

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 2, 2014

*Immediately following the Special Establishment and Project Review Committee which is
scheduled to begin at 10:00 a.m.*

*90 Church Street
4th Floor, Room 4A & 4B
New York City*

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Vice Chairman

II. APPROVAL OF MINUTES

August 7, 2014 Meeting Minutes

Exhibit #1

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Howard A. Zucker, M.D., J.D., Acting Commissioner of Health

B. Report of the Office of Primary Care and Health Systems Management Activities

Daniel Sheppard, Deputy Commissioner

C. Report of the Office of Health Insurance Programs Activities

Jason Helgerson, Deputy Commissioner, Office of Health Insurance Programs

D. Report of the Office of Public Health Activities

Dr. Guthrie Birkhead, Deputy Commissioner, Office of Public Health

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Jo Ivey Boufford, M.D., Chair of the Public Health Committee

V. **HEALTH POLICY**

Report on the Activities of the Committee on Health Planning

John Rugge, M.D., Chair of the Health Planning Committee

VI. **REGULATION**

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

Angel Gutiérrez, M.D., Chair, Committee on Codes, Regulations and Legislation

For Emergency Adoption

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps)

For Adoption

14-09 Amendment of Section 2.59 of Title 10 NYCRR
(Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel)

12-26 Amendment of Sections 600.3 and 710.5 of Title 10 NYCRR
(Amendment of Certificate of Need (CON) Applications)

For Discussion

Sections of Title 10 NYCRR – Integrated Services Licensure

VII. **AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE**

Report on the Activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care

Peter Robinson, Chair

VIII. **PROJECT REVIEW AND RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

Report of the Committee on Establishment and Project Review

Peter Robinson, Member, Establishment and Project Review Committee

A. **APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Acute Care Services - Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142005 C	Strong Memorial Hospital (Genesee County) Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141060 E	Phoenix House Foundation, Inc. (New York County)	Contingent Approval
2.	141258 E	Harlem East Life Plan (New York County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141044 E	Saratoga Center for Care, LLC d/b/a Saratoga Center for Rehab and Skilled Nursing Care (Saratoga County)	Contingent Approval
2.	141235 E	Safire Rehabilitation of Northtowns, LLC (Erie County)	Contingent Approval
3.	141237 E	Safire Rehabilitation of Southtowns, LLC (Erie County)	Contingent Approval
4.	142050 E	BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing (Tompkins County)	Contingent Approval

Certified Home Health Agency – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141082 E	Eddy Visiting Nurse Association (Rensselaer County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation

Exhibit #7

Applicant

E.P.R.C. Recommendation

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

Approval

New York Foundling Hospital Center for Pediatrics, Medical and Rehabilitative Care, Inc.

Approval

Certificate of Merger

Exhibit #8

Applicant

E.P.R.C. Recommendation

Arnot Health Foundation, Inc.

Approval

Certificate of Incorporation

Exhibit #9

Applicant

E.P.R.C. Recommendation

The St. Joseph Hospital Foundation

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #10

Number

Applicant/Facility

E.P.R.C. Recommendation

2148 L

Apex Licensed Home Care Agency, LLC
(Bronx, Queens, Kings, Richmond, New York, Westchester Counties)

Contingent Approval

2000 L

Arvut Home Care, Inc.
(Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)

Contingent Approval

2147 L	Attentive Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2136 L	Beautiful Day Home Care, Inc. (Cayuga, Tompkins, Onondaga, Cortland, Oswego, and Seneca Counties)	Contingent Approval
2134 L	Best Professional Home Care Agency, Inc. (Bronx, Kings, Queens, New York, and Richmond Counties)	Contingent Approval
2371 L	CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740 (Oneida, Madison, Onondaga and Oswego Counties)	Contingent Approval
2123 L	EOM Service, Inc. d/b/a BrightStar of South Brooklyn (Kings, Bronx, Queens, Richmond, and New York Counties)	Contingent Approval
1980 L	Clear Waters Home Care Services, LLC (Bronx, Orange, and Westchester Counties)	Contingent Approval
2038 L	Gentle Hands Agency, Inc. (Bronx, New York, Queens, Kings and Richmond Counties)	Contingent Approval
2104 L	Joyful NY, LLC d/b/a Joyful Home Care Services (Suffolk, Nassau and Queens Counties)	Contingent Approval

2066 L	Reliance Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York and Nassau Counties)	Contingent Approval
1614 L	Taconic Innovations, Inc. (Westchester and Dutchess Counties)	Contingent Approval
1787 L	The Terrance at Park Place, Inc. d/b/a The Terrance at Park Place Lansing (Tompkins County)	Contingent Approval
2223 L	Alliance Nursing Staffing of New York, Inc. (Nassau, Putnam, Dutchess, New York, Rockland, Westchester, Suffolk, Sullivan and Orange Counties)	Contingent Approval
2294 L	Astra Home Care, Inc. d/b/a True Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
2267 L	Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA (Queens, Kings, New York, Bronx, and Richmond Counties)	Contingent Approval
2303 A	Baywood, LLC d/b/a Plan and Partner Home Healthcare (Richmond County)	Contingent Approval
2303 L	Baywood, LLC d/b/a Plan and Partner Home Healthcare (Queens, Kings, New York, and Richmond Counties)	Contingent Approval

2105 L	Healthy and Long Life Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1935 L	Supreme Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval
2212 L	Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval
2496 L	A & T Healthcare, LLC (Dutchess, Rockland, Nassau, Suffolk, Orange, Westchester, Putnam, Bronx, Sullivan, Ulster, Kings, New York, Richmond, Queens, and Greene Counties)	Contingent Approval
2219 L	Healthwood Assisted Living at Williamsville, Inc. (Erie County)	Contingent Approval
2231 L	Intergen Health, LLC (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)	Contingent Approval
2309 L	Two K Management Corp. d/b/a Family Aides Home Care (Nassau, Suffolk, Queens, Westchester, Bronx, Kings, New York, Queens, Richmond, and Suffolk Counties)	Contingent Approval
2423 L	Senior Care Connection, Inc. d/b/a Eddy Senior Care (See Exhibit for Counties)	Contingent Approval

2424 L

Eddy Licensed Home Care Agency, Inc.
(See Exhibit for Counties)

Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Acute Care Services – Establish/Construct

Exhibit 11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141248 E	White Plains Hospital Center (Westchester County) Mr. Fassler – Interest	Contingent Approval
2.	142009 E	RU System (Ontario County) Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval
3.	142041 E	RU System (Genesee County) Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval

Diagnostic and Treatment Center – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142024 E	Charles Evans Health Center, Inc. (Nassau County) Mr. Kraut – Interest	Contingent Approval
2.	142031 B	LISH, Inc. d/b/a LISH at Central Islip (Suffolk County) Mr. Kraut - Interest	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #13

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 141221 E	True North DC, LLC d/b/a Port Washington Dialysis Center (Nassau County) Dr. Bhat – Interest Mr. Kraut - Recusal	Contingent Approval
2. 142015 E	West Nassau Dialysis Center, Inc. (Nassau County) Dr. Bhat - Recusal	Contingent Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2150 L	Professional Assistance for Seniors, Inc. (Monroe, Livingston, Wayne, Genesee, and Ontario Counties) Ms. Hines – Interest Mr. Robinson - Interest	Contingent Approval
2220 L	Healthwood Assisted Living at Penfield, Inc. (Monroe County) Ms. Hines – Interest Mr. Robinson - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141201 E	New York Endoscopy Center (Westchester County)	Contingent Approval
2.	141300 B	Greenwich Village Ambulatory Surgery Center, LLC (New York County) Mr. Kraut – Recusal	To be presented at the Special Establishment/Project Review Committee on 10/2/14 No Recommendation

Residential Health Care Facilities – Establish/Construct

Exhibit #16

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132356 E	KPRH IV Operations, LLC (Queens County)	To be presented at the Special Establishment/Project Review Committee on 10/2/14 No Recommendation
2.	141215 E	Dunkirk Operating, LLC d/b/a Chautauqua Nursing and Rehabilitation Center (Chautauqua County)	To be presented at the Special Establishment/Project Review Committee on 10/2/14 No Recommendation

IX. NEXT MEETING

November 13, 2014 – Albany
December 4, 2014 – Albany (Century House)

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
August 7, 2014

The meeting of the Public Health and Health Planning Council was held on Thursday, August 7, 2014, at the Empire State Plaza, Meeting Room 6, Albany, NY, New York State Department of Health Offices at 584 Delaware Avenue, 3rd Floor Training Video Conference Room, Buffalo, NY 14202, and the New York State Department of Health Offices, Triangle Building, 335 East Main Street, 2nd Floor Conference Room, Rochester, NY 14604. Vice Chairman, Dr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT:

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Jodumatt Bhat	Mr. Jeffrey Kraut
Mr. Christopher Booth	Dr. Levin
Dr. Jo Ivey Boufford	Dr. Glenn Martin
Ms. Kathleen Carver-Cheney	Ms. Ellen Rautenberg
Mr. Michael Fassler	Dr. John Ruge
Ms. Kim Fine	Dr. Strange
Dr. Ellen Grant – Buffalo via video	Dr. Anderson Torres
Dr. Angel Gutierrez	Dr. Patsy Yang
Ms. Vicky Hines – Rochester via video	

DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel	Ms. Colleen Leonard
Ms. Nancy Agard	Ms. Ruth Leslie
Mr. Udo Ammon	Ms. Karen Madden
Dr. Guthrie Birkhead	Ms. Lisa McMurdo
Mr. James Clancy	Ms. Joan Cleary Miron
Ms. Anna Colello	Ms. Elizabeth Misa
Mr. Alex Damiani	Ms. Lakeria Rucker
Ms. Barbara DelCogliano	Ms. Linda Rush
Mr. Christopher Delker	Mr. Keith Servis
Mr. James Dering	Mr. Michael Stone
Ms. Alejandra Diaz	Ms. Lisa Ullman
Ms. Celeste Johnson	Ms. Ruth Leslie
Ms. Sue Kelly	

INTRODUCTION:

Mr. Kraut called the meeting to order and welcomed Executive Deputy Commissioner Kelly along with Council members, meeting participants and observers.

RESOLUTION OF APPRECIATION:

On behalf of the Council, Ms. Kelly read and presented a Resolution of Appreciation to Dr. Streck for the important work he undertook in adopting the emergency regulation banning synthetic marijuana, adopting regulations involving governing telemedicine and implementing the Berger Commission recommendations.

Mr. Kraut mentioned that in addition to Dr. Streck, the Council lost two other members due to their Council term expiring, Mr. Fensterman and Mr. Hurlbut, both of whom would also be receiving signed resolutions from himself and Acting Commissioner Zucker in gratitude of their hard work and dedication.

Ms. Kelly briefly introduced the four new members: Kathleen Carver-Cheney, Kim Fine, Thomas Holt and Dr. Gary Kalkut. Mr. Kraut then reported the standing committee assignments of the new members. Please refer to pages 2 through 10 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:

Mr. Kraut turned the floor over to Ms. Kelly to give the Report on the Department of Health Activities.

NORTH ATLANTIC HURRICANE SEASON

Ms. Kelly reported that the unofficial start of the North Atlantic hurricane season was August 1, 2014. The development of E-FINDS, the Evacuation of Facilities in Disaster System, will allow tracking patients or residents in the event that evacuation of facilities is necessary. She noted that while this system puts the state in a better position to respond than ever before, communication and drills are still vital.

ALL PAYER DATA BASE

Ms. Kelly advised that the APD, all-payer database, is the new data system that compiles information from insurers on all health care encounters—inpatient, outpatient, pharmacy, long-term care. The APD grew out of legislation passed in the spring of 2011 and will serve as the repository for health care data. The information will be used to manage, evaluate, and analyze our state health care system; and serve as a key resource for measuring the quality of care, gauging our state's population health, and determining and evaluating our finance policies. She provided a tentative timeline of anticipated milestones of implementation.

STATE HEALTH INFORMATION NETWORK OF NEW YORK

Ms. Kelly briefly updated the Council on the SHINNY, the State Health Information Network of New York, which connects electronic health records across the state from private practices, hospitals, nursing homes, clinics, and laboratories. The rules, which have been drafted and are awaiting executive clearance, will be formally proposed proceeding a 45-day public comment period. The Department expects this will happen soon. Through the regional health information organizations, the SHIN-NY is going to link patient information across providers,

across the state, making it easier for patients to receive care in different practices at different kinds of facilities and in different locations. The SHINNY will provide complete, accurate, and private access to the information carefully gathered by each primary care practitioner, specialist-end providers during patient visits

STATEWIDE PLANNING AND RESEARCH COOPERATIVE SYSTEM

Ms. Kelly stated that the Department is making changes to its SPARCS, statewide planning and research cooperative system, regulations. These revisions will delete obsolete language; realign the regulation to reflect current practices; add a new provision that mandates outpatient services data collection; improve access to data; and add a provision that ensures the data are complete and accurate. These objectives continue to support the statewide initiatives to promote transparency and greater access to data. Tangible benefits resulting from these efforts in the Governor's Open Data Portal, as well as the new health data site, Health Data New York.

BALANCING INCENTIVE PROGRAM

Ms. Kelly reported that New York has just announced the recipients of the Balancing Incentive Program (BIP) innovation fund grant awards. These organizations will share more than \$47 million in funding to enhance community-based long-term care service and support for Medicaid beneficiaries. BIP was created by Congress to make structural changes to the nation's long-term care delivery system and its funds come from the Centers for Medicare and Medicaid Services as part of the Affordable Care Act. BIP was designed to inspire service providers to think outside the box as they come up with ideas for changing that system. She noted that a total of 75 applications were received.

NEW YORK STEM CELL SCIENCE PROGRAM

Ms. Kelly informed the Council that the Department also has initiatives in promoting stem cell research. She stated that the goal of NYSTEM, the New York and the New York State Stem Cell Science Program, is to help people live longer and healthier lives. NYSTEM recently announced several different types of funding mechanisms to promote stem cell research within the state: approximately \$10 million will be provided for biology teachers in middle schools and high schools to spend six to eight weeks doing research in a stem cell laboratory and then take the experiences back to their students in lesson plans and hands-on activities; \$7.5 million has been allocated for institutional training programs, \$4 million in funds for the informal stem cell education program through museums and science centers program; and \$4 million in funding is being allotted to a program for journalists and journalism students to help journalists better understand and communicate stem cell biology and regenerative medicine.

ACCREDITATION OF HUMAN RESEARCH PROTECTION

Ms. Kelly briefly mentioned briefly that the Association for the Accreditation of Human Research Protection recently accredited the Department's Institutional Review Board program for safeguarding human subjects of research. She explained that to earn accreditation, organizations must demonstrate that they have built extensive safeguards into every level of their research operations and adhere to high standards of research. Ms. Kelly noted that New York State has joined one other state in the nation, as well as the National Institute of Health, and many high-level research institutions in being accredited. Please refer to pages 12 through 20 of the attached transcript.

ADOPTION OF 2015 PHHPC MEETING SCHEDULE:

Mr. Kraut asked for a motion to approve the 2015 Public Health and Health Planning Council meeting schedule. Mr. Levin motioned for approval which was seconded by Dr. Gutierrez. The motion passed unanimously. Please refer to page 20 of the attached transcript.

APPROVAL OF THE MINUTES OF June 12, 2014:

Mr. Kraut asked for a motion to approve the June 12, 2014 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Mr. Levin. The minutes were unanimously adopted. Please refer to page 23 of the attached transcript.

REPORT OF THE OFFICE OF PUBLIC HEALTH ACTIVITIES:

Mr. Kraut introduced Dr. Birkhead to give the report of Activities of the Office of Public Health.

Activities of the Office of Public Health:

EBOLA PREPARATION

Dr. Birkhead reported that the Ebola outbreak occurring in West Africa is the largest outbreak of the virus to date and has a fatality rate exceeding 70%. He stated that's it usual to be occurring in West Africa because all of the previous ones have been in East Africa. Ebola is definitely a very severe illness which under certain conditions in both health care settings and community settings, can spread fairly readily through a direct-contact route. Dr. Birkhead stated that it highlights the modern world that we live in where any disease, anywhere in the world, could arrive in the United States within 24 hours via plane ride. As a result, the department examined its protocols for identifying ill persons on aircraft, departure and arrival location screenings, and sick visits to physicians after international travel.

Dr. Birkhead mentioned that department receives CDC guidance with diseases like Ebola, H1N1, and SARS to define what the epidemiology is; what the risk is; and what the clinical considerations are. That information is quickly distributed and typically followed up with phone calls. Meetings and conference calls are occurring with all the hospitals in the state, EMS providers, and laboratory workers, all of whom deal with blood from these patients. He briefly explained the hospital's processes for suspect cases of diseases requiring quarantine.

Dr. Birkhead stated that currently all Ebola virus testing is done at CDC; however, due to the large size of the outbreak in Africa and the likelihood of more travelers coming in, CDC has received an emergency authorization from the FDA to offer the test kits for state health department labs which could take effect within the next month or two. Currently, there's no treatment, although two patients in Atlanta are being treated with experimental treatments that look hopeful. Presently, care is completely dependent on supporting fluids, electrolytes, oxygen, blood pressure, and treating complicating infections.

Dr. Birkhead concluded his report. Mr. Kraut thanked Dr. Birkhead and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 23 to 29 of the attached transcript.

Report of the Office of Health Insurance Programs Activities:

Next, Mr. Kraut introduced Mr. Helgeson to give Report of Activities of the Office of Health Insurance Programs.

