of the Foundation.

If this information is satisfactory, please send me your letter consenting to the application of authority. Of course, please contact me with questions about this matter.

Sincerely,

Susan J. Facer

Susan J. Facer

E-mail: sfacer@moranlawyers.com

SJF/ccf
Enclosure
Copy w/ enc. to Laurie Reger, Executive Director

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Cambridge Home Care, LLC
Address:	New York
County:	New York
Structure:	Limited Liability Company
Application Number:	2131-L

Description of Project:

Cambridge Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Cambridge Home Care, LLC is:

Lorna E. McDonald, R.N., 100%
Private Duty Nurse, New York Presbyterian Hospital

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

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 800 2nd Avenue, 9th Floor, New York, New York 10017:

New York	Queens	Kings
Bronx	Richmond	Westchester

The applicant proposes to serve the residents of Westchester County from an office located at 175 Huguenot Street, Suite 2005, New Rochelle, New York 10801:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Nutrition
Speech Language Pathology	Medical Supplies, Equipment & Appliances	

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

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

Recommendation:	Contingent Approval
Date:	March 17, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	InterMed Health Care Services, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	2135-L

Description of Project:

InterMed Health Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Olga Botezat owns 120 shares and Lucian Botezat owns 80 shares.

The Board of Directors of InterMed Health Care Services, Inc. comprises the following individuals:

Olga Botezat, President/Treasurer
CEO/CFO, InterMed Homecare Agency (Atlanta, GA)
Affiliation: InterMed Homecare Agency (Atlanta, GA)

Lucian Botezat, Vice President/Secretary
Office Manager, InterMed Homecare Agency (Atlanta, GA)

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

The applicant proposes to serve the residents of the following counties from an office located at 262 Coney Island Avenue, Brooklyn, New York 11223:

New York	Kings	Queens	Bronx	Nassau

The applicant proposes to provide the following health care services:

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

A review of the following agency was performed as part of this review:

InterMed Homecare Agency (Atlanta, GA)

The information received from the State of Georgia indicated that the home care agency is in current compliance and that they have not taken any enforcement actions against the agency.

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

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

Recommendation: Contingent Approval
Date: April 1, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	LK Healthcare, Inc. d/b/a Accessible Home Health Care of Staten Island
Address:	Staten Island
County:	Richmond
Structure:	For-Profit Corporation
Application Number:	2132-L

Description of Project:

LK Healthcare, Inc., d/b/a Accessible Home Health Care of Staten Island, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Toa C. Wong.

The Board of Directors of LK Healthcare, Inc. d/b/a Accessible Home Health Care of Staten Island comprises the following individual:

Toa C. Wong, P.T., L.Ac.
CEO, TLC Clove Lake Physical Therapy
VP, TLC Rehabilitation Physical Therapy, PC

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of Richmond County from an office located at 1428 Victory Boulevard, Staten Island, New York 10301.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Homemaker	Housekeeper	

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

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

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

Recommendation: Contingent Approval
Date: April 1, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Refuah Home Health, Inc.
Address:	Spring Valley
County:	Rockland
Structure:	Not-For-Profit Corporation
Application Number:	2365L

Refuah Home Health, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Refuah Health Center Inc., a Federally Qualified Health Center (FQHC), will be the sole member of Refuah Home Health, Inc. The Refuah Health Center, Inc. board members will be identical to Refuah Home Health, Inc.

The Board of Directors of Refuah Home Health, Inc. and Refuah Health Center Inc. are comprised of the following individuals:

Samuel Breuer – Vice-President
Vice-President/CBS Management

Marion Corbet - Chairperson
President-Owner/Diversified Management Group, LLC

Esther Deutsch - Director
Housewife

Jacob Frieder - Director
Vice-President/Global Accountant & Business Consulting Inc.

Elena Hay, N.P. - Director
Nurse Practitioner/St. John's Riverside

Linda Neumann - Secretary
Sales-Marketing/Pams Lunchroom

Avigdor Ostreicher - Treasurer
Refuah Home Health, Inc.
Owner/Fairfield Gourmet Foods LLC

Joseph Rawicki - Director
Principal/Yeshiva Darchei Noam

Devorah Spitz - Director
Sales/Fashion Fit Lingerie

Leah Weisz - Director
Housewife

Shloime Wosner - Director
Sales Agent/New York Life

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

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, indicates no issue with the license of the medical professional associated with this application.