DELIVERY SYSTEM REFORM INCENTIVE PAYMENT PROGRAM

Mr. Helgeson stated that the Delivery System Reform Incentive Payment Program (DSRIP) is a \$6.9 billion enterprise over the next five years to really transform how health care is delivered for the Medicaid population. He stated that DSRIP consists of five key themes which consist of collaborations, project value drives, performance based payments, statewide performance matters, and lasting change.

Mr. Helgeson stated that the collaboration theme focuses on integrating delivery systems of providers from across the entire care spectrum of the Medicaid population to operate as a single system, to better meet the needs of its population. Final approval was approved in April; since then the Department has been trying to bring providers across the state together in new and unique ways.

Mr. Helgeson spoke about the project value drives which are based on transformation, the number of Medicaid population being served, and the quality of the applications. There is a list of 44 projects of which 11 can be selected. Mr. Helgeson noted that the more difficult projects that are also transformative, will have a higher dollar value. It's important for performing provider systems (PPFs) to be able to meet their goals because every single payment through this initiative is linked to a specific milestone or a specific performance metric. This is all about performance. If you do not perform, you will not be paid, it is that simple. There is no payments for effort. There's no payments and reimbursements for cost. This is all performance-based payments and in fact what makes these payments in this waiver allowable under federal law is that they are specifically performance-based payments.

Mr. Helgeson briefly discussed statewide performance. He noted that New York is the first state to have a statewide performance metric requirement which compares all of the performing provider systems across the state. This data will be presented to the federal government annually to reflect the state's overall success or failure. An unsuccessful performance overall will result in reduced payments to all of the performing provider systems. A communication system to share learning and best practices across the state will be needed. The Department is trying to create a sense of collaboration both within the PPSs and between the PPSs.

Mr. Helgeson stated that DSRIP is about permanent restructuring of the health care delivery system for the Medicaid population not just the next five years. The Department is trying to build an environment in which the managed care organizations who will receive capitation payments from the state and are responsible for maintaining an adequate network, will become a permanent feature of the Medicaid program.

Mr. Helgerson stated that 42 different planning grants were announced recently and that those “emerging PPSs” are really advanced in their efforts. They still have a tremendous amount of work to do. The full applications are due to the Department on December 16, 2014, with an anticipated start date of April 1, 2015.

Mr. Helgerson concluded the report. Mr. Kraut thanked him and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 29 through 51 of the attached transcript.

Report of the Office of Primary Care and Health Systems Management Activities:

Next, Mr. Kraut introduced Mr. Sheppard to give the Report of Activities of the Office of Primary Care and Health Systems Management.

INTERIM ACCESS ASSURANCE FUND

Mr. Sheppard stated that the Interim Access Assurance Fund (IAAF) could be considered the first phase of DSRIP. The purpose of IAAF is to help safety net hospitals in severe financial distress and major public hospital systems to sustain key health care services as they participate with other providers to develop proposals for systems of integrated services delivery to be funded and implemented under the DSRIP.

Mr. Sheppard stated that there is a total of up to \$500 million available for IAAF payments, \$250 million of which is going to the five major public hospital systems: HHC, the three SUNY hospitals, Erie County Medical Center, Nassau, and Westchester. The other \$250 million is going to the 25 safety net hospitals, of which approximately \$217 has been issued. The difference is largely due to depreciation which for purposes of IAAF was intended to keep safety net hospitals from operating for a 10 month period didn't really factor in. He noted that the \$33 million balance will be used for either new IAAF applicants or to the recipient hospitals who need more money to meet IAAF program requirements than originally planned.

Mr. Sheppard then advised members that the 2014-2015 budget authorized the commissioners of health, mental health, office for people with developmental disabilities, and office of alcoholism and substance abuse services, to waive regulatory requirements for DSRIP projects. The legislative intent of this authorization is to ensure the DSRIP projects could be implemented at a rapid pace, if a rapid pace required to hit the performance milestones necessary for the PPSs to receive funding. He noted that the statute prohibits the regulations being waived if patient safety will be jeopardized. The waivers must be project specific and are time limited. Many interested parties have already reached out to the Department with suggestions about how to utilize this authority and as part the design grant applications PPSs identified also potential requests for regulatory waivers. Some suggestions include integrating physical and behavioral health services, integrating long term care services, addressing physical plant standards that don't impact patient safety but might otherwise slow down implementation of a project; and facilitating information sharing between PPS participants.

Mr. Sheppard stated that the Department will be waiving regulations that would otherwise preclude or delay approved DSRIP projects, without impacting patient safety. He stated that an implementation framework needs to be developed that provides predictability to DSRIP applicants and consist of speed, consistency, and predictability. The department plans to finalize this framework and provide guidance to PPSs in late September which aligns with the beginning of the DSRIP application process. The Council's input would be very helpful in advancing thinking and effectuating change on regulatory streamlining and other efforts, such as redesigning ambulatory care and certificate of need (CON) reform. Mr. Sheppard stated that staff would be working with Public Health and Health Planning Council (PHHPC) members on these issues over the next several weeks and would present the information before the Council at its next meeting in September 17, 2014.

Mr. Sheppard concluded his report. Mr. Kraut thanked him and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 51 through 67 of the attached transcript.

Report on the Office of Quality and Patient Safety Activities:

Mr. Kraut introduced Ms. Agard to give the report of Activities of the Office of Quality and Patient Safety.

OFFICE BASED SURGERY

Ms. Agard stated the Department and the Council has had an interest in the quality of care and office-based surgery (OBS) actually since the 1990s when an ad-hoc committee was created to look at the quality of care as ambulatory care began to increase. The outcome of that first committee's work was the development of guidelines in 2000 which can still be found on the office-based surgery website.

Ms. Agard stated that in 2005, the Council again asked the Commissioner to appoint a committee on office-based surgery quality and found that incidences were still occurring. The second committee's recommendations resulted into public health law 230D which was passed in 2007. In that law they defined office-based surgery and required that these office-based surgery practices become accredited. The licensees that were identified initially in the law were physicians, physician assistants and specialist assistants. In July of 2009, it became a requirement to report select adverse events within 24 hours of an event or the provider becoming aware of it. Ms. Agard provided examples of common adverse events. She noted that in 2008, there were some adverse events going on within the private practice community that involved transmission of blood-borne pathogens which was later added as a separate and additional type of reportable event.

Ms. Agard commented that the Department designated three accreditation agencies for private practices seeking to provide office-based surgery services to the community. They included the American Association for the Accreditation of Ambulatory Surgery Facilities Inc., Accreditation Association for Ambulatory Healthcare and the Joint Commission. She noted that there are approximately 1,000 accredited office-based surgery practices currently which are primarily downstate in New York City, Nassau County, Suffolk County and Westchester County.

Ms. Agard then summarized the trends in adverse reporting data that was collected since 2010. She highlighted that there was an initial boost which was followed by a period of stability and then a decline. The decline is due to only 20 percent reporting rate in 2013 which is disappointing.

Ms. Agard discussed the adverse event reporting system which is currently a self-reporting system done by the providers. Patient transfers are the most identifiable events. The identification of admissions and deaths require some sort of a follow-up with patients and providers which is typically one to two days. Most providers do not have a system in place that identifies a 30-day follow up with the exception of vascular providers. She stated that unlike hospitals or ambulatory surgery centers that are reporting SPARCS data, private practices that are performing procedures aren't submitting any data to the Department.

Ms. Agard summarized the demographics of the data collected between 2010 and 2013. She described which age groups are most involved in adverse events, compared statistics for specialty specific procedures, and mentioned the distribution of adverse events for all office-based surgery adverse event types that were reported. Admissions were the leading contender followed by transfers and then deaths. About a third of admissions do start out as transfers. She stated that the majority of deaths are singular adverse event types and did not occur in combination with an admission or transfer.

Ms. Agard concluded that in terms of care, challenges consist of patient selection, procedural complexity and risk, intra-procedural care and monitoring of patient, and discharge disposition and follow-up. Additionally, concerns with data include lack of OBS procedure denominator data, self-reported nature and suspected under-reporting of adverse events, limited ability to identify OBS practitioners and procedures in other data sources, such as Medicaid.

Mr. Kraut thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 67 through 100 of the attached transcript.

Report of the Committee on Codes, Regulation and Legislation:

Mr. Kraut introduced Dr. Gutierrez to give his Report of the Committee on Codes, Regulations and Legislation.

For Emergency Adoption

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps)

Dr. Gutierrez Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps) and motioned to adopt this regulation. Dr. Berliner seconded the motion. The adoption carried. Please see pages 100 through 102 of the attached transcript.

10-15 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS))

Dr. Gutierrez described 10-15 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS) and made a motion to adopt this regulation. Dr. Bhat seconded the motion. The motion carried. Please see pages 102 through 105 of the attached transcript.

12-20 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care Programs and Managed Long Term Care)

Dr. Gutierrez described 12-20 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care Programs and Managed Long Term Care) and motioned to adopt this regulation. Dr. Berliner seconded the motion. The adoption carried. Please see pages 105 and 107 of the attached transcript.

For Discussion

14-09 Amendment of Section 2.59 of Title 10 NYCRR (Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel)

Dr. Gutierrez informed members that the Department has received feedback from facilities that are subject to this regulation since it was implemented and determined that it would be helpful to refine certain provisions of the existing regulation and make it easier to comply. The proposed amendments include: adding definitions to keep terms such as “patient” or “resident” and influenza vaccine; modifying documentation requirements to bring requirements into alignment with those of other vaccines; allowing facilities to accept that the stations from contractors or professional schools that individuals have been vaccinated; and clarifying that the vaccinations apply to facilities where patients or residents are typically present at the facility and eliminating the mask requirement when covered personnel accompany patients in the community or when the personnel provides speech therapy or communicates with someone who lip reads. He noted that Susan Waltman of the Greater New York Hospital Association spoke in support of the amendments and discussed the resources that go into enforcement of these regulations. The proposed regulation is entering into the 45 day public comment period. Once finalized the permanent version will be presented for adoption. Dr. Emily Lutterloh from the Department Office of Public Health is available to answer any questions from Council members. Please see pages 107 to 109 of the attached transcript.

13-04 Addition of Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY))

Dr. Gutierrez advised that disclosures of interest regarding this proposal were declared by Mr. Levin, Dr. Martin, and Mr. Kraut. He then stated that the proposed regulations would establish the structure of the State Health Information Network of New York, also known as SHIN-NY, to safeguard the security and confidentiality of patient health information. Specifically the proposal would: establish a fully transparent SHIN-NY governance structure; require certification process for entities that would be entrusted to facilitate the sharing of personal health information; solidify a statewide collaboration process and SHIN-NY’s policy standards; require providers regulated by the Department utilizing a certified electronic health record, or HER, to participate in the SHIN-NY and share patient information and clarify patient

rights and the consent model regarding their health information. Dr. Gutierrez stated that there were a number of questions for Steve Smith of the Department and discussion among committee members regarding aspects of the regulation particularly regarding patient consent. He noted that Susan Waltman spoke in support of the proposed regulations, particularly regarding accountability through defining roles and responsibilities. She also stressed that it is important for the SHIN-NY to support federal requirements for meaningful use and provide clarification on community consent. This proposal is entering into the 45 day public comment period. Once finalized, the permanent version will be presented for adoption. Steve Smith from the Office of Quality and Patient Safety has joined us over the phone to answer any questions from Council members. Please see pages 109 to 113 of the attached transcript.

Dr. Gutierrez concluded his report. Mr. Kraut thanked him and moved to the next item on the agenda, the Project Review Recommendations and Establishment Action and introduced Mr. Booth to give the Report.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Christopher Booth, Vice Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Acute Care Services - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132378 C	Samaritan Hospital (Rensselaer County)	Contingent Approval

Mr. Booth introduced application 132378 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried with Ms. Fine’s interest. Please see page 113 of the attached transcript.

2.	141159 C	St. Mary’s Healthcare – Amsterdam Memorial Campus (Montgomery County)	Contingent Approval
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Mr. Booth introduced application 141159 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried with Drs. Martin and Rugge abstaining and Ms. Fine’s interest. Please see page 114 of the attached transcript.

Cardiac Services - Construction**Exhibit #5**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132296 C	University Hospital (Suffolk County)	Contingent Approval
2.	132297 C	John T. Mather Memorial Hospital of Port Jefferson New York Inc. (Suffolk County)	Contingent Approval

Mr. Booth introduced applications 132296 and 132297 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 115 of the attached transcript.

Residential Health Care Facilities Pediatric Ventilator Beds - Construction Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132369 C	Elizabeth Seton Pediatric Center (Westchester County)	Contingent Approval

Mr. Booth introduced application 132369 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 115 to 116 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications**Residential Health Care Facilities Pediatric Ventilator Beds - Construction Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	132257 C	Sunshine Children's Home and Rehab Center (Westchester County) Ms. Carver-Cheney – Abstaining/Interest	Contingent Approval

Mr. Booth introduced application 132257 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried with Ms. Carver-Cheney's declaration of interest and her abstention. Please see page 116 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Residential Health Care Facilities Pediatric Ventilator Beds - Construction Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141137 B	Blythedale Children’s Hospital (Westchester County)	Contingent Approval

Mr. Booth introduced application 141137 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see pages 116 to 117 of the attached transcript.

Ambulatory Surgery Centers – Establish/Construct**Exhibit #9**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 132145 E	The Rye ASC (Westchester County)	Contingent Approval

Mr. Booth introduced application 132145 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried.

Mr. Booth then made a second motion to establish an ad-hoc subcommittee to review the charity data relating to ASC facilities and develop recommendations regarding ways the charity care obligations of this facility may be satisfied. Dr. Gutierrez seconded the motion. The motion carried. Please see pages 117 to 121 of the attached transcript.

Residential Health Care Facilities – Establish/Construct**Exhibit #10**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 141190 E	HHH Acquisition, LLC d/b/a The Grove at Valhalla Rehabilitation and Healing Center (Westchester County)	Contingent Approval

Mr. Booth introduced application 141190 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 121 of the attached transcript.

Certificate of Amendment of the Certificate of Incorporation**Exhibit #11**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Allegheny/Western Steuben Rural Health Network, Inc.	Approval

Mr. Booth introduced a Certificate of Amendment of the Certificate of Incorporation of Allegheny Western Steuben Rural Health Network Inc. due to a name change and made a motion. Dr. Gutierrez seconded the motion. The motion to approve carried. Please see page 121 of the attached transcript.

HOME HEALTH AGENCY LICENSURES**Exhibit #12**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2151 L	7 Day Home Care, Ltd. (Nassau and Queens Counties)	Contingent Approval
2245 L	Constellation Private Duty, LLC (Nassau, Suffolk, Westchester, Queens, New York and Bronx Counties)	Contingent Approval

1828 L	Detty Home Care Service, LLC (New York, Nassau, Bronx, Richmond, Queens and Kings Counties)	Contingent Approval
1574 L	Good Help at Home, Inc. (Bronx, Westchester, New York, Dutchess, Rockland, Orange and Ulster Counties)	Contingent Approval
2110 L	High Standard Home Care, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties)	Contingent Approval
2124 L	Joy & Angels Home Care Agency, Inc. (Nassau, Suffolk and Queens Counties)	Contingent Approval
2458 L	Westchester Family Care, Inc. (Westchester, Rockland, Putnam, and Dutchess Counties)	Contingent Approval
2425 L	Oceanview Manor Home for Adults, Inc. (Kings County)	Contingent Approval
2310 L	Sachem Adult Home and ALP, LLC d/b/a Sachem Licensed Home Care Service Agency (Nassau and Suffolk Counties)	Contingent Approval
2311 L	South Bay Adult Home and ALP, LLC d/b/a South Bay Licensed Home Care Services Agency (Nassau and Suffolk Counties)	Contingent Approval
2385L	InCare Home Health Care Group, LLC d/b/a InCare Home Health Care (Bronx, New York, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval

2392L	All Metro Aids, Inc. d/b/a All Metro Health Care (New York, Queens, Kings, Bronx and Richmond Counties)	Contingent Approval
2393L	All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care (See exhibit for counties)	Contingent Approval

Mr. Booth called applications 2151, 2245, 1828, 1574, 2110, 2124, 2458, 2425, 2310, 2311, 2385, 2392 and 2393 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve the applications carried. Please see page 122 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Acute Care Services – Establish/Construct

Exhibit #13

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141168 E	Cayuga Health System (Tompkins County) Mr. Booth - Interest	Contingent Approval
2.	141283 E	Lake Erie Regional Health System (Chautauqua County) Mr. Booth – Interest	Contingent Approval

Mr. Booth called applications 141168 and 141283 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve the applications carried. Please see page 123 of the attached transcript.

Diagnostic and Treatment Center – Establish/Construct

Exhibit #14

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141090 B	Schenectady Specialty Services, LLC (Schenectady County) Ms. Fine - Recusal	Contingent Approval

Mr. Booth called applications 141090 and motioned for approval and noted for the record that Ms. Fine has a conflict is exited the meeting room. Dr. Gutierrez seconded the motion. The motion to approve carried with Ms. Fine recused. Please see page 123 of the attached transcript. Ms. Fine returned to the meeting room.

Hospice - Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141172 E	Hospicare & Palliative Care Services of Tompkins County, Inc. (Tompkins County) Mr. Booth - Interest	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Exhibit #16

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141128 E	Comprehensive at Orleans, LLC d/b/a the Villages of Orleans Health and Rehabilitation Center (Orleans County) Ms. Booth - Interest	Contingent Approval
2.	141140 E	Cortland Acquisition LLC d/b/a Crown Center for Nursing and Rehabilitation (Cortland County) Mr. Booth - Interest	Contingent Approval
3.	141212 E	CCRN Operator, LLC d/b/a Focus Rehabilitation and Nursing Center at Otsego (Otsego County) Mr. Booth - Interest	Contingent Approval

Certified Home Health Agencies – Establish/Construct

Exhibit #17

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141174 E	Samaritan Home Health, Inc. (Jefferson County) Mr. Booth – Interest	Contingent Approval

Mr. Booth called applications 141172, 141128, 141140, 141212, and 141174 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve the applications carried with Mr. Booth’s interest. Please see pages 124 to 126 of the attached transcript.

Certificate of Dissolution

Exhibit #18

Applicant

E.P.R.C. Recommendation

The Pluta Cancer Center, Inc.
Interest: Ms. Hines

Approval

Mr. Booth introduced a certificate of dissolution for the Pluta Cancer Center, Inc. and made a motion. Dr. Gutierrez seconded the motion. The motion to approve carried with Ms. Hine’s interest. Please see page 126 of the attached transcript.

HOME HEALTH AGENCY LICENSURES

Exhibit #19

Number

Applicant/Facility

E.P.R.C. Recommendation

2199L	Cottrill’s Pharmacy, Inc. (Chautauqua, Erie, Niagara, Cattaraugus, Wyoming, Orleans, Allegany, Genesee and Monroe Counties) Mr. Booth – Interest Ms. Hines - Interest	Contingent Approval
2102 L	Lincolns Heart & Associates, Inc. (Monroe County) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval
2021 L	Valley Residential Services, Inc. d/b/a Valley Home Care (Herkimer County) Mr. Booth – Interest	Contingent Approval

Mr. Booth called applications 2199, 2102 and 2021 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve the applications carried with Mr. Booth’s and Ms. Hine’s interests. Please see pages 126 to 127 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Dialysis Center – Establish/Construct

Exhibit #20

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	141164 B	Glengariff Dialysis Center, LLC (Nassau County) Dr. Bhat – Recusal	Contingent Approval

Mr. Booth called application 141164 and noted for the record that Dr. Bhat is recusing and left the meeting room and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve the application carried with Dr. Bhat’s recusal. Please see pages 127 to 135 of the attached transcript. Dr. Bhat returned to the meeting room.

2.	141205 E	Workmen’s Circle Dialysis Management, LLC d/b/a Workmen’s Circle Dialysis Center (Bronx County)	Contingent Approval
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Mr. Booth called application 141205 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve the application carried. Please see pages 137 to138 of the attached transcript.

Mr. Booth concluded his report and Mr. Kraut thanked him.

ADJOURNMENT:

Mr. Kraut reminded members of the dates and location of the next meeting cycle. He then made a motion to adjourn. The motion was seconded and passed unanimously.

1 JEFF KRAUT: I'll start. OK. Good morning. I'm Jeff
2 Kraut. I'm the Vice Chair of the Public Health and Health
3 Planning Council. I have the privilege to call to order the
4 meeting of the Public Health and Health Planning Council for
5 August 7, 2014 and welcome our members.

6 Ms. Hines, I believe, is participating from Rochester and
7 Dr. Grant is participating from Buffalo. We have a number of
8 folks here today. The Executive Deputy Commissioner Kelly is
9 here, participants and observers from various locations, and I'd
10 like to thank Dr. Streck who is our honored guest at a portion
11 of today's Council meeting.

12 As a reminder for our audience, there is a form that needs
13 to be filled out before you enter the meeting room which records
14 your attendance at meetings; it's required by the Joint
15 Commission on Public Ethics in accordance with executive law
16 section 166. The form's also posted on the Department of
17 Health's website, www.nyhealth.gov, under Certificate of Need,
18 so in the future, you can fill out the form prior to the council
19 meetings. We appreciate your cooperating by fulfilling our
20 duties as proscribed by the law.

21 I just want to remind council members, the staff, and the
22 audience that this meeting is subject to the Open Meeting Law
23 and is broadcast over the internet. The webcast may be accessed
24 at the department of Health's website, which is
25 <http://nyhealth.gov>, and the on-demand webcasts are available no

1 later than seven days after the meeting and they are up there
2 for a minimum of 30 days, and a copy is retained in the
3 Department for up to four months.

4 Just to remind everybody, a little ground rules to follow
5 to make this a successful meeting. Because there is synchronized
6 captioning, it's important that people don't talk over each
7 other; captioning cannot be done correctly, obviously, when two
8 people are speaking at the same time. That would never work in a
9 family gather in my house. The first time you speak, please
10 state your name and briefly identify yourself as a councilmember
11 or member of DOH staff; this will be assistance to the
12 broadcasting company who record the meeting. And also, most
13 importantly, please note that the microphones are hot. They mean
14 they pick up every sound. That means avoid rustling papers next
15 to the microphone and when you think you're having a side
16 conversation with your hand covering the mic and the green light
17 is on, believe it or not, we have been able to hear those
18 conversations, so please make sure that green light is off if
19 you are having a side conversation and remove the mic as far
20 away from your mouth as possible.

21 Well, today it's a pleasure to have with us Dr. Streck.
22 We'd like to acknowledge and thank him for his service to the
23 Council. Dr. Streck has served as Chair of the Public Health
24 Council and the Public Health and Health Planning Council for,
25 gosh, 20- well, he's served as chair for 10 years and he's been

1 a member of the Council and the predecessor councils for over 20
2 years, so that's quite a body of work and I'll talk a little
3 more about this. We obviously want to thank him for his
4 leadership and his dedication that he deserves so much and Dr.
5 Zucker and myself have signed a resolution of appreciation,
6 which cannot fully convey to us our thanks to him for all he's
7 accomplished for the citizens of New York and on behalf of this
8 Council and on the councils that came before it. I have just a
9 few words and- but first I'd like to talk- turn it over to
10 Deputy Commissioner Kelly.

11

12 SUE KELLY: Thank you very much. Turn on the green light
13 here. And I am so pleased that Dr. Streck is here this morning
14 to join us for this recognition. I actually remember when Dr.
15 Streck was first appointed to the State Hospital Review on
16 Planning Council and then later in leadership of the Public
17 Health Council. I'd like to read this resolution of
18 appreciation.

19 "Whereas William F. Streck, MD, has served with distinction
20 on the New York State Public Health Council from February 3,
21 2004 to November 30, 2010 and the Public Health and Health
22 Planning Council from December 1, 2010 to June 18, 2014. And
23 whereas Dr. Streck, during his tenure, served as chair of the
24 Public Health Council and the Public Health and Health Planning
25 Council through the administrations of Commissioners of Health

1 Dr. Antonia Novello, Dr. Richard Danes, Dr. Nirav Shah, and Dr.
2 Howard Zucker. And whereas in serving in this capacity over the
3 past decade, he has made countless contributions to improving
4 New York State's health care delivery system and to furthering
5 the improvement of public health for the citizens of New York
6 State. And whereas Dr. Streck was instrumental in implementing
7 the importance of the Public Health Council's and Public Health
8 and Health Planning Council's role in public health. And whereas
9 Dr. Streck has demonstrated his support of the Department of
10 Health's initiatives and assisted in the implementation of these
11 initiatives such as: adopting the emergency regulation banning
12 synthetic marijuana; adopting regulations involving governing
13 telemedicine and implementing the Berger Commission
14 recommendations. And whereas the members of the Public Health
15 and Health Planning Council of the State of New York do hereby
16 express and acknowledge his unstinting selfless and valuable
17 service to the Council and now therefore be it resolved that
18 members of the Public Health and Health Planning Council convey
19 to Dr. Streck our esteem, admiration, and appreciation for his
20 instrumental role in enhancing the health and wellbeing of all
21 who reside in the State of New York. And be it further resolved
22 that members of the Public Health and Health Planning Council do
23 hereby extend their gratitude to William F. Streck for his
24 committed service to the Council and send him our best wishes
25 for many years of health and happiness."

1 For the Public Health and Health Planning Council, this was
2 signed by Dr. Zucker and Jeff Kraut. Thank you so much.
3 [applause]

4
5 JEFF KRAUT: So, before I turn the mic over to Dr. Streck
6 to speak and say a few words, you know, there isn't a member of
7 this Council, a member of the Department of the Health staff, or
8 anybody who has sat in the audience over the past 24 years that
9 can attest— that anybody, every one of us could attest to the
10 intelligence and leadership of Dr. Streck and the content of his
11 character. He's thoughtful, he's deliberative, he's an
12 innovator, and he's a critical thinker, and he has a deep moral
13 and social commitment to improving the health, to—you know, he
14 understands what we've been entrusted with, not only at this
15 Council, but at the Bassett Health System, which he's lead this
16 many years—he understands what that obligation is and he tries
17 to fulfill it in each and every action and deliberation that
18 we've had. He focuses on quality and particularly, I think, his
19 focus on trying to enhance equitable access to care for all the
20 residents of New York State. He shaped health policy these 24
21 years; not only in this room, six of it of which, as you heard,
22 he served as chair. He was also chair of the HANYS board. He has
23 served on numerous commissions, boards—both local, statewide,
24 and national. And most importantly, during.. throughout this
25 journey, he's never forgot he was a doctor and he's always

1 brought that skill and that experience here. Dr. Streck, your
2 legacy is healthy communities and in an extraordinary
3 contribution to the health care of the people of this state and
4 on behalf of all of the members of the Council who have served
5 with you, it has been our honor and privilege to do so and we
6 thank you so much.

7

8 WILLIAM STRECK: Thank you very much. Sue, Jeff, I would
9 begin by saying that I am here today fully aware that something
10 like this might happen, but that's not why I came. I came for
11 two reasons. I came because there was a sense of incompleteness
12 in having chaired the meeting and then not having an opportunity
13 to acknowledge the work of the group and my appreciation for
14 being a part of this enterprise for such a long time. I think
15 that the Public Health and Health Planning Council brings a
16 collection of skills and talent that often goes unappreciated,
17 both in terms of the breadth of the work and the depth of the
18 work that is performed. So, if you think of the fact that from
19 wastewater at water parks, to biochemistry of bath salts, to the
20 controversies of CON, to the policies of public health, and the
21 politics of our health system, a lot of that finds its
22 confluence in the discussions of this group. And when you
23 recognize, as well, that this group, like today when the full
24 Council meets, this simply is the end stage of a process that
25 has engaged countless hours of work on the part of the

1 Department of Health and members of the Public Health Council—
2 work that most do not recognize. So the countless hours that go
3 into the CON reviews, the work that John did in planning, the
4 work that Dr. Boufford does on the public health side, working
5 with Gus, the work that goes into our regulations—the
6 wastewater, other of these activities, all very important to our
7 communities—and it's just an immense amount of time by people
8 who are very committed. So, the reason I came back today,
9 because once you are past tense, your pertinence is much
10 diminished, but one's appreciation for the colleagues with whom
11 you've worked is not diminished and so I came back specifically
12 today to thank the members of the staff of the Department of
13 Health of this state, with whom I have been privileged to work
14 for so many years, and who performs so well in an understaffed
15 way here of late, but whose work is relentlessly continuing and
16 always first class when it's brought to this meeting. And to
17 thank, as well, the members of the Public Health Council, who
18 put in the time in these other activities. I would say that when
19 all of this comes together as it does as the Public Health
20 Council meetings—we have never had a meeting that could be
21 described as "scintillating" and that is just a fact—but our
22 meetings have generally been ones in which the group has been
23 thoughtful, has sought to be fair by understanding the questions
24 that were brought before the group, and my position, which I
25 have greatly valued as the chair over this period of time at the

1 Public Health and Health Planning Council, I think those duties
2 have been discharged well by this group. So, I wish to bring
3 some closure to a great opportunity that's been afforded me and
4 I wish to do so by thanking the staff, the members of the
5 Council, it is has been a great privilege to be your colleague,
6 to work in this important field, and I wish you well. Thank you.
7 [applause] And now I am done.

8

9 JEFF KRAUT: So, Dr. Streck, unlike the rest of us, we
10 have never said this to you, but you can leave if you'd like.

11

12 WILLIAM STRECK: OK. Thank you.

13

14 JEFF KRAUT: Thank you so much for coming. [applause] I'm
15 gonna ask Ms. Kelly to introduce some of the new members of the
16 Council.

17

18 SUE KELLY: Yes. I am always having to remember to put
19 the green light on here. Anyway, good morning and I- two weeks
20 ago at the Council committee day, we welcomed our four new
21 members and I want to acknowledge and thank them again for
22 joining us, joining the Council. Let me introduce each
23 individual new member and they include Kathleen Carver Cheney,
24 Kim Fine, Thomas Holt, and Dr. Gary Kalkut. It's good to have
25 you join this Council.

1 For those of you who don't know the new members, shall I
2 share their backgrounds? Yes. Kathleen Carver Cheney's unique
3 qualifications combine a clinical background as a nurse, with
4 health care legal experience as a partner for the Manhattan law
5 firm Novack, Burnbaum, and Crystal. As an attorney, Ms. Cheney
6 represents health care providers with a focus on long-term and
7 post-acute care. She is well-versed in managed long-term care
8 plans, regulatory compliance, Medicare and Medicaid
9 reimbursement, certificate of need, and end-of-life issues.

10 We also welcome Kim Fine, who is the Executive Vice
11 President and Chief Strategy Officer for Albany Medical Center.
12 Ms. Fine coordinates the development of the hospital's strategic
13 plan for addressing patient care, education, and research
14 initiatives. She also advises Albany Med on policy matters,
15 communications activities, and manages medical center
16 philanthropic efforts, helping to raise more than \$10 million
17 every year.

18 We welcome Tom Holt. Mr. Holt is the President and CEO of
19 Lutheran Social Services Group, a multi-service provider of care
20 and housing. The Group includes a skilled nursing facility, an
21 assisted living program, an adult day health care program, a
22 resident treatment facility, and a school for at-risk
23 adolescents, senior housing, and housing and care for people
24 with developmental disabilities.

1 As our fourth new member, we welcome Dr. Gary Kalkut. Dr.
2 Kalkut is the Senior Vice President for Network Integration and
3 Associate Chief Clinical Officer at NYU/Langone Medical Center.
4 He is an attending physician in the Division of Infectious
5 Disease, also a professor of medicine and population health at
6 NYU's School of Medicine. On behalf of Governor Cuomo and the
7 people of New York State, I want to welcome you all and thank
8 you for making this commitment and I'll turn the agenda back
9 over to Jeff Kraut.

10

11 JEFF KRAUT: So, just to, for the record, Ms. Carver
12 Cheney is going to serve on the Codes Committee, Health Planning
13 Committee, and the Health Personnel and Inter-professional
14 Relations Committee; Ms. Fine will serve on the Codes Committee
15 and the Public Health Committee; Mr. Holt will serve on the
16 Codes Committee and the Health Personnel and Inter-professional
17 Relations Committee; and Dr. Kalkut will serve on Establish and
18 Project Review. We welcome you to the Council and we really look
19 forward to your expertise and engaging with the rest of us. You
20 heard Dr. Streck—it's a wonderful journey and it's a wonderful
21 opportunity to serve and we encourage you to get in the fray, as
22 it were. And as we welcome new members and we said goodbye to
23 Dr. Streck, we also have to say goodbye to two other members,
24 that's Mr. Hurlbut and Mr. Fensterman. And, you know, it's
25 always difficult to say goodbye, as you heard Dr. Streck say,

1 because one, we don't know you are leaving sometimes, and but we
2 have two individuals here who were truly dedicated to the
3 mission of the Council and it was really an honor to serve with
4 them. Mr. Hurlbut served for seven years. He was appointed in
5 2005 to the predecessor council and subsequently to this
6 Council, and during his tenure he served on the Code,
7 Regulation, Legislation, Establishment, and the Committee on
8 Health Personnel and Inter-professional Relations. I would say
9 Mr. Hurlbut was one of those individuals who saw things from a
10 different perspective and many times just added a dimension to
11 our thinking that's kind of reflective of what we're trying to
12 accomplish—is make sure we look at an issue from different
13 dimensions. And he was vocal, he was passionate, and it was
14 really a pleasure to serve with him. I have to tell you, I was
15 educated by him because he brought up things I never would have
16 thought about and I deeply appreciated it. Mr. Fensterman also
17 has, he had served six years. He was appointed in 2008 to the
18 Council and then reappointed to the successor council. He served
19 at Public Health and Health Planning on the Establishment and
20 Project Review and the Committee on Health Personnel and Inter-
21 professional Relations and I would say his skills as an attorney
22 were apparent at every meeting. An individual who was no better
23 prepared than anybody. If everybody recalls seeing Mr.
24 Fensterman with a book—not only the exhibits with the
25 attachments, not only the exhibits and the attachments, but we

1 had little yellow tags coming out with questions. And although
2 his line of questioning was very surgical and very focused, he
3 did get and uncover many issues that, again, because of his
4 experience, because of his perspective, we would have not have
5 otherwise brought into this room to deliberate and in that
6 respect, his hard work, his dedication, his commitment, his
7 focus on trying to find the essence or the truth of an issue.
8 And at the same time to be very fair and equitable, I think, has
9 been one of the things that I remember. He was intense and I am
10 sure we all have our own adjectives, but I deeply appreciated
11 and also enjoyed so... We have resolutions of appreciation. I will
12 not read them, but we have signed them and we're sending it to
13 him, so I just, again, let's—even though if they are watching
14 today, thank you so much. [applause] So, I— excuse me?