The applicant proposes to serve the residents in the following counties from an office located at 728 North Main Street, Spring Valley, New York 10977:

Rockland	Orange	Sullivan	Kings

The applicant proposes to provide the following health care services:

Nursing	Housekeeping
Physical Therapy	Occupational Therapy
Personal Care	Home Health Aide
Speech-Language Pathology	Medical Social services
Nutrition	Homemaker

A 7 year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

- Refuah Health Center Inc. (Diagnostic & Treatment Center)

The Division of Hospital and Diagnostic and Treatment Centers has reviewed the compliance history of Refuah Health Center Inc. and indicates that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency:
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 7, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Sofia's Home Care, Inc.
Address:	Staten Island
County:	Richmond
Structure:	For-Profit Corporation
Application Number:	1818-L

Description of Project:

Sofia's Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Rimma Perelman – 170 Shares
Liliya Gekhman, MD – 30 Shares

The Board of Directors of Sofia's Home Care, Inc. is comprised of the following individuals:

Rimma Perelman – President/Secretary
Medical Librarian, Nassau University Medical Center

Liliya Gekhman, MD – Vice President/Treasurer
Medical Director, FLH Medical

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

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

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

The applicant proposes to serve the residents of the following counties from an office located at 139 Kiswick Street, Staten Island, New York 10306:

Bronx
Kings
New York
Queens
Richmond

The applicant proposes to open a second site to be located in Nassau County to serve the residents of the following counties after the main site has had a successful operational survey.

Nassau
Suffolk
Westchester

The applicant proposes to provide the following health care services:

Nursing
Home Health Aide

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

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

Recommendation: Contingent Approval
Date: March 26, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Ultimate Home Care, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For Profit Corporation
Application Number:	2110-L

Description of Project:

Ultimate Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Ultimate Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Ludmila Varobey owns 43 shares, Marina Adelman owns 42 shares and Petar Muncan owns 15 shares. The remaining 100 shares are unissued.

The members of the Board of Directors of Ultimate Home Care, Inc. comprise the following individuals:

Ludmila Varobey, R.D.H., President
Dental Hygienist, Dr. Stuart Feintuch

Marina Adelman, Vice President
Owner/President, Ultimate Billing

Jeffry Varobey, Secretary/Treasurer
Unemployed

Petar Muncan, R.N., Director
R.N., Jewish Community Council Services Commission

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

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 535 Neptune Avenue, Apt. 23-E, Brooklyn, New York 11224:

New York	Kings	Queens	Bronx	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care

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

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

Recommendation: Contingent Approval
Date: May 7, 2014

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Magic Home Care, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	2209-L

<u>Description of Project:</u>

Magic Home Care, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Magic Home Care, LLC. was previously approved as a home care services agency by the Public Health Council at its October 6, 2011 meeting and subsequently licensed as 2007L001.

At that time, the LLC membership consisted of Tsilistina Ryabicheva and Gennady Shafir with each of them owning 50% of the membership interest.

Through an Assignment of Limited Liability Company Membership Interest Agreement Tsilistina Ryabicheva proposes to transfer her membership (50%) to Esfira Shafir.

The proposed membership of Magic Home Care, LLC comprises the following individuals:

Esfira Shafir, RN – 50%
Field Nurse – Staff Registered Nurse,
The Brooklyn Hospital Center Home Care
Home Care Nursing Supervisor, Caring Professional, Inc.

Gennady Shafir – 50%

Gennady Shafir is exempt from character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

The Office of the Professions of the State Education Department indicates no issues with Esfira Shafir's licensure as a Registered Nurse.

A search of Esfira Shafir's name revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 250 Avenue X, Brooklyn, New York 11223:

Kings	Queens	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Occupational Therapy	Medical Social Services	Housekeeper	

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

<u>Contingency</u>
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	May 6, 2014

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2803 and 2805-t of the Public Health Law, a new Section 400.25 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Section 400.25 is added to read as follows:

Section 400.25 Disclosure of nursing quality indicators.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) Acuity means the nursing care requirements of patients or residents.

(2) Case mix means the differences in patients or residents within a population in terms of their physical and mental conditions, and the resources that are used in their care.

(3) Fall means:

(i) For general hospitals, an unplanned descent to the floor with or without injury to the patient including unassisted and assisted descents whether they result from physiological or environmental reasons.

(ii) For nursing homes, an unintentional change in position coming to rest on the ground, floor or onto the next lower surface with or without injury to the resident including intercepted falls.

(4) Fall injury level means:

(i) For general hospitals, the degree of injury resulting from a fall and designated as moderate, major or fatal. For purposes of this subparagraph: moderate injuries involve suturing, application of steri-strips/skin glue, splinting or muscle/joint strain; major injuries involve surgery, casting or traction, or require consultation to rule out neurological or internal injury or patients with coagulopathy that receive blood products as a result of the fall; and fatal falls involve injuries that cause the patient's death but do not include falls caused by physiologic events.

(ii) For nursing homes, the degree of injury resulting from a fall designated as major involves bone fractures, joint dislocations, closed head injuries with altered consciousness or subdural hematoma.

(5) Healthcare setting associated infection means any localized or systemic patient condition that:

(i) resulted from the presence of an infectious agent or its toxin(s) as determined by clinical examination or by laboratory testing; and

(ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting.

(6) Licensed Practical Nurse means a person who is licensed and currently registered as a Licensed Practical Nurse pursuant to Article 139 of the New York State Education Law.

(7) Patient includes a resident of a nursing home.

(8) Patient care staff means unit-based Registered Nurses, Licensed Practical Nurses and unlicensed personnel providing direct patient care greater than 50% of their shift.

(9) Patient day is the average number of patients a unit has per shift during a 24 hour period.

(10) Pressure ulcer means a localized injury to the skin and/or underlying tissue as a result of pressure or pressure in combination with shear acquired after admission to a healthcare facility.

(11) Registered Nurse means a person who is licensed and currently registered as a Registered Professional Nurse pursuant to Article 139 of the New York State Education Law.

(12) Shift means a 24 hour period of time as a whole or divided into parts as appropriate to the reporting facility.

(13) Unit means a distinct location providing patient care in a general hospital or nursing home distinguished from other distinct locations by name, number or other patient-specific factors.

(14) Unlicensed personnel means individuals trained to function in an assistive role to nurses in the provision of patient care, as assigned by and under the supervision of the Registered Nurse.

(b) Nurse Staffing Indicators are:

(1) The total number of productive hours of care provided by patient care staff per patient day for each unit, and the number and percentage of productive hours of

care provided by Registered Nurses, Licensed Practical Nurses and unlicensed personnel each; and

(2) the average Registered Nurse and Licensed Practical Nurse to patient ratio for each unit and on each shift.

(c) Nurse-sensitive patient outcome indicators for general hospitals are:

(1) Falls with injury rate as indicated by the frequency in which falls result in a fall injury level of moderate, major or fatal per applicable unit calculated no less often than quarterly.

(2) Health care acquired pressure ulcers as indicated by the percentage of patients with facility-acquired pressure ulcer(s) of the skin that are determined to be stages II, III, IV, unstageable and suspected deep tissue injury per applicable unit calculated no less often than quarterly.

(3) Healthcare setting associated infection rates per applicable unit calculated no less often than quarterly for the following:

(i) Central line associated blood stream infection;

(ii) Catheter associated urinary tract infection; and

(iii) Ventilator associated (pneumonia) event.

(d) Nurse-sensitive patient outcome indicators for nursing homes are:

(1) Percent of long-stay residents who experienced one or more falls with major injury.

(2) Percentage of short-stay residents who have medical conditions that predispose them to developing a facility-acquired pressure ulcer with new or worsening pressure ulcers Stage II-IV.

(3) Percentage of long-stay residents with urinary tract health care setting associated infections.

(e) Within 30 days of a written request, general hospitals and nursing homes shall provide to the requester in hard copy or an electronic copy such as a portable document format (pdf) file, the following information for a three to twelve month period of time that is not more than one year prior to the date of the request:

(1) nurse staffing indicators and nurse-sensitive patient outcome indicators specified in this section;

(2) the procedures and processes used for determining and adjusting staffing levels based on patient case mix and acuity;

(3) the final conclusions of any complaint investigations filed with any state or federal regulatory agency or accrediting agency and any citations resulting from surveys; and

(4) the sources and dates for data disclosed.