15

16 [inaudible question]

17

18 Very funny. I'd like now to turn to Ms. Kelly to give the
19 Department of Health report on activities.

20

21 SUE KELLY: Thank you, Mr. Kraut. And I am happy to be
22 here today speaking on behalf of Dr. Zucker who could not be
23 here today. Moving on to the Department of Health report, we've
24 had an eventful week in public health during the first week of
25 August and I will turn to Dr. Birkhead and his remarks to share

1 with you many observations from this first week of August. But I
2 will note that the unofficial start of the North Atlantic
3 hurricane season is August 1st. With the development of E-Finds,
4 the Evacuation of Facilities in Disaster System, which I
5 reported to the Council about last year, we have participating
6 New York State agencies that, in coordination with the caring
7 providers, will be able to track patients or residents if we
8 need to evacuate facilities. This system, along with the
9 continued work and refinement of state, local, and facility-
10 level coastal storm plans, puts us in a better position to
11 respond than ever before. But we can't forget that communication
12 is very important. Drills—we've issued plans to... guidance to
13 providers about health care evacuations, but each facility must
14 really look within to the roles and responsibilities, as they
15 do, as well as to their plans in the event of emergencies. We
16 have some other developments within the Department that I want
17 to report to you. One is a report and update on the all-payer
18 database. For one, we're making significant progress with our
19 APD, the all-payer database. The new data system that complies
20 information from insurers on all health care encounters—
21 inpatient, outpatient, pharmacy, long-term care. As you may
22 know, the APD grew out of legislation passed in the spring of
23 2011. Proposed regulations are in the preliminary comment
24 period. This is going to be a critical tool as we advance our
25 health care reforms here in New York. The database will serve as

1 the repository for health care data. The information will be
2 used to manage, evaluate, and analyze our state health care
3 system. It will serve as a key resource for measuring the
4 quality of care, gauging our state's population health, and
5 determining and evaluating our finance policies. This data...
6 these data will enable us to compare health care services and
7 develop ways to improve our health care delivery system. We will
8 start this process, data collection process, in December by
9 collecting from plans participating on the New York State of
10 Health. Next February we'll begin collecting these data from
11 Medicaid plans, and in the fourth quarter of 2015 we will start
12 gathering data from commercial plans. Come this September, we'll
13 start soliciting bids for data management and analysis and we
14 plan to award a contract by the end of this year. The APD is a
15 major tool in our arsenal for the transformation of our health
16 care system and it will be a resource for all stakeholders in
17 the health care system—consumers, providers, payers, employers,
18 and state policymakers. We're thrilled to see it moving forward
19 and we'll keep you apprised of developments. Next I want to
20 briefly update you on the State Health Information Network of
21 New York—SHINNY. The SHINNY connects electronic health records
22 across the state from private practices, hospitals, nursing
23 homes, clinics, and laboratories. We've drafted the rules for
24 SHINNY and after executive clearance, we will formally propose
25 them and there will be a 45-day public comment period. We expect

1 this will happen soon. Through the regional health information
2 organizations, the SHIN-NY is going to link patient information
3 across providers, across the state, making it easier for
4 patients to receive care in different practices at different
5 kinds of facilities and in different locations. The SHINNY will
6 provide complete, accurate, and private access to the
7 information carefully gathered by each primary care
8 practitioner, specialist-end providers during patient visits. We
9 know there will be challenges as we go forward, but we are
10 confident that the statewide network lays out the framework for
11 what promises to be a thriving public utility that will benefit
12 all New Yorkers. Next, for those of you who follow the SPARCS
13 system (I look at Mr. Levin as one), we're also making some
14 changes to our SPARCS regulations, the statewide planning and
15 research cooperative system. These revisions will do five
16 things: they will delete obsolete language (thank you very
17 much); realign the regulation to reflect current practices; add
18 new provision, including those for the mandated outpatient
19 services data collection; improve access to data; and add
20 provisions that ensure the data are complete and accurate. These
21 objectives continue to support the statewide initiatives to
22 promote transparency and greater access to data. We can also see
23 tangible benefits resulting from these efforts in the Governor's
24 Open Data Portal, as well as the new health data site, Health
25 Data New York. We also have promising news in the world on long-

1 term care. I wanted to report on the Balancing Incentive
2 Program. New York has just announced the recipients of the
3 Balancing Incentive Program, or BIP innovation fund grant
4 awards. These organizations will share more than [\$]47 million
5 in funding. The money will be used to enhance community-based
6 long-term care service and support for Medicaid beneficiaries.
7 The BIP funds come from the Centers for Medicare and Medicaid
8 Services as part of the Affordable Care Act. BIP was created by
9 Congress to make structural changes to the nation's long-term
10 care delivery system. It was designed to inspire service
11 providers to think outside the box as they come up with ideas
12 for changing that system. And that's exactly what we have from
13 the 75 applicants who sought BIP funding. Examples of projects
14 include a self-management program for people with diabetes so
15 that they can avoid hospitalization and reduce ER use; a skill-
16 development program for individuals with disabilities who face
17 barriers to long-term care services and supports; peer mentoring
18 programs to facilitate greater independence within the
19 community. The goal of BIP is simple—we want to provide
20 solutions that increase our spending on community-based long-
21 term care services and support people while reducing
22 expenditures on institutional care. Ultimately, we want people
23 to live in their communities for as long as possible. We have
24 initiatives in promotion stem cell research; helping people live
25 longer and healthier lives is a major goal of our stem cell

1 program here in New York and the New York State Stem Cell
2 Science Program (affectionately known as NYSTEM) has recently
3 announced several different types of funding to promote stem
4 cell research. More than \$10 million of these funds will be used
5 to provide opportunity for biology teachers in middle schools
6 and high schools; the teachers will spend six to eight weeks
7 doing research in a stem cell laboratory and then take the
8 experiences back to their students in lesson plans and hands-on
9 activities. The idea is to stimulate the students' interest in
10 stem cell research so that we have more scientists in the future
11 in New York. NYSTEM works with scientists who have already made
12 that commitment. That's why it has allocated [\$]7.5 million in
13 its institutional training program, which supports the training
14 and career development of aspiring stem cell scientists. The
15 money will go to organizations to support pre-doctoral and
16 postdoctoral fellows. NYSTEM also has [\$]4 million in funds for
17 the informal stem cell education program through museums and
18 science centers program. The goal is to teach visitors to
19 science museums and science centers about the fundamentals of
20 stem cell science and research. Of course, it's essential to
21 have people who convey this complex information and another [\$]4
22 million in funding is being allotted to a program for
23 journalists and journalism students to help journalists better
24 understand and communicate stem cell biology and regenerative
25 medicine. These investments demonstrate our conviction that stem

1 cells hold the key to understanding and treating some of the
2 most devastating diseases of our day, including type 1 diabetes,
3 lupus, and Parkinson's Disease. I just want to mention briefly,
4 DOH received good news this summer from the Association for the
5 Accreditation of Human Research Protection programs. I have been
6 involved in this initiative, actually since 2011. We decided to
7 seek outside accreditation for our IRB and after much work and
8 monitoring visits, earlier this summer the association, the
9 national association accredited our institutional review board
10 for safeguarding human subjects of research. To earn
11 accreditation, organizations must demonstrate that they have
12 built extensive safeguards into every level of their research
13 operations and adhere to high standards of research. And the New
14 York State Department of Health has joined one other state in
15 the nation, as well as the National Institute of Health, and
16 many high-level research institutions—actually globally—in being
17 accredited. So, now we'll move on to other reports. I believe
18 that the first reporter, thankfully, will be Dr. Gus Birkhead.

19

20 JEFF KRAUT: Dr. Birkhead, just before we move on, just
21 any questions? Yes. Ms. Rautenberg.

22

23 ELLEN RAUTENBERG: Sue, you used the word "public utility"
24 in describing the SHINNY. Is that public utility with a big "p,"
25 big "a" [sic]? Is that a legal definition of public utility?

1

2 SUE KELLY: No, it's not. It's not. I would say it's
3 more of a lay-persons' statement about it being a public
4 resource so it's small "p."

5

6 ELLEN RAUTENBERG: OK, just curious.

7

8 SUE KELLY: Available for providers, payers, patients- I
9 can say, I had the opportunity to sign on to a new physician in
10 the past week at Albany Medical Center, I am on the faculty
11 there. And I received my- I had to sign a number of forms to
12 consent to the data being uploaded into the system that the
13 local regional health information organization monitors and
14 manages and I received- I gave my personal email address and I
15 received my notification, my first notification, of being on a
16 patient- having access to a patient portal. And it means... it
17 means so much to me as an individual, but I am also the manager
18 of care for my aunt, who I discovered having a stroke in 2010
19 and I care for her and the thought that I will be able to assure
20 that my primary care practitioners and referral specialists will
21 have this information. I guard my privacy, but the fact that I
22 can also monitor through the patient portal this information
23 means a lot. So I think it's a public resource, if I were to
24 rephrase. I wasn't- I am not a lawyer, so I am not making a

1 legal statement, but I do think it's a public resource and a
2 public good.

3

4 ELLEN RAUTENBERG: Thank you.

5

6 SUE KELLY: Thanks.

7

8 JEFF KRAUT: Any other questions? Before we turn to Dr.
9 Birkhead, there were two ministerial functions I have to do. One
10 of them is you have an exhibit one, our meeting schedule for
11 2015. These are the meeting dates that we're going to meet.
12 There should be a copy also at your table. I need a motion to
13 accept the meeting schedule. There will be three in New York,
14 three in Albany.

15

16 [So moved.]

17

18 Second. And any- we, there's really no discussion, these
19 are the meeting schedules. All those in favor, aye.

20

21 [Aye.]

22

23 Nobody opposed. Nay. OK. We'll move on. Yes, Dr. Martin. Is
24 this not convenient?

25

1 GLENN MARTIN: No, no, just a question about the meeting.
2 It is germane, I believe.

3

4 JEFF KRAUT: OK. Yes sir.

5

6 GLENN MARTIN: So I gaze off on the side and I see two of
7 our esteemed council members calling in remotely and I am just
8 wondering is that a precedent going forward that we may actually
9 allow people to be more disbursed rather than training as a
10 general rule or— I am just curious how we are doing that if we
11 know going forward.

12

13 JEFF KRAUT: I have always personally felt that, you
14 know, the challenge of getting a quorum. You know, we should
15 avail ourselves of contemporary technology to constitute that
16 quorum, as long as it's—I am going to go to Mr. Dering in a
17 second about doing that. There are some prohibitions at times if
18 it comes to voting. The issue has always been that we don't want
19 to make it so convenient that we don't come together
20 collectively, but on the other hand, if it's not an abused
21 privilege, I am all for it because I think it does accommodate
22 individuals who either because of weather or because of their
23 schedules or they are incapacitated make it difficult to travel
24 to the site. This is certainly the case in the winter months.
25 We've experienced it, so I am all for it and I'll turn it over

1 to Mr. Dering to tell me if there is any legal prohibitions on
2 what we are doing.

3

4 JIM DEERING: Sure. So, the Open Meetings Law and an
5 advisory opinion from the Committee on Open Government allow it
6 so long as certain conditions are met, which would be handled
7 through Colleen's office, so it is something that is legally
8 allowable.

9

10 JEFF KRAUT: So, yes. So we don't have, interestingly
11 enough, we don't have the New York City site live, but could I
12 ask you a question? If there are times when councilmembers can't
13 make it to Albany..

14

15 [We could open that up. That is a webcam.]

16

17 JEFF KRAUT: That's a webcam.

18

19 [WE DO NOT HAVE THE EQUIPMENT FOR ME TO GET TO NEW YORK CITY.]

20

21 JEFF KRAUT: OK, so if you needed, we could do it through
22 a webcam and, you know, we'll go to Best Buy afterwards, we can
23 buy it, I'll give it to you, alright. So that's it. Look, the
24 reality is you use it occasionally, fine, but if it becomes a
25 constant, I think, we tap you on the shoulder and say "please

1 don't do that." You know, you are abusing the privilege. So, if
2 that's OK, we're gonna accept the schedule. OK. Second, I am
3 going to ask for an approval of the minutes of the June 12,
4 2014, the meeting minutes, which is listed as exhibit 2 in your
5 book. Have a motion, a second. All those in favor, aye.

6

7 [Aye]

8 Opposed? Abstention? The motion carries. Now I would
9 like to turn it over to Dr. Birkhead.

10

11 GUS BIRKHEAD: Thanks very much, Mr. Chairman, and as Sue
12 said, it has been an interesting couple of weeks on the Ebola
13 front and I thought I would just summarize, since it's been so
14 heavily in the news, some of our activities. This, of course, is
15 a fall out from the largest Ebola outbreak in history, known
16 history, occurring in Africa now. It's an unusual outbreak in
17 that it's occurring in West Africa; the previous ones have been
18 in East Africa. It's now over, well over 1,000 cases and a case
19 fatality rate exceeding 70%, so Ebola is definitely a very
20 severe illness and under certain conditions in both health care
21 settings and also community settings, can spread fairly readily,
22 but through a direct-contact route—it's not an airborne virus.
23 But it highlights, really, the modern world that we live in
24 where any disease, anywhere in the world, could be here in the
25 United States in 24 hours via plane ride. And so actually the

1 activity in the last week was not something new for us. We have
2 been dealing with this phenomenon for a number of years,
3 actually for most of my time at the Health Department. There
4 actually have been previous Ebola outbreaks in Africa, and we
5 actually had suspect patients come to New York during those
6 previous outbreaks. I think we really got going, however, in a
7 formal sense in terms of protocols for these kinds of events
8 during the SARS outbreak, where we had, I think, over 60 suspect
9 cases of SARS come into the state and had to be handled either
10 in hospitals or at home, home isolation and quarantine types of
11 activities. We actually didn't have a confirmed case of SARS,
12 but we in the aftermath of 9/11 were already gearing up all
13 kinds of activities, and the anthrax attacks, were gearing up
14 lots of different activities, and so SARS was a good training
15 ground, if you will. The H1N1 pandemic in 2009 raised a number
16 of these issues, at least early on, with travel, and the
17 continuing avian flu issues are something that we also keep
18 track of and occasionally have a suspect patient come into the
19 state. And then, more... most recently I have reported to the
20 Council on the Middle Eastern Respiratory System (MERS), which
21 is occurring in the Arabian Peninsula, and which we have had a
22 couple of cases come into the United States... not into New York,
23 but we have suspect cases, so the system of identifying ill
24 persons on aircraft or actually screening at the departure
25 location and then dealing with them when they get here or people

1 who become ill shortly after returning from international travel
2 and present their physician's office or an emergency room, it's
3 really a daily occurrence. A lot of people travel, they travel
4 to lots of different parts of the world, and a small proportion
5 of them, just as a matter of course may become ill or may become
6 ill on their return. So, the events with Ebola in the past week
7 really just activated our routine systems of around these kinds
8 of events. We have good communication with our hospitals, with
9 our emergency departments. We very quickly transmitted CDC
10 guidance and we do rely on CDC with diseases like Ebola and MERS
11 to really define what the epidemiology is, what the risk is,
12 what the clinical considerations are. So, very quickly
13 distribute that, but also follow up with phone calls. We had a
14 call with all the hospitals in New York City and I have a call
15 tomorrow with the hospitals in the rest of the state. We have
16 had calls with EMS providers; we have an issue now with
17 laboratory workers and how to protect laboratory workers dealing
18 with blood samples from these patients. So, each of these
19 episodes presents some new challenges, like the lab issue I just
20 mentioned that we have to sort of work though in a little more
21 detail and so we are on regular calls with CDC and other
22 national organizations to do that and come up with the best
23 guidance that we can. The most recent case at Mount Sinai, which
24 was ruled out, I think sort of exemplifies how the system works.
25 My understanding is that patient was identified and put in

1 isolation within seven minutes of arrival in the emergency
2 department, so very high index of suspicion. I think he probably
3 presented where he had been traveling and it was recognized
4 immediately that this presented a potential risk and so the
5 isolation occurred very, very quickly. And fortunately, I think,
6 it ruled out the Ebola in that case; the testing right now is
7 all done at CDC. I think we're very quickly, because of the
8 large size of the outbreak in Africa and the likelihood of more
9 travelers coming in, CDC has gotten an emergency authorization
10 from FDA to offer the test kits for Ebola to state health
11 department labs, so I think in the next month or two we'll be
12 able to do our testing locally. That's the hope, anyway. So
13 that... again, the events sort of drive the policy, if you will.
14 CDC had sort of kept this testing in their own lab, but I think
15 it's something that we could also do here equally well. So,
16 that's, I think, really the report. You know, Ebola is a severe
17 disease, but we think it can be handled with appropriate
18 precautions in health care settings. The keys are early
19 identification of a potential risk and then implementation of
20 protocols and then good communication throughout the public
21 health system until we determine whether the patient actually
22 is... meets the criteria for a high risk for disease and getting
23 testing done to follow up. If we do have a positive case, we
24 will probably identify... we will identify close contacts—family
25 members, others—and we'll monitor those individuals for a period

1 of two to three weeks for daily fever and other things so that
2 if a secondary case should occur, that person can be isolated
3 quickly and not further transmit. So, at this point, there's no
4 treatment, although I understand that the two patients in
5 Atlanta are being treated with experimental treatments, so at
6 some point in the future there may be treatment, but at this
7 point, care is completely supportive in terms of fluid and
8 electrolytes support, oxygen and blood pressure support, and
9 treating complicating infections, and that's really the steps
10 that are taken to treat these patients. So, again, an
11 interesting episode, I am sure. It's highly likely we will have
12 more such cases as the Mount Sinai case. I hope we don't end up
13 having a case, but I think we can't rule out that that's
14 possible and that's why we're taking these steps. So I would be
15 happy to answer any questions if people have them.