(f) Facilities shall have policies and procedures for documentation and management of requests and responses to requests under this section. Documentation of requests and responses to requests under this section shall be kept for a period of no less than two years from the date the request for information was received.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803 and 2805-t.

PHL Section 2803 outlines the powers and duties of the Commissioner. It also authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Section 2805-t authorizes the Commissioner to promulgate regulations on the disclosure of nursing quality indicators including: (1) the number of hours of total direct nursing care per patient; (2) the percentage of such nursing care provided by Registered Nurses, Licensed Practical Nurses and unlicensed personnel; (3) the ratio of patients per Registered Nurse providing direct care; (4) the incidence of select adverse patient care occurrences; (5) the procedures and processes used to determine staffing based on patient or resident case mix and/or acuity and the facility's compliance with these methods; and (6) outcomes of complaint investigation(s) filed with any state or federal regulatory agency or accrediting agency and survey(s) resulting in citation(s), including but not limited to significant medication errors.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. The objective of PHL Section 2805-t is to provide the public with information regarding nursing staffing levels and nursing-sensitive patient outcome indicators.

Needs and Benefits:

The Nursing Care Quality Protection Act (Chapter 422 of the Laws of 2009), effective March 15, 2010, added PHL Section 2805-t and requires Article 28 facilities to disclose identified nursing quality indicator information upon request to any member of the public, and to the Commissioner of any State agency responsible for licensing the facility or responsible for overseeing the delivery of services by the facility, or any organization accrediting the facility. PHL Section 2805-t authorizes the Commissioner to promulgate regulations regarding disclosure of nursing quality indicators to such requesters. This regulation is to provide, consistent with PHL Section 2805-t, standards for the collection and disclosure of data regarding nursing staffing levels and nursing-sensitive patient outcome indicators. These regulations require the use of established, standardized definitions and measurement criteria that are, to the extent possible, already being collected by facilities.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

The Nursing Care Quality Protection Act (Chapter 422 of the Laws of 2009), became effective March 15, 2010, 180 days after it was signed into law. Initial compliance was facilitated by guidance documents developed collaboratively with stakeholders and communicated to facilities via Dear Administrator letters. At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. In addition: (1) CMS utilizes and makes information regarding a number of these indicators available to the public on the Nursing Home Compare website as measures of quality; (2) prior to this law becoming effective over 50% of hospitals already participated in the National Database for Nursing Quality Indicators (NDNQI) which requires measurement and reporting of the nursing quality indicators included in this regulation; and (3) a CMS hospital requirement recently became effective that requires measurement and reporting of a number of these same indicators. Costs associated with collecting and maintaining data have already been borne. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received. It is estimated that an average size facility would expend $5.00 per request to make 5, 10-page reports available per year, for a total annual cost of $25.00.

Costs to Local and State Government:

Article 28 facilities that fall under the jurisdiction of local or state government such as county nursing homes, clinics, or hospitals are affected and incur costs the same as any other

Article 28 facilities. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Costs to the Department of Health:

There will be no additional costs to the Department of Health in enforcing this regulation. Implementation and surveillance of these provisions will be accomplished utilizing existing staff.

Article 28 facilities operated by the Department of Health (Helen Hayes Hospital and Four Veterans' Nursing Homes) are affected and incur costs the same as any other Article 28 facilities. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Local Government Mandates:

Article 28 facilities that fall under the jurisdiction of local government such as county nursing homes or general hospitals will be affected and be subject to the same requirements as any other Article 28 facilities.

Paperwork:

New paperwork associated with this regulation is minimal. Tracking and measurement of staffing data for payroll purposes is routine in all Article 28 facilities. One hundred fifty-one (151) hospitals currently measure staffing and nursing-sensitive patient outcome indicators in the manner required by these regulations as a result of their voluntary participation in the National Database for Nursing Quality Indicators (NDNQI). In addition, many other hospitals measure and track these indicators without formal participation in NDNQI in order to benchmark their nursing quality against other facilities. Nursing homes currently report nursing quality indicator measures/information through Minimum Data Set (MDS) submissions, so a substantial amount of new paperwork is also not expected for these providers. Maintenance of requests for nursing quality indicator information for the required two year period of time will be new but should not create considerable paperwork for Article 28 providers.

Duplication:

This proposal does not duplicate any New York State regulation. In an effort to avoid duplication of work for regulated facilities, when appropriate, efforts have been made to define nursing staffing and patient outcome indicator measurement and calculation in the same way as defined by the Center for Medicaid and Medicare Services (CMS), Centers for Disease Control and Prevention (CDC), New York State Department of Health (NYSDOH), National Quality Forum (NQF) and/or the National Database of Nursing Quality Indicators (NDNQI)—entities where these indicators are either already required for submission or, a submission plan is under development or, in the case of NDNQI, have been elected voluntarily for submission by NYS hospitals and/or LTC facilities.

There is a CMS initiative requiring hospitals to participate in a nursing registry and submit nursing quality indicators consistent with this proposed regulation. The planned acknowledgement of submission of 2012 structural measures data was April 1, 2013 through May 15, 2013.

Alternative Approaches:

These regulations are authorized by PHL Section 2805-t. Efforts have been made to minimize any adverse impact by requiring standardized indicators that in many cases are already being collected by the facilities. Acceptable methods of disclosure include facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Federal Requirements:

CMS Hospital Inpatient Quality Reporting (IQR) Program requires that certain measures are reported that assess the characteristics and capacity of the provider to deliver quality healthcare. This includes Participation in a Systematic Clinical Database Registry for Nursing Sensitive Care. A hospital’s Annual Payment Update is affected when the hospital does not answer all required questions indicating participation or non-participation in a registry. For FFY 2014 dates for acknowledging collection of IQR data were April 1, 2013, through May 15, 2013.

The Centers for Medicare & Medicaid Services (CMS) began a national Nursing Home Quality Initiative (NHQI) in 2002. The nursing home quality measures come from resident assessment data that nursing homes routinely collect on the residents at specified intervals during their stay. These measures assess the resident's physical and clinical conditions and abilities, as well as preferences and life care wishes. These assessment data are converted to develop quality measures that show how well nursing homes are caring for their residents' physical and clinical needs. The Minimum Data Set (MDS) is currently in use to collect resident assessment data.

Compliance Schedule:

This regulation will take effect upon publication of a Notice of Adoption in the New York *State Register.*

Contact Person:

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REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The provisions of this regulation will apply to hospital and nursing homes authorized to operate pursuant to Public Health Law Article 28. Such facilities include: 228 general hospitals, and 635 nursing homes. Three general hospitals and 84 nursing homes are considered small businesses. Local governments operate 18 hospitals and 40 nursing homes.

Compliance Requirements:

General hospitals and nursing homes will be required to disclose identified nursing quality indicators, including information associated with complaint investigations and surveys, and methods used to determine and adjust staffing levels upon request. Records of requests and facility response must be kept for a period of no less than two years in order for organizations to be able to track and show evidence of their compliance with requests for this information.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses and local governments to comply with these regulations.

Minimizing Adverse Impact:

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and nursing homes to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Small Business and Local Government Participation:

Outreach to the affected parties was and continues to be conducted. Affected parties were given the opportunity to contribute to the pre-publication development of the content and processes involved in implementation of this regulation. Organizations that represent the affected parties are given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

The proposed amendment will apply Statewide, including the 43 rural counties with less than 200,000 inhabitants, and the 10 urban counties with a population density of 150 per square mile or less.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services and Costs:

This proposal specifies that "facilities shall have policies and procedures for documentation and management of requests and responses to requests under this section. Records must be kept for a period of no less than two years from the date the information was received." At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Minimizing Adverse Impact:

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and nursing homes to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Rural Area Participation:

Outreach to the affected parties, including those in rural areas is being conducted. Organizations that represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

JOB IMPACT STATEMENT

Pursuant to the State Administrative Procedure Act (SAPA) Section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Subdivision 4 of Section 225, and by Section 2402 of the Public Health Law, the section heading and subdivision (a) of Section 1.31 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