16

17 JEFF KRAUT: Any questions for Dr. Birkhead? I would just
18 say that, you know, I commend the Department. I know the
19 communication—I am in kind of a loop on some of these emails—
20 it's tremendous. So we're educating. I mean, as we go into flu
21 season, we're all, you know, we're all concerned. There's the
22 heightened awareness and everybody is going to run in if we have
23 a bad flu season and what that's going to do. I have a question.
24 The test kit. How long does the, you know, there was commentary

1 that it took a long time to determine the patient at Sinai if it
2 was positive. Is it a rapid test or is it a...?

3

4 GUS BIRKHEAD: I think the test kit that they will send out
5 is a standard PCR, polymerase chain reaction test, which I don't
6 think there really was a delay in CDC testing.

7 It takes about 24 hours.

8

9 JEFF KRAUT: OK.

10

11 GUS BIRKHEAD: You need to run controls, positive and
12 negative. Sometimes you repeat the run to be sure if there is a
13 question about the answer. So it's a standard methodology, I
14 think.

15

16 JEFF KRAUT: OK. And just maybe at a subsequent meeting
17 when you give a report, if you can give- I think people don't
18 appreciate the value in the resource we have in the Wadsworth
19 Laboratory and the history that it's participated in protecting
20 public health in New York and I know we are coming on a-I think
21 it's a big anniversary.

22

23 GUS BIRKHEAD: This fall we are going to have a celebration
24 of the 100th anniversary of the Wadsworth Lab and I think we can
25 probably invite the members of the Public Health and Health

1 Planning Council to attend. We're planning to have a celebration
2 with a prominent national speaker coming.

3

4 JEFF KRAUT: That would be great. It may be coincidental
5 or immediately after that, if you would spend a few, a brief
6 presentation, just a couple of slides and make everybody
7 appreciate, I think the laboratory and what we have here and its
8 legacy, and just make more people, you know, people in the
9 audience, people who watch this, I think it would be very
10 helpful and instructive. Cause we don't- it's like the hidden
11 science, we never talk about that part of our health care
12 center.

13

14 GUS BIRKHEAD: Gladly. I would be glad to do that.

15

16 JEFF KRAUT: Thanks. OK. I am now going to go- well, I
17 guess if you look at your emails and the only other word that
18 exceeds Ebola in my recent emails is the word "DSRIP." I'd like
19 now to turn to Mr. Helgerson who is going to present the Office
20 of Health Insurance and Programs activities.

21

22 JASON HELGERSON: Great. Thank you. It's certainly a
23 pleasure to be here today and for the focus of my presentation
24 is to talk about where we are with our 1115 waiver amendment
25 that Governor Cuomo successfully negotiated with our federal

1 colleagues and the major component of that, which is the
2 delivery system reform incentive payment program, which is a
3 \$6.9 billion enterprise over the next five years to really
4 transform how health care is delivered for the Medicaid
5 population. And so, I am going to try to talk about something
6 that is very large and quite complex in a very short period of
7 time, cause I know you have a very long agenda, but the
8 information I am going to provide today is also available on the
9 website; in fact, there's a couple of white board presentations,
10 which are short videos that also will go into each of the sort
11 of topics that I'll be discussing today in a little bit greater
12 detail. They are about five minutes, so I will spend maybe a
13 little bit less than five minutes on each of these two slides. I
14 am not sure whether it's... This doesn't seem to be. You can just
15 advance it.

16 OK. Alright, in terms of DSRIP, sort of five things, sort
17 of five key themes to sort of keep in mind in terms of what this
18 program is all about. First and foremost, my favorite word these
19 days has been "collaboration." What we're trying to create are
20 performing providers systems—in essence, integrated delivery
21 systems of providers from across the entire spectrum of care for
22 the Medicaid population coming together and to operate really as
23 a single system, a single team, to better meet the needs of the
24 Medicaid population. It's very essential component, we have
25 been, since April when we got final approval, been really

1 driving hard across the state to bring providers together in new
2 and unique ways. And in cases, in some cases you are bringing
3 people together who historically have been tough competitors
4 with one another in the marketplace, trying to get them to work
5 together and put together comprehensive, innovative proposals.
6 And what I can say is that we have seen a lot of really good
7 collaborative thinking going on across the state.

8 I want to point out in particular in the Rochester
9 community, the Finger Lakes, they have really coalesced around a
10 single performing provider system where you had two large
11 hospital systems that really competed against each other for
12 many, many years coming together in agreement to pursue this
13 initiative as a single entity and we think that those single
14 entities bring a lot of advantages to the program in terms of an
15 ability to make the lives of downstream providers who need to
16 clinically integrate with, in this case, one system—as opposed
17 to clinically integrate with more than one system—it makes their
18 lives a lot easier, so there really is a lot of advantages there
19 and we have been certainly encouraging broader coalitions to
20 come together. We won't achieve that in every community, but we
21 are certainly trying to keep the number of performing provider
22 systems to a manageable level.

23 Next is obviously this initiative is new investments into
24 the health care delivery system and everyone wants to know how
25 the money is, what drives the money in the program and there's

1 really three things that do this and we're pushing each of the
2 performing provider systems to understand this. First is the
3 level of transformation. There's a list of 44 projects, you can
4 select up to 10 or in certain circumstances now 11 projects. The
5 various projects have different levels of value attached to
6 them. The ones that are more difficult, but are at the same time
7 more transformative are the ones that have the higher dollar
8 value. So it's important for folks to not bite off more than
9 they can chew, but the more aggressive you are in terms of
10 transformation, the more money you receive. Also, it's the
11 number of Medicaid members you serve, it's a key factor in all
12 of this. You really want to make sure that in each PPS that the
13 providers who also serve the Medicaid population are part and
14 parcel of that performing provider system. And it's important to
15 also note that what will drive attribution, as we call it, to
16 any performing provider system, is primarily going to be the
17 primary care providers in the community. So those are really
18 essential partners, while most of the performing provider
19 systems that are emerging in this process are led by hospitals,
20 it's essential that those hospitals have those primary care
21 partners and that they are front and center because they will
22 drive a lot of the money in this initiative.

23 And then lastly is application quality. This is going to
24 be, and we're working on it right now, the draft applications
25 will go out for public comment. This is going to be a very

1 different application that what individuals may have seen in
2 other programs—whether that was HEAL or other types of waiver
3 programs. It is going to be a very detailed application, it's
4 going to require a tremendous amount of thought and effort and
5 it's important that each performing provider system does what it
6 takes to submit a good quality application because the
7 application score is going to be a major driver of funds in this
8 program, as well. So it's really important to get that
9 application right. So, in addition to the money, it's important
10 in how we sort of set what we call "initial value" for each of
11 the projects that we fund. It's important to note that every
12 single payment through this initiative is linked to a specific
13 milestone or a specific performance metric. This is all about
14 performance. If you do not perform, you will not be paid, it is
15 that simple. There is no payments for effort. There's no
16 payments and reimbursements for cost. This is all performance-
17 based payments and in fact what makes these payments in this
18 waiver allowable under federal law is that they are specifically
19 performance-based payments and it's important for folks to go in
20 with their eyes wide open that whatever you commit to in your
21 application, you are committing to and you have to deliver on
22 those commitments.

23 Next is statewide performance matters. I think for this
24 body this is an important concept to understand is that in the
25 past, you know, the individual performance of a grant recipient

1 through the HEAL program, whether they succeeded or failed, you
2 know, was in their reform efforts really it was that individual
3 community or that group of providers that was the ones who
4 either saw the benefit or experienced the failure. In the case
5 of DSRIP, and we're the first state to have this requirement, is
6 that we're required to roll up the performance metrics across
7 all the performing provider systems in the state and present to
8 the federal government each year a report card that shows how we
9 as a state overall are succeeding or failing and if we are not
10 successful as a state, and in our overall performance
11 improvement, we will have to reduce payments to all of the
12 performing provider systems. And what that means is that what
13 happens in the Bronx matters in Binghamton and vice versa and
14 we're going to have to find ways to share learning, share best
15 practices, across the state. And it really does put us in a
16 different situation. It's not a competition between these
17 performing provider systems, it should really be a collaborative
18 effort to improve outcomes for the Medicaid population. So we
19 are definitely trying to create that sense of collaboration both
20 within the PPSs and between the PPSs. And then lastly, and this
21 gets to the next slide, this is not about five years' worth of
22 funding, go off and do some good things and achieve some
23 improved outcomes and hopefully make some smart investments.
24 This is about permanent restructuring of the health care
25 delivery system for the Medicaid population. And it's important

1 and that's why this slide is important for folks to understand,
2 is how DSRIP will—and I always see it as the seed capital for
3 the new delivery system for this population—and what we're in
4 essence trying to build here as this schematic shows, is an
5 environment in which the managed care organizations that we
6 partner with today who will receive capitation payments from the
7 state and are responsible for maintaining an adequate network,
8 but we see the vast majority of the services provided to the
9 Medicaid population will be provided through these performing
10 provider systems that we are creating, we see them as a
11 permanent feature of the Medicaid program—almost akin, I would
12 say, to a new provider type—we see these performing provider
13 systems actually being active participants in payment reform and
14 so our ultimate vision, and this is sort of five years into the
15 future, is for these managed care organizations to provide
16 bundled payments, or sub-capitation-like payments to these
17 performing provider systems and then those performing provider
18 systems then have the ability to design health care delivery
19 solutions that meet the needs of the population that they serve.
20 So the idea here is to break out of fee-for-service once and for
21 all and actually have—in fact, our goal in the waiver documents
22 is that 90 percent of all Medicaid payments, that's 90 percent
23 of \$55 billion in our health care delivery system—will be going
24 through these non-fee-for-service, and be going through a value-
25 based payment systems to the provider community. So this is not

1 a small change; it is going to take a while. I mean, this is a-
2 we have a delivery system in our state that was built on fee-
3 for-service; people built business models around that, the
4 incentives that are created within that system, and to go from
5 where we are today to that new state is not a small undertaking.
6 But we are, I think, fortunate, and Dan, my colleague, will talk
7 a little bit more, is that not only do we have the waiver funds
8 available, that \$7 billion to invest to help seed this new
9 system, we also are bringing to the table sort of unheard of in
10 the past regulatory relief. An opportunity to waive regulations
11 for providers who are coming together as part of these PPSs, as
12 well as \$1.2 billion in capital funding, the state investing in
13 long-term debt that we're putting forward to help make sure that
14 this overall effort is successful. So, that's sort of DSRIP in a
15 nutshell. There's obviously a lot more detail to this. And
16 encourage all of you to continue to follow us on the web and
17 happy to come back at future meetings to give you updates of
18 where we are in the process timeline-wise is that yesterday we
19 announced grants awards, planning grants, out there to 42
20 different planning grants were announced. Those are we call
21 "emerging PPSs" that are really coming down and advanced in
22 their efforts. They still have a tremendous amount of work to
23 do. The full applications are due to the Department on December
24 16th and our goal here is to have the program formally launched
25 the beginning of what we call "demonstration year one," which

1 will begin April 1, 2015. So there is a lot of effort, both at
2 the health Department, as well as out there in the provider
3 community in terms of getting ourselves ready for the beginning
4 of the demonstration. So with that I am happy to answer any
5 questions.

6

7 JEFF KRAUT: Thank you. Are there questions for Mr.
8 Helgerson? Mr. Fassler.

9

10 MICHAEL FASSLER: Yeah, just a question on attribution.
11 If someone is in a nursing home part of the year and the
12 community the rest of the year, how does the attribution model
13 work?

14

15 JASON HELGERSON: So, in the case of the nursing home
16 population, if they are in long-term nursing home, so if they
17 are in a nursing home long term, meaning that's their permanent
18 (for lack of a better word) placement, then that will be what
19 really drives attribution. Now, in a case of someone who is in
20 short-term, like short-term rehab or something like that, that
21 utilization will not drive it; rather, other services—and it
22 depends on what the population is, if they are developmentally
23 disabled or they have significant and persistent mental illness,
24 but depending on which of the buckets that they fall into from a

1 diagnosis standpoint will dictate which of the other services
2 will determine attribution.

3

4 JEFF KRAUT: Any other questions? Dr. Rugge. I'll get
5 to Dr. Bhat next.

6

7 JOHN RUGGE: Thank you for the presentation and the \$8
8 billion. This, as you say, represents substantial restructuring
9 of care for the Medicaid population. It would be very difficult
10 for providers to treat the Medicaid population different than
11 others, and I would think over the next coming year significant
12 cross agency coordination from financial services regarding
13 commercial payers, and also thinking about the connection to
14 Medicare ACOs and as providers there's a confluence of activity
15 and yet these are all kind of distinct.

16

17 JASON HELGERSON: Very good point, and you're right. In
18 many cases providers will, and I think one of the benefits here
19 is potentially that some of the benefits from this level of
20 collaboration can extend beyond the Medicaid population and into
21 other populations as well. But I do think that this is not
22 being done in a vacuum. There are other initiatives going on.
23 The Medicare ACOs is a good example and we certainly are hoping
24 to build off of some of that infrastructure that's been built
25 through things like the Medicare ACO, and I know that several of

1 the PPS's are also Medicare ACOs and they're going to use that
2 infrastructure directly, and we've certainly been encouraging
3 that, but I do think that this entire approach to healthcare
4 delivery, this idea about integrated delivery and encouraging
5 providers to work together does lead to a broader discussion
6 that I think will probably be appropriate for this council at
7 some point, which is, in an environment where payments are made
8 based on value in an environment where we're actively
9 encouraging collaboration, an environment where perhaps we
10 consider what constitutes good competition in healthcare maybe a
11 little differently than we had in the past. I think suggests
12 maybe a need to think about how we regulate the healthcare
13 delivery system. You know, we're going to have - and Dan will
14 talk about this - the regulatory relief that comes along with
15 this and so each performing providers systems is gonna
16 experiment with this and it's a demonstration so we're gonna
17 learn some things from that regulatory relief. In some cases
18 it's gonna lead to hopefully better outcomes. Other cases maybe
19 not so much. But I think whatever those lessons are should then
20 be used to inform policy making. I think that as we evaluate
21 this initiative we should constantly have an eye to, you know,
22 what it's broader potential impacts are and how we might want to
23 adjust our policies to deal with those broader impacts.

24

25 JEFF KRAUT: Dr. Bhat.

1

2 DR. BHAT: Thank you. You mentioned a couple of
3 times saying if there are non-performers they don't get paid.
4 As a (whole) in the state, you're not going to achieve that 25
5 percent reduction. What happens to that money? Or does it go
6 to only the performers equally divided? Or we lose the money?

7

8 JASON HELGERSON: So, good question. So, the answer is if
9 we don't perform as a state, we will see reductions in the total
10 value of this initiative and that's why it's so important that
11 we take steps particularly here in year zero to ensure that we
12 set the table for success. That's why we are very actively
13 involved in helping to build these performing provider systems
14 so that they are successful, because we have a lot riding on
15 this, and we have safety net providers in the State - I think
16 everyone around the table knows who are very financially
17 fragile, and their only path to sustainability is really the
18 waiver of funds. So it's really important we utilize those
19 funds. And so in terms of if failures occur and to talk about
20 that is that each of these PPSs is choosing multiple projects.
21 Within each project there are multiple measures, and so it's
22 possible, in fact likely, that you will have PPSs that will not
23 hit every single one of their metrics, and therefore their
24 payments will be reduced, but it won't mean that they will lose
25 all of their payments.

1 That said, what we had worked out with CMS is that we will
2 have a special performance pool established, so what we'll
3 attempt to do is assuming we hit the overall statewide targets
4 but we have individual problems in various PPSs where we don't
5 hit every single metric, we'll be able to basically reprogram
6 those dollars to the PPSs who exceed the targets they have for
7 various program measures. So that is in essence our built-in
8 vehicle for helping you know, on those individual by individual
9 basis where we fail to hit metrics to reinvest dollars back into
10 the delivery systems that exceed, and we wanted - CMS agreed
11 that we needed to create incentive to go above and beyond just
12 hitting a specific performance target, so we have that vehicle.
13 With that said, if when you roll up the overall performance and
14 we don't meet the overall state report card requirements, then
15 we will have to reduce payments overall, and that's obviously
16 what we want to try to avoid over the five years of the waiver.

17

18 JEFF KRAUT: Do you have a follow up Dr. Bhat.

19

20 DR. BHAT: It's a (pilot) program. Year two or three you
21 find one of the components are not, definitely is not going to
22 work. Would you advise them to drop it or go on to something
23 else?

24

1 JASON HELGERSON: So, interesting point to raise. So,
2 they're going to choose up to 10 or in the case of certain ones,
3 11 projects. And in essence they're required to implement those
4 projects. With each of the projects they select come certain
5 measures. There are certain measures that apply to everyone,
6 right, and avoidable hospital measures that you mentioned are
7 among those. And so everyone's held accountable for that. But
8 the other measures are based on the projects that they select.
9 Now, at the end of the day they're locked in, when they choose
10 those projects name and they have an approved application,
11 they're locked into those measures for the entire five years.
12 Now, if they need to do something above and beyond the specific
13 targeted intervention that they signed up for in order to hit
14 those metrics, they need to do that, otherwise they potentially
15 lose money. Because at the end of the day this program is less
16 about the interventions than it is about the incomes. They need
17 to do whatever it takes to be successful. And so if they need
18 to modify their approach, add new strategies, you know, whatever
19 that is in order to achieve success in those metrics is really
20 the bottom line which is a very different type of program than
21 we've had in the past. It's less about the inputs. All about
22 the outputs, and what we were trying to do is, CMS wants some
23 standardization, so that's why these initiatives - there's 44
24 you get to select from - but at the same time we also want the
25 communities and the providers to be able to have some

1 flexibility in terms of how they administer these initiatives so
2 that they can design them in ways that will lead to the greatest
3 amount of success. But, as I say repeatedly, it's all about
4 performance and you've got to hit those metrics and you've got
5 to do whatever it takes to get there.