1.31 Disclosure of confidential cancer information [for research purposes].

(a) The identity of any person contained in a report of cancer made pursuant to the provisions of Section 2401 of the Public Health Law, or cancer data collected for other specific research studies, shall not be disclosed except [to governmental or government-sponsored research projects]:

(1) for the purpose of scientific studies and research when the State Commissioner of Health determines that substantial knowledge may be gained by such disclosure leading toward the reduction of morbidity and mortality[.]; or

(2) for surveillance or evaluation activities that are government sponsored at the federal, state or Canadian province level, when the State Commissioner of Health determines that the proposed activity is of significant public health importance and that release of identifiable information is necessary for the proposed activity.

The recipient shall limit the use of such information to the specific [study or research] purpose for which such disclosure is made, shall not further disclose such information <u>(except when the recipient is another cancer registry pursuant to laws applicable to such registry)</u>, and shall satisfy the State Commissioner of Health that the confidentiality of [the] patient['s] identity will be maintained.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law ("PHL") Sections 225(4) and 2402. PHL 225(4) authorizes the Public Health and Health Planning Council (PHHPC) to establish, and from time to time, amend and repeal sanitary regulations, to be known as the sanitary code of the state of New York, subject to approval by the commissioner.

PHL 2402 specifies that "the reports of cancer cases made pursuant to the provisions of this article shall not be divulged or made public so as to disclose the identity of any person to whom they relate, by any person, except in so far as may be authorized in the sanitary code."

Legislative Objectives:

To allow for the amendment of the State sanitary code in order to preserve the security of life or health or the preservation and improvement of public health in the state of New York. Also to provide for the confidential treatment of patient and medical data, specifically cancer patient identity, while recognizing the legitimacy of research.

Needs and Benefits:

The purpose of the proposed amendment to the existing regulation is to make it more consistent with current cancer surveillance, research, and evaluation needs as well as sponsorship practices: allowing greater access to the New York State Cancer

Registry's data and expanding use of confidential data for surveillance and evaluation activities while continuing to protect the privacy and security of any information that could be used to identify individual cancer patients. The proposed changes will bring the New York State Cancer Registry into conformance with standard cancer registry practices pertaining to use of confidential cancer information.

Much has changed in the cancer registration arena since the original regulation governing use of "confidential cancer information" was promulgated in 1979. The North American Association of Central Cancer Registries (NAACCR) was founded in 1987 through the joint efforts of the National Cancer Institute (NCI), the American College of Surgeons, the American Cancer Society, and the American Association of Cancer Institutes in response to the growing number of state cancer registries and the realization that the registry community needed to adopt consensus standards in order to maximize the usefulness of the data collected across all jurisdictions. In 1992, the U.S. Congress passed the Cancer Registries Amendment Act (PL 102-515) with the purpose of establishing a National Program of Cancer Registries (NPCR), administered through the Centers for Disease Control and Prevention (CDC) with a system of grants to states to support the operation of population-based statewide cancer registries. This federal legislation requires specific assurances that the funded states will "provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations." Among other provisions, the federal legislation specifically requires that State laws and regulations: a) address the protection of confidential cancer patient information (i.e., information that identifies or could lead to the identification of a cancer patient), with the specific exemption of disclosure to "other State cancer registries and local and State Health officials," and b) provide for the disclosure of confidential cancer data for research.

Currently all 50 states and the District of Columbia have cancer registries. All registries receive funding support from the CDC or NCI or from both federal institutions. The NPCR is a significant source of funding for the NYS Cancer Registry.

Over this same time period, significant shifts have occurred in the research environment. In 1979, 78.0% of research funding (not limited to cancer research) to academic and/or non-profit institutions came from federal or other governmental funding sources; by 2010 that percentage had declined to 65.3% (source: National Science Foundation). While the proportion of federal funding for research has decreased, the number of research applications, including cancer-related applications, has greatly increased. In 1997, the National Institutes for Health (NIH) reviewed about 18,000 new applications and funded 24.7% of these. In 2012, nearly 46,000 new applications were reviewed by NIH but only 15.3% were funded (source: NIH Research Portfolio Online Reporting Tools). Many of the unfunded research proposals were of scientific merit and it is highly likely that some were subsequently funded by non-governmental sources.