6

7 JEFF KRAUT: Dr. Berliner and then Dr. Martin. And then
8 Mr. Levin.

9

10 HOWARD BERLINER: Excuse me. Mr. Helgerson, somewhat
11 unfocused and vague question, so I apologize in advance. It
12 seems to me there are two ways that you can run the Medicaid
13 program; you can have it done through the managed care
14 organizations as the financiers or you can have it done through
15 the providers. Is this - and so I guess my question is moving
16 forward, I mean, do these PPSs become essentially having
17 established you know, an attributed Medicaid population, I mean,
18 do they become competition for MCOs? Has that been thought
19 through at all about where this might go? I'm asking purely
20 philosophically, not in a -

21

22 JASON HELGERSON: No, no. It's a very good question, and
23 we have thought through it, which is that at the end of the day
24 we feel that the managed care model is more flexible and that
25 the managed care organizations, even in an environment where we

1 have very robust, very evolved, sophisticated PPSs that those
2 managed care organizations will still add value to the system.
3 And not to say that there won't be some of these PPSs that may
4 decide that they want to evolve to a plan. We have systems here
5 today who have created their own insurance companies for their
6 own very good reasons, but I think we have to envision an
7 environment where not all of the providers will want to take on
8 insurance risk. And managing insurance risk is different than
9 managing performance risk. You know, good example right now
10 there's a challenge out there, and probably everyone's read
11 about some of the challenges, but also opportunities around how
12 we treat Hepatitis C, and the fact that there's a new drug out
13 there that can cure the disease which is wonderful. At the same
14 time extremely expensive. And that's an example of a factor
15 that comes into the environment and if you're an insurance
16 company and you are experiencing managing risk and you maintain
17 reserves, you do things, it's easier to manage those
18 developments than if you a group of providers who doesn't have
19 experience in that, doesn't maintain those reserves, and things
20 like that. The other advantage of managed care - advantage of
21 managed care over fee-for-service and paying the PPSs directly
22 is that its, in my experience and been a Medicaid director now
23 for eight years in two states and trying to get CMS to make
24 approved changes in rate methodology and fee-for-service is an
25 amazingly time consuming an issue which makes us not very nimble

1 when it comes to meeting the unique needs of providers across
2 the State. It can take two years to get a state plan amendment
3 approved and we've had that, certainly had that issue in New
4 York State. The managed care organizations can change payment
5 systems much more quickly. They don't require those sort of
6 federal changes. We will still regulate the managed care
7 organizations, we'll have contract requirements in place, but we
8 have to expect the fact that some of these performing provider
9 systems are going to come out of the waiver period very well-
10 integrated and primed absolutely for payment reform and can take
11 a subcapitation like payment. But there will be others who
12 won't be that advanced. Who to take that much risk would put
13 those providers really at risk of financial, severe financial
14 problems. And so we have to sort of plan for that likelihood
15 and the managed care approach to Medicaid management gives us
16 the flexibility that I think we would not have if we used sort
17 of the more traditional approach to direct payment from the
18 State to the providers.

19

20 JEFF KRAUT: Dr. Martin.

21

22 GLENN MARTIN: Well, actually Dr. Berliner asked my
23 question. So I turn it over to -

24

25 JEFF KRAUT: Thank you. You go together, I know.

1

2 GLENN MARTIN: So we couldn't coordinate it as well.

3

4 JEFF KRAUT: Go ahead.

5

6 ART LEVIN: ...ask my question. Number one, what, I'm
7 curious as to the source of the metrics that are being used, and
8 the second thing is, is all self-reported data? And if so, is
9 there any provision for audit, either on a random or 100 percent
10 basis because over time we've all come to realize self-reported
11 data and their questions about its accuracy and when it's used
12 for this purpose?

13

14 JASON HELGERSON: Certainly. So, a variety of measures,
15 generally speaking though if I were to sort of characterize most
16 of them I would say they're HEDIS or HEDIS-like measures so
17 they're data that's coming out of the claims system so they're
18 not sort of self-reported in the sense, in the sort of,
19 traditional sense. We've had in our colleagues here from Office
20 of Quality and Patient Safety could probably talk to this more,
21 a lot of experience in these measures. We've been using them to
22 hold the managed care organizations accountable for long periods
23 of time, and Pat (Ruin) and staff are the leads on this piece of
24 it. But there are other types of measures so we will be using a
25 modified version of the CAPS survey, which is the survey of

1 actual Medicaid recipients. In fact, we will be monitoring the
2 patient experience in each of these performing provider systems,
3 so that, I think will be interesting. So that in addition to
4 outcome data that we're pulling out of the claims system or out
5 of chart review and those kinds of things, we'll also be, as I
6 say, asking the opinion of the Medicaid members in each of these
7 communities what they are experiencing as a result of the
8 transformation and those measures also will be part of what is
9 used to hold the PPSs accountable.

10

11 JEFF KRAUT: Any other questions for Mr. Helgerson? Yes,
12 Ms. Carver-Cheney.

13

14 KATHLEEN CARVER-CHENEY: What will happen in the long run
15 with providers who don't become part of these PPSs?

16

17 JASON HELGERSON: Sure. So, I put sort of providers into
18 two buckets there. There are certain providers that are I would
19 say sort of specialized providers for whom it probably wouldn't
20 be appropriate to join one or more of the PPSs. So you can have
21 a specialized cancer center, for instance, that you know, is
22 important, meets - Medicaid members need to have access to it
23 and they would continue to have access to it because the managed
24 care organization would have to maintain a network that would
25 likely, in fact, will, include providers who aren't directly

1 part in parcel of the PPS. But that said, I think that my
2 message to any provider who is, does a good amount of Medicaid
3 business where Medicaid is an important payer, you need to think
4 very, very seriously about joining, because you know, while at
5 first as these organizations are developing that you won't
6 necessarily directly see it probably at first changes in
7 referral patterns. I would expect that as these parties deepen
8 their relationships and start working together will start
9 thinking about - well, thinking long and hard about who they
10 want to refer patients to, and they're most likely gonna want to
11 refer patients to providers who they actually partner with. And
12 just give you an example of one unnamed hospital executive told
13 me as they were thinking about this, they took a step back and
14 looked at the nursing homes that they had referred to and found
15 that there was in this case, I think it was over 100 different
16 nursing homes that they were discharging to and had very little
17 actual clinical relationship with any of them. And began to
18 think about whether or not that was really the best way to go
19 about doing business, particularly in the DSRIP environment
20 where we want clinical integration between nursing homes and
21 hospitals. We want there to get an effective handoff because,
22 and maintain that relationship. So that's just like an example
23 as bringing these providers together, starting to think about
24 how you achieve these performance metrics, how that's going to
25 have a direct impact on some of these conversations about you

1 know, when our folks are making those decisions or making
2 recommendations to families and individuals about where to get
3 their care, I think that a lot of those recommendations, those
4 recommendations are going to be influenced by this discussion
5 and about who they're partnering with.

6

7 JEFF KRAUT: Dr. Kalkut.

8

9 GARY KALKUT: Hi. Would you comment on the 11th project,
10 important recent addition to the program.

11

12 JASON HELGERSON: Sure. We've been throughout this
13 process gathering public feedback on the initiative, and
14 probably one of the most common comments we got was that the
15 initiative while beneficial to the Medicaid population was not
16 available and was gonna maybe benefit the uninsured in our
17 community. We roughly two million people living amongst us who
18 are uninsured even after the Affordable Care Act. Many of those
19 individuals obviously undocumented do not have access to the tax
20 credits or to the Medicaid program in our state to help insure
21 healthcare access and so what we've done with the 11th project is
22 created an opportunity for performing provider systems to engage
23 that community to really extend the benefits of the PPS to the
24 uninsured, and in particular to - and we're working on
25 performance measures here - but to try to get them engaged in

1 meaningful ways, particularly get them into more primary and
2 preventative care services, and PPSs will have decisions to make
3 as to whether or not they launch the 11th project. We are giving
4 the public-led PPSs the right of first refusal in the
5 communities in which they serve for leading that 11th project.
6 It's a reflection of the fact that they're unique provider
7 status, but if a public-led PPS does not move forward on the 11th
8 project, it's not mandatory for them, other PPSs will have the
9 opportunity to do so. Or in the parts of the State where we
10 don't have a public PPS. The PPSs there will have that
11 opportunity to pursue that 11th project. It's a high-value
12 project. It will drive a good amount of money because we also
13 acknowledge the fact that there are costs associated with this.
14 Unlike the other service, the population, the Medicaid
15 population where if you engage them and you provide services to
16 them you receive reimbursement through the Medicaid program. In
17 the case of the uninsured, there is no direct form of
18 reimbursement, and so that's part of the reason why we wanted to
19 reflect the high value is to make it an attractive project, and
20 our hope is that the 11th project is launched in every part of
21 the State.

22

23 GARY KALKUT: Thank you.

24

1 JEFF KRAUT: Any other questions? Thank you so much.
2 Thank you. I'm sure this is not the first and last conversation
3 we will be having.

4 Now I'm going to turn to Mr. Shepard is going to give us an
5 update of the Office of Primary Care and the Health Systems
6 Management activities.

7
8 DAN SHEPARD: Good morning. I suppose a brief, very brief
9 introduction is probably in order. I'm Dan Shepard. And
10 towards the end of June I assumed the position of Deputy
11 Commissioner for the Office of Primary Care and Health Systems
12 Management. I had, it was a great pleasure to work with Karen
13 Westervelt over the past several years in my - in my previous
14 role as deputy director with budget division on a host of
15 challenging healthcare issues, and so it's really wonderful to
16 be joining the Department at such a transformative time as my
17 colleague Jason just covered.

18 I'm just also, I'm sorry I haven't had a chance to reach
19 out to all of you individually. It is my intent to both, not
20 just introduce myself in a little bit more detail, but also to
21 hear most importantly what your priorities are for the Council
22 and any other thoughts - speak up?

23
24 JEFF KRAUT: If you could just pull the mic a little
25 closer -

1

2 DAN SHEPARD: No one's ever accused me of speaking

3 quietly, but -

4

5 JEFF KRAUT: OK, Dr. Grant. We've got it.

6

7 DAN SHEPARD: Is that better? OK. So, on to the

8 substance.

9 What I wanted to cover here today are just a little bit

10 deeper dive into a few of the DSRIP activities that have been or

11 are taking place.

12 The first is the interim access assurance fund, and if

13 DSRIP has funding phases we could consider IAF the first phase.

14 And the purpose of IAF is to help especially fragile safety net

15 hospitals who intend to participate in DSRIP but are at risk of

16 closing or significantly reducing services before the primary

17 DSRIP funds start to flow in the spring of 2015 to make sure

18 that they can continue to operate, stay afloat, and be part of

19 those performing provider systems.

20 IAF was a total of \$500 million or is a total of \$500

21 million. \$250 million of that is going to the five major public

22 hospital systems. I mean, that's HHC, the three SUNY hospitals,

23 Erie County Medical Center, Nassau and Westchester. I think

24 while the funding definitely provides a needed boost to the

25 publics, the, sort of virtually every one of them in some way,

1 shape or form needs it, some of you may be familiar with the
2 structure of DSRIP requires the public payments to generate the
3 payments for the non-public hospitals and so the \$250 (million)
4 for the publics generated an additional \$250 million of federal
5 funds for the safety net hospitals, and that's safety net, the
6 definition as per, as negotiated with CMS for purposes of DSRIP.

7 We awarded, as I said, the full \$250 million to the public
8 hospitals and a total of about \$217 million so far to the, to 25
9 safety net hospitals. There was a total requested amount for
10 those 25 safety nets of about \$300 million. The difference is
11 largely due not so much to programmatic differences but really
12 some counted depreciation which for purposes of IAF which really
13 just intended to keep hospitals, safety net hospitals from
14 operating for a 10-month period didn't really factor in. So,
15 roughly \$217 million for 25 hospitals. That leaves a balance of
16 \$33 million that we'll be using either if new IAF applicants
17 come forward, or to the extent that in our monthly monitoring of
18 the recipient hospitals turns out that they, that they need more
19 to meet the goals of IAF then we originally programed, it gives
20 some capacity to increase their IAF grant.

21 That's really wrapping up on IAF, and I know in interest of
22 time let me quickly pivot to a, something that is a DSRIP
23 related activity that is launching and launching quickly. And
24 as Jason alluded to, this year's State budget authorized the
25 commissioners of health, mental health, office of people with

1 developmental disabilities, and office of alcoholism and
2 substance abuse services, authorized those commissioners to
3 waive regulatory requirements for DSRIP projects. The
4 legislative intent of this authorization is to ensure the DSRIP
5 projects could be implemented at a rapid pace, if a rapid pace
6 required to hit the performance milestones necessary for the
7 PPSs to receive funding. And you've heard through Jason the
8 importance of hitting those milestones, not just for the
9 individual PPSs but for the State as a whole. The regulations
10 cannot, and this is per the statute, cannot be waived if in
11 doing so would jeopardize patient safety. And the waivers must
12 be project specific and time limited. As you can imagine, many
13 interested parties have already reached out to us with
14 suggestions about how to utilize this authority and in addition
15 as part the design grant applications PPSs identified also
16 potential requests for regulatory waivers. These, the
17 suggestions we've heard and the requests, just to give you some
18 examples of the kinds of areas that they're covering,
19 integrating physical and behavioral health services; integrating
20 long term care services; addressing physical plant standards
21 that don't impact patient safety but might otherwise slow down
22 implementation of a project; facilitating information sharing
23 between PPS participants; do we have regulations that without
24 jeopardizing patient safety or HIPPA and more precisely here are
25 holding back PPSs, and also waiving regulations that might help

1 us promote workforce flexibility that will support coordinated
2 care in the clinically integrated environment so the PPSs will
3 be developing.

4 In general we anticipate the Department will be waiving
5 regulations that would otherwise preclude or delay approved
6 DSRIP projects, again, without impacting patient safety. I
7 think however, in developing an implementation framework which
8 provides predictability to DSRIP applicants, speed and
9 consistency across projects, all of those things are critical;
10 predictability, speed and consistency are critical, so the
11 framework we're developing needs to meet those tests.

12 We're going to be finalizing this framework and providing
13 guidance to PPSs in late September. This timeframe aligns with
14 the beginning of the DSRIP application process. And right now
15 we're in the process of following up with stakeholders who have
16 reached out to us in soliciting input from others who haven't
17 but we think have something to offer in the process.
18 Importantly and for this meeting we also believe this is an area
19 where the expertise of the council could be very helpful to us.
20 PHHPC as you know certainly better than I do and many people
21 have told me there's been an incredibly important resource of
22 the department in advancing thinking and effectuating change on
23 regulatory streamlining and other efforts. For example, two
24 examples that have been raised, redesigning ambulatory care and
25 CON reform.

1 So over the next several weeks we're going to be reaching
2 out to the health planning committee members for input and then
3 at the September 18 meeting of the planning committee we're
4 going to present our thinking to you based on the work we're
5 doing over this very tight time frame. I think while the
6 authority granted to the commissioners by the legislature is
7 time-limited and DSRIP specific, it provides a unique
8 opportunity to test (bad) streamlined approaches to exercising
9 oversight of both existing and new healthcare delivery models
10 and as such will inform future discussions about broader
11 regulatory reform which we very much and I very much look
12 forward to taking up in partnership with the Council. So that
13 concludes those remarks. I do need to - I want to do a quick
14 handoff to my colleague, Chris Delker, but before I do that just
15 any questions on IAF or the regulatory waiver?

16

17 JEFF KRAUT: Any questions? Dr. Bhat?

18

19 DR. BHAT: The monies that are going to the hospital, do
20 they have any kind of strings as how exactly they can spend
21 them?

22

23 DAN SHEPARD: I'm sorry. The beginning of your question?

24

1 DR. BHAT: monies that went out of the hospitals. What are
2 they going to be using it for?

3

4 DAN SHEPARD: So, the IAF funds, it's I guess for
5 certainly my experience for handing out that amount of money, a
6 shockingly simple test which is, it's an analysis conducted by
7 the department based on an application from the provider as to
8 how much cash they need to pay their bills through the 10-month
9 IAF period. It is, so the amount of the award was based purely
10 on a cash flow analysis. They can't spend it on consultants. I
11 mean, there were some limitations. They can't spend it on
12 consultants. No capital. But it's purely, it's operating. It's
13 really to maintain status quo, again, to maintain status quo, to
14 ensure that otherwise viable or desirable PPS partners don't
15 have to shut their doors before the DSRIP funds begin to flow in
16 spring of 2015.

17

18 JEFF KRAUT: Ms. Carver-Cheney.

19

20 KATHLEEN CARVER CHENEY: How does that compare to the
21 desire to close hospitals or reduce hospital beds that you're
22 just wanting to keep them operating even though they're losing
23 money?

24

1 DAN SHEPARD: So, again, it's not - IAF dollars per design
2 in the waiver grant were, the problem they were solving was this
3 notion of if you have a provider that wants to transform, that
4 may - again, may want to - may view itself as over time
5 converting from an inpatient facility to an outpatient facility
6 or a long term care facility as part of an integrated,
7 clinically integrated PPS. But, and this is pure hypothetical,
8 the leadership, their boards all express that desire, they're
9 all in in a PPS, but the reality is that they can't transform
10 fast enough. In fact, the PPSs won't be final until spring of
11 2015, so it's a bridge. Should be looked at nothing more of
12 than a bridge to solve a very, very specific goal.