Another significant shift in the cancer research environment was brought about by the Food and Drug Administration Amendments Act of 2007 (FDAAA), which gives the FDA the authority to require drug companies to conduct post-marketing studies or clinical trials – known as post-marketing requirements (PMRs). For rare cancers, potential risk associated with drug use can only be assessed effectively through the participation of multiple state cancer registries. This avenue of research, typically conducted by consulting firms on behalf of and sponsored by pharmaceutical companies, is expected to expand over time.

The New York State Cancer Registry (NYSCR) has been receiving funding through the CDC-NPCR since 1996. Although the NYSCR is compliant with the federal Cancer Registries Amendment Act (PL 102-515), the current regulation governing "disclosure of confidential cancer information" does not specifically address public health practice and is unnecessarily restrictive to research.

Part 1 of the State Sanitary Code 1.31(a) shall be amended to remove the requirement that research be governmental or government sponsored. An evaluation of state policies regarding cancer research conducted recently by CDC found that all state cancer registries have provisions for the release of confidential cancer information for research. The evaluation also found that no other state restricts research based on funding source (i.e., government-sponsored).

The proposed change to the regulation will permit greater use of NYSCR data for research. Specifically it will allow:

- Research conducted by or funded through private foundations such as the American Cancer Society, Susan G. Komen for the Cure, Howard Hughes Medical Institute, and the Leukemia and Lymphoma Society, which are significant sources of cancer research funding.
- Research sponsored by academic institutions.
- The conduct of pilot studies or proof-of-concept studies, which typically are not funded, but are required for most federal grant applications.
- FDA-required post-marketing surveillance studies.

Part 1 of the State Sanitary Code 1.31(a) shall be further amended to allow the release of identifiable cancer data for surveillance or evaluation activities that are government sponsored at the federal, state, or provincial level, when the State Commissioner of Health determines that the proposed activity is of significant public health importance and that release of identifiable information is necessary for the proposed activity. The concept of government sponsorship in the context of cancer surveillance and evaluation is still appropriate. This addition to the regulation addresses significant public health activities that require access to identifiable cancer data that do not fall in the realm of research. Specific examples include:

- Inter-state data exchange. In order for state cancer registries to be complete, i.e., to capture cancer surveillance data on all of their residents, confidential information must be exchanged by state cancer registries (e.g., a Connecticut resident treated for cancer in New York and reported to the NYSCR must be reported to the Connecticut state cancer registry and vice- versa). Both NAACCR and CDC-NPCR program standards specify that, at a minimum, state cancer registries must have agreements in place with all bordering states. [Note: NY PHL section 2401 paragraph 8 states "The department shall, meet cancer registry goals established by a nationally recognized central cancer registry organization unless any such goal is contrary to any provision of law."] Currently, the NYSCR has 22 inter-state reporting agreements in place. These agreements have been reviewed by the Department of Health's legal counsel and signed by the Health Commissioner or his/her designee

- Evaluation of an apparent cancer cluster tied to a potential environmental source, which may require the collection of additional information on specific cancer cases. These types of evaluations are frequently conducted by the Agency for Toxic Substances and Disease Registries (ATSDR). Similar evaluations in the context of occupational settings are conducted by the National Institute for Occupational Safety and Health (NIOSH).

The current specifications of Part 1 of the State Sanitary Code 1.31(a) regarding the limitation of the use of data for the specific purpose for which it was disclosed, the prohibition on disclosing the data further, and the requirement to ensure the confidentiality of the disclosed data shall be retained.

An exception to the "further disclosure" stipulation is the exchange of data with another state cancer registry; the confidentiality of that data shall be maintained pursuant to the laws applicable in that state. A review of state cancer registry policies regarding disclosure of confidential cancer data indicates that all states have laws and/or regulations in place to safeguard confidential cancer information. Additionally, all NPCR-funded state cancer registries are subject to the confidentiality provisions of the federal legislation. It is impractical for registries to treat data reported to them by another state cancer registry differently from data reported to them by in-state hospitals and physicians, since all the data become one population-based registry.