13

14 JEFF KRAUT: Give a little breathing room to make
15 changes. Dr. Martin.

16

17 GLENN MARTIN: Just a quick question about the regulatory
18 relief that the commissioners can do; is there any review
19 process for that or any public comment or transparency? Just
20 how does that work after the application goes in or request?

21

22 DAN SHEPARD: So each - so the statute requires that each
23 waiver be on projects basis waiver, you know, and there's a
24 reporting requirement in the statute that requires the
25 commissioners through their agencies. We'll do it certainly in

1 a consolidated fashion to report to the legislature publicly on
2 that. I think what we would envision is, again, because I think
3 we view it as an opportunity to test bed broader discussions
4 about regulatory reform that we would want to have with PHHPC.
5 We would at the pleasure of the committee chairs and the chair
6 have regular updates to the board on that.

7

8 JEFF KRAUT: Are you gonna hand off to Chris to talk
9 about regulatory reform?

10

11 DAN SHEPARD: No, just an issue that I understand that the
12 Council wanted an update on.

13

14 JEFF KRAUT: So then before we turn off on this, what I'm
15 hearing is, and you know, Jason Helgerson referred to it as a
16 new provider type. So it's kind of, we're trying to continue
17 what we've I think been doing in the planning committee with
18 regulatory reform is to really look at how do we give relief to
19 regulations that don't add value to what we're trying to do, or
20 frankly serve as an impediment, and what I'm hearing Mr. Shepard
21 say here is they're gonna use these powers for applications that
22 may have been required to come to the PHHPC but will not be
23 required and they're going to put out an advisory policy paper I
24 the fall. We'll probably bring it to the planning committee to
25 comment on it along with the rest of the industry to see what

1 our perspective is so we're aware and I think the point that you
2 raised is among the most critical in my mind is transparency so
3 we know all, no matter what that policy is, if we're waiving, if
4 it's not coming here - not so much we're waiving, but if it's
5 not coming here we're at least aware of it and who knows, maybe
6 we'll learn from that and we'll come back and adapt our
7 regulations to recognize these new contemporary provider types
8 that you know, cause our code is based and regulations is based
9 on kind of single stand-alone providers, and although we'll
10 probably have to continue to recognize that, this may be the
11 beginning of a parallel process as we get that DSRIP learning to
12 revisit certain essential elements of the code that never
13 envisioned a provider or behavior like this. And that requires
14 accountability, regulation, and oversight to some degree. So I
15 think that's great. We look forward, and Dr. Ruge -

16

17 JOHN RUGGE: I think another way of summarizing this is
18 to say that up to now the planning committee and the council
19 have been looking at catching up with all the changes that have
20 occurred in recent decades and healthcare delivery and now what
21 I'm hearing from our presenters are that we're looking now to
22 anticipate and to keep up with even more rapid change about to
23 happen due to DSRIP and due to incredible market forces the
24 likes of which we've not seen yet.

25

1 JEFF KRAUT: Great way to say it, and I think
2 intellectually we're looking forward to participating as the
3 rest of the industry is in that discussion. So, Mr. Delker.

4
5 CHRIS DELKER: Dr. Rugge's remarks are a great segue to
6 just a very brief update I want to give you. You should have a
7 single page in your packet there on determination of need for
8 hospital sponsored off campus emergency departments. You were
9 called among the matters discussed in the ambulatory services
10 deliberations of the health planning committee over the last
11 year was the emergence of a new model of off campus emergency
12 departments. That is, emergency departments operating
13 independently and the concern is how should the Department
14 respond to these, and the committee has recommended that we
15 develop a need methodology for these models. And so I just
16 wanted to give you an update, and something by way of a preview
17 that we would hope to discuss in further depth at the upcoming
18 meeting next month of the health planning committee.

19 We as staff have been looking at various factors that we
20 think are some of the first ones that should be considered,
21 obviously the one is access, and for that in terms of emergency
22 distance and travel time are obviously fundamental to that. So,
23 the model will - we will need in the methodology so come to some
24 agreement on what those factors should be adjusted for geography
25 and other instances.

1 The other consideration obviously is the capacity and
2 utilization of existing EDs where there's a proposed new off-
3 campus ED. What is the utilization like there in terms of
4 volume, in terms of waiting time, in terms of through-put time,
5 the profile of the population and so on. And the obviously
6 other factors as we consider in virtually every need
7 methodology, what are the population factors? What's the
8 density? What are the trends? What's the age distribution?
9 What's the projected growth or decline of the population in the
10 proposed service area? Some of the resources we do have to
11 address this obviously SPARCS which can give us the number of
12 discharges or claims by ED, by payer category and by diagnosis.
13 We can also calculate the average length of stay or the through-
14 put time for emergency department encounters from SPARCS data.
15 The EMS unit also have some information about average travel
16 time from ambulance pick-up to hospital emergency facilities by
17 county and that may be brought to bear perhaps on some of the
18 considerations for this need methodology. Some of the data
19 limitations we found so far, and staff are continuing to look at
20 various sources, we don't keep track, believe it or not, of the
21 number of treatment bays or beds in EDs. We don't put it on the
22 operating certificate. We just certify the emergency services.
23 That may be a shortcoming. We may in a need methodology want to
24 come to some agreement on optimum number of treatment per bay.
25 That may or may not be feasible. It's a consideration. And we

1 also don't have information or a way of calculating it so far
2 that we found about the actual wait time. That is, from the
3 time someone checks in to the time treatment actually begins.
4 So that may be something that we may need to delve into.

5 So we just wanted to give you this heads-up about what'll
6 be discussed and invite you to think about these and other
7 factors and also to our colleagues in the industry who I'm sure
8 will have a lot to say at these meetings as well.

9

10 JEFF KRAUT: Dr. Berliner.

11

12 HOWARD BERLINER: Chris, have you thought about what a
13 reasonable distance from an already exiting ER might be in such
14 a case?

15

16 CHRIS DELKER: Well, we've looked at some other states, and
17 I believe one state has a maximum distance of 35 miles. That is
18 from the parent hospital, so to speak. Another state has a
19 population density requirement that is an off campus ED cannot
20 operate in a municipality that has more than 75,000 people. So
21 there's some models in other states, so we are looking at that.
22 But our own need methodologies, most of them do have a travel
23 time and factor in them already, so we have a lot of experience
24 with that adjusting for weather and climate conditions and so
25 on, and transportation resources.

1

2 JEFF KRAUT: Just, you know, Dr. Berliner, to the point,
3 you know, with the 200 or so that are approved nationally, most
4 of them evolved out of rural needs and where population, where
5 the population is growing rapidly and the infrastructure hasn't
6 caught up. Here, and I think that's part of the issue that kind
7 of drove some of this is to avoid somebody opening up across the
8 street from an existing weak hospital and destabilizing it. On
9 the other hand there may be pockets, and I'm thinking of eastern
10 Brooklyn where something like this would be under 30 miles but
11 it's a kind of a - it may be - it's not enough to look at the ED
12 independent of other things that may be built around it that
13 would provide access to services. So it's kind of a "you'll
14 know it when you see it" kind of thing. But this is to prevent
15 really inappropriate placements, I guess, and see that - Dr.
16 Strange.

17

18 DR. STRANGE: So the dovetail exactly to what you just
19 said, Jeff, are we looking also at these recent explosion of
20 urgent care centers and the like that are exploding in these
21 areas that may or may not do the same thing, and I know we've
22 put regulation on some of that, but this seems to be a trend now
23 and the insurance industry is pushing towards that trend because
24 of the lower cost factor. How does that impact here or it
25 doesn't?

1

2 JEFF KRAUT: Ok. Dr. Rugge, you want to respond.

3

4 JOHN RUGGE: Certainly as a council we try to address
5 that through new designation of urgent care. The legislature has
6 not taken upon itself to enact the recommendations we suggested.
7 I think whatever collectively we can do to collect more
8 information so that we can provide that to the legislature in
9 this next session would be very helpful.

10

11 JEFF KRAUT: So, here's the paradox. A great example.
12 We just finished discussing about reducing regulations, waiving
13 it, giving the commissioner powers to start encouraging things,
14 and in the next breath, not incorrectly saying, well, this is a
15 problem, maybe we should be regulating it. You know. I think,
16 it's kind of we, the regulatory schizophrenia here of we have to
17 find out you know, what we can do to encourage innovation, drive
18 cost, and experiment with some of this without over regulating
19 it. That's our sweet spot. So, Chris -

20

21 JOHN RUGGE: Just, to say that though, as we do this
22 work, we're not only regulating and constraining, but we're also
23 using the tools of government to empower and develop. So, for
24 example, we proposed -

25

1 JEFF KRAUT: To encourage.

2

3 JOHN RUGGE: To encourage. We proposed regulations if
4 you will, of recognition of service clinics, retail clinics. And
5 this is a way to enable a new level of service which we hope
6 would be integrated with other care givers and that, New York
7 did not take it upon themselves to do so. So, I wouldn't regard
8 all regulation as being constraining or suffocating.

9

10 JEFF KRAUT: You're absolutely right, because the
11 example is if you're going to do those things we want to make
12 sure you're plugged in. We're making certain affirmative
13 obligations that we don't think are necessarily onerous, but
14 critical in a kind of a more holistic -

15

16 JOHN RUGGE: We're also applying financing mechanisms and
17 a way to have assured viability for services which right now is
18 not the case.

19

20 JEFF KRAUT: I know. I'm just pushing the pendulum in
21 the other direction. That's my problem. Thank you. So, Chris,
22 this is going to - we're going to put this out for comment and
23 then it'll come back through, I think it was Dr. Rugge's
24 committee? Is that the expectation?

25

1 CHRIS DELKER: Yeah, well, I think this is not meant to be
2 an exhaustive list. This is just preliminary and certainly it
3 is available here to those attending today, so I'm sure we'll be
4 hearing from various stakeholders over the next few weeks and at
5 that meeting as well, and subsequent meetings if they're
6 necessary.

7
8 JEFF KRAUT: Send those cards and letters in. Thank you
9 Dr. Delker, Mr. Shepard, and welcome.

10 Ms. Agard from the Office of Quality and Patient Safety is
11 going to give us an update on office-based surgery.

12
13 NANCY AGARD: Morning. You should've gotten the slides
14 and they are up on the screen there. I'm gonna try to talk fast
15 and hope that this little clicker works like it didn't before.
16 Maybe not. Ah ha. Technology is not my forte. We should
17 probably put that out front.

18 I sort of wanted to give the committee a little bit of an
19 orientation to the history of OBS. Some folks have been around a
20 while, some people have not. To move through this quickly.
21 Actually, the Department of Health and this Council actually has
22 had an interest in the quality of care and office-based surgery
23 actually since the 1990s. The then Public Health Council
24 actually asked the Commissioner of Health to appoint a committee
25 on office-based surgery to look at the quality as more and more

1 care moved out into the community and into the ambulatory
2 settings. The outcome of that first committee's work was the
3 development of guidelines which you can find on the office-based
4 surgery website at this time. Those guidelines were passed in
5 about 2000. The committee ended its work. Several years later
6 about 2005 actually the Council again asked the Commissioner to
7 appoint a committee on office-based surgery quality and to look
8 at what was happening out there. We again were having
9 incidences. The Council and the Commissioner was concerned.
10 The second committee actually ended up recommending the law that
11 did pass later in 2007, so their recommendations of the
12 Committee ended up evolving into public health law 230D. In
13 that law they defined office-based surgery, and they defined it
14 as the performance of an invasive or surgical procedure
15 involving more than minimal sedation or liposuction of more than
16 500ccs or MLs performed by specific licensees that we'll
17 identify a little bit later in a non-article 28 setting. So a
18 non-regulated setting. They required, the law required that
19 these office-based surgery practices become accredited. That
20 requirement became effective in July of 2009 and it required
21 that they report select adverse events reports. And we're going
22 to talk a little bit more about what those are.

23 The licensees that were identified initially in the law
24 were physicians, PAs, and SAs, so physician assistants and
25 specialist assistants as well as since then in 2012 the scope of

1 practice for podiatrists was changed and it was evolved to
2 include ankle surgery. So at that time office-based surgery law
3 was changed to say if you're gonna - if you're a podiatrist and
4 you're going to perform invasive or surgical podiatric ankle
5 surgery in your office involving more than minimal sedation that
6 you too have to become accredited and file adverse event
7 reports.

8 The adverse events that were identified in the statute, and
9 I want to sort of say upfront that adverse events are not
10 necessarily complications but they are events that occur in
11 relation to an office-based surgery encounter. So the first
12 type of adverse event that's in the law is an unplanned transfer
13 to the hospital. So a patient has a procedure and for whatever
14 the reason might be they're transitioned to the hospital without
15 being discharged home. Unscheduled admission of more than 24
16 hours within 72 hours of the procedure, death within 30 days of
17 the procedure, and then there's sort of this big bucket kind of
18 undefined adverse event type with any serious or life
19 threatening event. The Department has taken the position and
20 we've defined that as the national quality forum, serious
21 reportable events. So it's essentially that we defined that any
22 serious event in that way.

23 In 2008 there were again, some adverse events that were
24 going on within the private practice community that involved
25 transmission of blood-borne pathogens. So at that time they

1 added as a separate and additional type of reportable event, the
2 suspected transmission of blood-borne pathogens either between
3 patients or between providers and patients.

4 The adverse event reporting is required within 24 hours of
5 the event or the provider becoming aware of the event. The
6 adverse event reports are confidential and at the same time that
7 the OBS law was written, education law was changed to add two
8 more criteria for professional misconduct for physicians, PAs
9 and SAs and that involves performing office-based surgery in an
10 unaccredited office or failing to file a required adverse event
11 report.

12 The Department of Health did go on to designate three
13 accrediting agencies that the, any private practice seeking to
14 provide office-based surgery services to the community had to
15 utilize to get that accreditation. They include Quad-ASF, the
16 American Association for the Accreditation of Ambulatory Surgery
17 Facilities - if forever refer to them as Quad-A because I can't
18 say all those words. AAAHC which is the Accreditation
19 Association for Ambulatory Healthcare and the joint commission.

20 At this point we have about 1000 accredited office-based
21 surgery practices. They're primarily downstate in the city,
22 Nassau County, Suffolk County, Westchester County. There are a
23 few in the mid-Hudson Valley eastern region capital area. Not a
24 lot. Not a lot in the North. Not a lot in the West. The
25 primary accrediting agency for all office-based surgery

1 practices at this point is QuadASF. They accredit about 2/3 of
2 the OBS practices.

3 Now this next slide is really sort of the slide where we
4 start to talk a little bit about what kind of information do we
5 have about adverse events versus accredited practices and sort
6 of lays the groundwork for some of our concerns about what's
7 happening out there as far as reporting, and the types of things
8 that we see in the reports.

9 Now, the top line on this graph identifies the trend as far
10 as the number of accredited practices through time, I think it's
11 2010 forward over a six month period of time. You see in the
12 beginning there was a fairly steep climb and then we sort of
13 stabilized out but still trending upward. The bottom line
14 represents the, on a six-month basis the number of adverse event
15 reports we've gotten throughout that same period of time. As
16 you can see there was an initial boost if you want to call it
17 that, then a period of somewhat stability and then a decline.
18 We tried to look at the whole global system from when we
19 started as far as number of accredited, adverse event reports
20 versus number of accredited practices. That served as a
21 challenge - that was really a challenge for us so we went about
22 this in a slightly different way. We looked at all the
23 accredited, all the practices that were accredited for an entire
24 year during 2011 and there were about 599 of them. That year we
25 received 230 - we received at 230 reports from individual

1 practices. So we got more reports but there were multiples from
2 some of the practices, which really sort of translated to a 38
3 percent reporting frequency. So 38 percent of accredited
4 practices during 2011 reported an adverse event report. In 2012
5 you see a number of practices does continue to go up 747; 202
6 distinct practices reported adverse events. Our reporting rate
7 thus goes down to our percent goes down to 27 percent. The
8 number of practices continues to go up in 2013. The number of
9 distinct practices reporting adverse event continues to go down
10 in 2013. And we're down to approximately a 20 percent reporting
11 rate. So this as you might imagine is, we're not happy with.
12 And we're not happy for a variety of reasons and some of those
13 I'm going to talk further about as we talk about the types of
14 adverse events that we're seeing, and then talk a little bit
15 more about what we're trying to do to address this. And
16 actually looking to the Council to actually provide us with some
17 support and ideas.

18 I want to start again to talk a little bit about the data.
19 The adverse event reports are self-reported. So this is A, the
20 reporting responsibilities on the practitioners that either
21 perform the procedures or become aware of reportable events so
22 they have to go - and at this point in time it's a paper form.
23 You have to go to the website, print out the paper, fill it out.
24 Although you can fill it out electronically and then print it,
25 but then it has to be sent into the Department. So that can

1 either be done via U.S. mail - such a reliable system - and/or
2 you can use the secure file transfer process that we have in
3 health commerce. The providers have to identify that an adverse
4 event occurred. Now it's fairly evident when a transfer from
5 your place occurs, so those are identifiable. The
6 identification of admissions and deaths certain require some
7 sort of a follow-up with patients, providers - with patients
8 and/or their families to identify how they're doing. Most of the
9 providers generally have a one to two day follow up. You had a
10 procedure at our place; how are you doing? Did you have any
11 problems? Do you understand your discharge instructions? They
12 have most of the providers do not have a system in place that
13 identifies a 30-day follow up. The vascular providers are
14 somewhat different from the rest of the providers but, so all of
15 this, the point of this slide is really talking about the fact
16 this is self-reported. You have to become aware of the event.
17 You have to recognize that the event is a reportable, is
18 something that is reportable.