Although access to identifiable cancer data is being expanded, the Department of Health shall continue to apply a rigorous review process. All requests for identifiable cancer data will undergo administrative review as well as review by the New York State

Department of Health's Institutional Review Board (IRB) to assure that the criteria of Part 1 of the State Sanitary Code 1.31(a) are met. Researchers must demonstrate that substantial knowledge leading to the reduction of morbidity or mortality may be gained; that they will only use the disclosed data for the specified purpose and will not re-disclose the data; and that they have procedures and safeguards in place to ensure the confidentiality of the disclosed data. In addition to submitting a formal application which describes how the researcher will meet the criteria stated above, the researcher is required to submit proof of human subject protection training and a copy of their own institution's IRB approval of the proposed research.

Costs:

Other than a slight potential increase in research-funded employment, there is no cost to the state or increase in necessary state funds, and little significant change in operations. The amendment will not change any data reporting requirements; it will have no impact on regulated parties.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties. All requestors will be required to submit the same "application for research use of personal identifiable information" currently in use for researchers with governmental funding seeking access to identifiable data. This application includes, but is not limited to: a summary of the study proposal and project activities, including all sources of funding for the project, the type of data for which access is requested, documentation of Institutional Review Board approval of the project for the Protection of Human Subjects (in the case of research), documentation of informed consent (when appropriate); a detailed plan for ensuring the confidentiality of requested data; a detailed plan for securing specific and secure use of requested data; past and anticipated future requests for the study in question; and a signed, notarized affidavit verifying the data will be used only as specifically authorized and kept confidential.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

None. The original intent of this regulation was to protect the privacy and identities of cancer patients by severely limiting access to identifying information, while still making case information available for study and analysis, promoting the understanding and lessening of the burden of cancer in New York State. In recent years, important studies have been undertaken outside the province of the government. An increasing number of recognized contributors exist in the private sector. The current regulation limits access to Registry data for these non-government entities that support research and make important contributions leading to the reduction of cancer morbidity and mortality, e.g., the American Cancer Society, the Robert Woods Johnson Foundation, and Susan G. Komen for the Cure. Additionally, the current regulations limit opportunities for exchange of information with other states, and with studies required by the FDA for Post-market Drug Safety Surveillance.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area. Rather, it brings us into closer alignment with federal requirements.

Compliance Schedule:

The amendment will take effect when the Notice of Adoption is published in the State Register.

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STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

A Regulatory Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on small businesses and local governments. The rule amendment and underlying provisions impose no new reporting requirements, forms, or other paperwork upon county, city, town, village, school district, fire district, or other special district, but apply universally throughout this State. The rule does not impose dissimilar reporting, recordkeeping, or other compliance requirements on public or private entities.

All requestors will be required to submit the same "application for research use of personal identifiable information" currently in use for governmental entities seeking access to identifiable data, and the rule does not distinguish between parties of dissimilar types. This application includes, but is not limited to: a summary of the study proposal and project activities, including all sources of funding for the project, the type of data for which access is requested, documentation of Institutional Review Board approval of the project for the Protection of Human Subjects (in the case of research), documentation of informed consent (when appropriate); a detailed plan for ensuring the confidentiality of requested data; a detailed plan for securing specific and secure use of requested data; past and anticipated future requests for the study in question; and a signed, notarized affidavit verifying the data will be used only as specifically authorized.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

STATEMENT IN LIEU OF
A RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas. The rule and underlying provisions of the law do not distinguish between regulated parties located in rural, suburban, or metropolitan areas of this New York State, but apply universally throughout this State. The rule does not impose dissimilar reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

All requestors will be required to submit the same "application for research use of personal identifiable information" currently in use for governmental entities seeking access to identifiable data, and the rule does not distinguish between parties located in different geographical areas. This application includes, but is not limited to: a summary of the study proposal and project activities, including all sources of funding for the project, the type of data for which access is requested, documentation of Institutional Review Board approval of the project for the Protection of Human Subjects (in the case of research), documentation of informed consent (when appropriate); a detailed plan for ensuring the confidentiality of requested data; a detailed plan for securing specific and secure use of requested data; past and anticipated future requests for the study in question; and a signed, notarized affidavit verifying the data will be used only as specifically authorized.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The staffing status quo will remain unchanged by amending this regulation, both within the New York State Cancer Registry, and outside of it.