19 Moving on to somewhat more a different type of challenge
20 related to understanding the data is that we don't have
21 procedural denominators. At this point these are private
22 practices that are performing procedures. They don't submit any
23 data to the Health Department. They're not like hospitals or
24 ambulatory surgery centers that are reporting SPARCS data. So,
25 you're not going to see any rates here, sort of, as a result of

1 that. We don't know as a result of that fact that we don't have
2 denominator - the variations that you're gonna see in adverse
3 event reporting through time, we don't know what those are
4 related to. There's more procedures being done, if there's more
5 adverse events being identified and/or reported. So there's a
6 lot of, sort of, unknowns related to this.

7 So I'm gonna start to talk a little bit about the things
8 that we have observed from the data, and I am gonna try to talk
9 fast, so, and I may end up skipping a few things just in the
10 acknowledgment of some time. The average age for the office-
11 based - the patients that undergo office-based surgery that are
12 identified and reported, adverse events that are reported to us
13 is around 60. The age range primarily is between 50 and 70,
14 although there are some groups that are younger and some groups
15 that are older. The OB-GYN population is younger which makes
16 sense. The vascular, the patients undergoing vascular
17 procedures are somewhat older.

18 Most often patients that are identified on adverse event
19 reports have been classed as either an ASA3 or an ASA2 or an
20 ASA3 which is mild systemic disease or severe systemic disease,
21 although stable. But when you break the groups up, if you look
22 at the GI group versus the vascular group versus the plastics
23 group what you'll see is the majority of patients and the
24 majority of non-vascular patients have an ASA score of 2 while
25 the majority of the vascular patients in this population is

1 primarily the end stage renal disease patients who are
2 undergoing procedures for their hemodialysis access. Those
3 folks are primarily ASA3 class.

4 Again, you remember the definition of office-based surgery
5 is the performance of a procedure using more than minimal
6 sedation. Well this next bullet point sort of supports that.
7 The majority of the sedation that's provided in office-based
8 surgery is moderate sedation. Although, with very little minimal
9 and local being given or else it's given in combination with.

10 The majority of the office-based surgery, of patients
11 undergoing procedures in office-based surgery setting that were
12 reported to us are undergoing single procedures, and that's true
13 pretty much across the board except for two populations; one
14 being the vascular population. Again, these are ESRD patients.
15 They generally go in for a fistulagram and then during their
16 fistulagram they identify either that the access is clotted or
17 that it's stenotic and so they need to have some sort of
18 angioplasty or stenting or some sort of other procedure during
19 that encounter. The other group that has more than one
20 procedure is the plastics group and they have about half one
21 procedure, 50 percent more than one procedure.

22 This next slide talks about the distribution of adverse
23 events for all office-based surgery adverse event types that are
24 reported. As you can see by far admissions are the leading
25 contender here followed by transfers and then deaths. What I

1 want you to understand about this pie chart is that this does
2 represent people who have more than one adverse event type.
3 Let's say had my colonoscopy. I was transferred to the hospital
4 and then I was admitted. In this particular - in that scenario
5 you would've been slotted into the admission category here
6 because that's the higher level of adverse event that occurred
7 to you. We do have other slides that sort of breakdown and show
8 every sort of combination and permutation of adverse events that
9 come together. They're just not in this presentation. About a
10 third of these admissions do start out as transfers. Something
11 of interest about the deaths is the majority of those deaths are
12 singular adverse event types, so they did not occur in
13 combination with an admission or transfer.

14 Moving on to the next, and again, I realize that I am
15 moving quickly and for some reason the percentages are not
16 showing up on the top of the slide. It says "cell range." So I
17 guess we'll have to check that out the next time around. But,
18 what this slide is meant to tell you is that there is a, there
19 are a lot of GI procedures. They are the leading group that
20 reports adverse events to us. We don't know that that means
21 that they're the group that has the most adverse events. We
22 just know that they are providing the most reports. It may
23 reflect that the primary GI procedures are being done are
24 colonoscopies and EGDs. Certainly we have a lot of
25 colonoscopies that are done in our aging population. The

1 majority of colonoscopies are done in outpatient settings
2 outside of the hospital. The second group is again this
3 vascular group. The primary population here I said is the ESRD
4 population. The second group that's seeking these type of
5 vascular interventions are those with peripheral vascular
6 disease, those that are having actually similar types of
7 procedures as the ESRD patients but are involving different
8 vessels. So they have a non-healing leg ulcer. So they're
9 going and they're having some sort of intervention to try to
10 increase the circulation to their extremity.

11 The third group is the GU population. This is, there are
12 two primary procedure groups in this category also involving
13 folks who have renal stones and who are having lithotripsies.
14 The ESWL population, which actually has a fairly large range
15 starting quite young to older, as well as the men who are having
16 prostate procedures of one sort or another. Followed by OB-GYN
17 and plastics. I'm not going to talk a whole lot about all of
18 these other groups, but I did want to sort of bring your
19 attention to the fact that we do have a group of patients who
20 are reported to us as adverse events that never get their
21 procedure. They're the sedation category there that they go
22 into the office, they have, you know, been cleared for their
23 procedure, they're stable when they start, they get their
24 sedation and then they sustain an event.

1 Again, we included all these little reporting categories
2 that don't have a lot of numbers primarily based on the fact
3 that I don't know how representative our numbers are. We have a
4 lot of GI procedures being reported but it is, does that really
5 mean that those are the procedures that most frequently have
6 adverse events associated with them, I don't know.

7 The next slide is again, this actually means to represent
8 the distribution of the types of adverse events that are
9 occurring to the different procedural populations. This is
10 again, sort of a quick through slide. The point of this slide
11 is that the majority that all of the groups, their primary
12 adverse event type is admission for the majority of the groups
13 their second most frequent adverse event type is transfer except
14 for the vascular group. You'll see that the purple bar on the
15 outside, the second most frequent adverse event they type
16 happens to the vascular patients are they die within 30 days of
17 the event. Now, and we're going to talk a little bit more about
18 the deaths on the next slide. And again, just trying to vary
19 the types of graphs that we have here, but clearly this bar is
20 primarily purple off to the left-hand side does represent the
21 vascular population. Of the number of deaths that we had
22 reported, 78 percent of the deaths were vascular patients
23 followed by GI deaths at 12 percent. Again, I don't want you go
24 get, to take as though our denominator here is adverse events
25 that are reported. It is not the number of procedures or the

1 types of procedures. So that's sort of always a caveat about
2 what we're looking at.

3 What's interesting is that in the second table to the
4 right-hand side is that when you look at the days to death after
5 the procedure, 12 percent of the patients die on the procedural
6 day; 33 percent die within 3 days, and over 50 percent die
7 within seven days. That was quite striking to us. And again,
8 we want to bring that back to the fact that these death numbers
9 are being driven by the ESRD population, that primary group
10 within the vascular population. This is a group of patients
11 that exists sort of at an ASA3 level. They are, have severe
12 systemic disease that are intermittently stable and
13 intermittently unstable depending on how they are with their
14 access situation.

15 This is actually an observation that is relatively new to
16 the field and we plan to follow up on with a study of the U.S.
17 renal disease data system as far as looking at, let's look at a
18 bigger population. Not just in New York population. Is this
19 really an observation that is accurate.

20 The next slide talks about the distribution of diagnoses
21 and complications after all types of procedures. This is again,
22 not limited to not broken up by procedure type, but the big
23 point to note is although the primary complication here looks to
24 be cardiovascular followed by bleeding injury and respiratory,
25 that's for the whole group. There's a tremendous amount of

1 variety or variation that exists within each of the procedural
2 categories. So if I talk about GI, the primary reporting group,
3 you're going to see that the primary reporting type of
4 complication of diagnosis associated with those procedures are
5 injury. Injury means about bowel perforation or laceration or a
6 splenic injury, that type of thing. So this is for the whole
7 group, there's a lot of variety within the groups. And I think
8 that's probably all I'm going to say about that for now. I'm
9 trying to move along.

10 This slide represents the two procedural specialty groups
11 that have reported the most to us, GI and vascular. I pretty
12 much talked already about the procedures that are involved in
13 those groups, so I'm not going to spend a lot of time on that.
14 This next slide represents the GU, OB-GYN, and plastics
15 procedures that were associated with adverse events. I talked a
16 little bit about GU already. The OB-GYN the two primary
17 procedures that are occurring within that group are terminations
18 of pregnancy and egg retrievals. And the third group is
19 plastics. That's the group that has a lot, about 50 percent
20 multiple procedures; 50 percent single procedures. We don't have
21 high numbers there so I'm not going to spend a lot of time
22 there.

23 This again, this shows you the one slide where I said that
24 the primary complication or diagnosis group, the first one that
25 came in is cardiovascular. This is the distribution for GI

1 injury comes in first followed by bleeding, primarily associated
2 with the post-polypectomy bleeds, post biopsy bleeds which makes
3 sense. Respiratory, actually, that where occurs more
4 predominantly with the EGD procedures versus the colonoscopy so
5 how the distribution of complications not only changes by
6 procedural specialty group but within the types of procedures
7 themselves.

8 This is the same sort of breakdown for the vascular
9 patients. Here you are seeing the primary complication being
10 the cardiovascular. This is the group that dies most often as
11 we previously mentioned. The second most frequent adverse event
12 type here which is of concern to us is infection. When we've
13 talked with experts in the field this is not, this is again,
14 somewhat of an unsettling find to them. This is also something
15 that's hard to track down. We had expected to find a higher
16 infection rate with our catheter patients than with our fistula
17 patients, actually that does not look like -- our data does not
18 look like that. But again, all we have is adverse event data.
19 Have no idea how valid that observation is. And the other
20 problem with infection with this group is that this is the group
21 who's going, who's very (likely) to have two or three healthcare
22 encounters within a very short period of time. They go to their
23 dialysis center, they go to get dialyzed, they realize their
24 access isn't working, two hours later they're at the OBS office
25 getting their access - accessed to try to open it up, clean it

1 up, make it run, and then two hours after that they're back at
2 their dialysis center. So where is the infection being
3 generated from? These are questions we have to dive a little
4 deeper into.

5 So to coming into conclusion, we've, in reviewing both
6 individual cases and looking at the data, we've identified a
7 number of different types of concerns and this is pretty
8 consistent with the literature. If we talk about care related
9 concerns, questions about patient selections, are the right
10 patients undergoing procedures in an office-based setting? What
11 types of, as far as procedural complexity and risk are their
12 procedures that are just too complex or risky to be done in an
13 office-based setting, and what would those be and what would the
14 criteria be that you would utilize to select or identify them.
15 Inter-procedural care and monitoring of patients; we've
16 identified some opportunities for improvement with the way that
17 patients are monitored during their procedure while they're
18 under sedation or anesthesia, continuous EKG monitoring and
19 title CO2 monitoring so that you're not relying on a pulse
20 oximetry to give you sense of how well someone's ventilating and
21 breathing. Discharge disposition and follow-up. This is about
22 discharge education, identifying follow-up providers and
23 communicating with those providers. We've talked a little bit
24 already about what our data related issues are. The third one
25 is probably something we haven't mentioned which is the

1 challenges identified by, faced by identifying OBS providers and
2 procedures and claims data. At this time we actually are
3 looking at Medicaid data to try to identify Medicaid patients
4 who underwent a colonoscopy in an office-base setting. Well,
5 the way that the data is both entered and in the database
6 somewhat makes that a challenge because you have Medicaid
7 providers that are performing the same procedures in multiple
8 settings. They're doing them in hospitals. They're doing them
9 in ambulatory surgery centers. They're doing them in office-
10 based practices. And so sort of teasing those cases out of the
11 existing data and then identifying potential complications that
12 may or may not have been reported has been - is a road we're on
13 but it's been a slow road.

14 Additional challenges that this council is aware of is that
15 actually we attempted to advance changes to the office-based
16 surgery law within the last legislative session. Changes that
17 were supported and approved by this group that would've expanded
18 the application of the need for accreditation and adverse event
19 reporting to those medical practices performing procedures
20 involving more than minimal sedation. We're looking to limit
21 procedural and post-procedure recovery time, and we would
22 require the registration of office-based surgery practices with
23 the department accompanied by a submission of select data. In my
24 mind that select data would have been procedural denominator

1 data that would have helped me a whole lot in identifying giving
2 meaning to some of this adverse event data.

3 We have limited programmatic funding like has been alluded
4 to elsewhere throughout the morning. We do have a listing of
5 ongoing and future planned initiatives. I'm not going to spend,
6 actually I don't think much time on this at all but we have
7 attempted to outreach to practices reminding them of their
8 reporting requirements. Actually when our next phase is to pull
9 some of their findings from this adverse event data into the
10 next newsletter to send it out to again, to kind of remind folks
11 that we are using the data, that we're looking at it, these are
12 things that we want you - we want to bring to your attention
13 about it. We've had some outreach of the, to the specialty
14 societies by the members of my advisory board. We are
15 collaborating with the accrediting agencies to try to help get
16 that word out there. And really a variety of other actions. I
17 want to probably stop here and give a little bit of time for
18 questions because I know that you're long.

19

20 JEFF KRAUT: Thank you. Where to begin. Dr. Berliner.

21

22 HOWARD BERLINER: Thank you for that presentation. Two
23 questions; it seems that the all-payer database would solve your
24 denominator problem.

25

1 NANCY AGARD: It should.

2

3 HOWARD BERLINER: Ok. And the second question is, are
4 you aware of any practitioners who have been reported to OPMC as
5 a result of not reporting?

6

7 NANCY AGARD: Yes. I'm aware of practitioners who have
8 been reported to - we have reported practitioners to OPMC for
9 both not reporting as well as care related concerns.

10

11 JEFF KRAUT: Mr. Booth - Mr. Levin and then Mr. Booth.
12 Sorry.

13

14 ART LEVIN: So, thank you. And having been involved
15 with this issue since 2000 or maybe before, it's nice to see
16 some data coming out. Of course, the more data we have, the
17 more understanding we have that we don't really know what's
18 going on. And the big issue, one of the big issues has been how
19 does office-based surgery outcome, the outcomes compare to in-
20 hospital facility outcomes? And that's sort of an interesting
21 question, right? Those of us who really supported this, you
22 know, had a feeling of what went on in offices was riskier than
23 what was happening in an inpatient setting with more, which was
24 regulated and had more support staff and had more infrastructure
25 available to deal with crises, but at the end of the day we

1 still don't know. You know, whether patients are at greater
2 risk having an office-based procedure or having the same
3 procedure in an inpatient facility or in a licensed article 28
4 facility, and I think that's really important key data that we
5 have to find out. I don't know how we get there, but I think
6 that's really, for me, one of the critical questions.

7
8 NANCY AGARD: And actually, can I respond to that? And
9 actually there was a recent article - I should say, actually a
10 couple things. When we did the literature review for the
11 ambulatory services reform paper and looked at outcomes and
12 studies that had been done, the literature is sort of is all
13 over the place. It's better here, it's not good there, we need
14 this, we don't need that. So New York is no sort of different
15 from the national perspective, however, what we are trying to do
16 and what the plan is to do is to try to take a look at maybe one
17 procedure, what do the outcomes from colonoscopies from office-
18 based surgery because we have to start small, and what do they
19 look like when they were done in ambulatory surgery centers, or
20 some sort of licensed facility? You need to look at, you know,
21 the questions we'd like to answer is what do these patients look
22 like in one setting versus another? Are they really more(sick)
23 in a licensed facility versus the, versus an office private
24 practice? Are they being triaged differently to different
25 settings? Are their outcomes the same? Are their complications

1 or diagnoses the same? Those are questions that we're asking
2 and that we're early inserting our way down that road.

3

4 JEFF KRAUT: Mr. Booth and then Dr. Bhat and then Dr.
5 Kalkut.

6

7 CHRIS BOOTH: So, my comments were going to be along the
8 lines of Mr. Levin's comments that you know, developing data is
9 good but without context it's almost meaningless and we need
10 context here, and he asked the key question; what's the rates
11 compared to an ASC? What's the rates compared to an outpatient
12 hospital setting, and without that information we don't know
13 whether 200+ deaths on the vascular is something to be very
14 concerned about or not. I would say it's the one compelling
15 number that came out of your analysis and I do believe there's
16 ways to get at that at other facilities to see rates in
17 comparison. I feel somewhat, once you put a number like that on
18 the table, how do you just walk away and say we don't know the
19 answer to the question and you know, we're working on it over
20 time. I do think that that screams for some focus and attention
21 and get to an answer as soon as you can.

22

23 JEFF KRAUT: Dr. Bhat.

24

1 DR. BHAT: This is probably a good first step. I think the
2 problem is going to be getting the denominator data for the
3 office-based. Going back and talking about vascular access
4 surgery, the best comparison probably would be to compare an ASC
5 to office-based, not a hospital to an office-based, because
6 there is a bias because most of the time we do have
7 someone who has cardiac problems, it's very unlikely that we're
8 going to do it in an office-base. It's much more likely to be
9 in a hospital. So the best comparison would be go in and take a
10 look at am-surg and compare it with office-based. And issue
11 that comes out getting the denominator data, Mr. Kraut already
12 had suggested saying that we don't want to have more
13 regulations, how exactly going to your suggestion
14 taking one or two procedures and trying to compare them head to
15 head in am-surg which is regulated versus office-based, probably
16 the right way to go.

17

18 JEFF KRAUT: Dr. Kalkut. And then we'll come back.

19

20 GARY KALKUT: I agree with the previous comments and I
21 think your data is excellent to the limit of what you have and
22 provocative, and a focused review, I realize that the all-payer
23 database might, will help, but focus review on end stage renal
24 patients for instance who are getting these vascular access may
25 be helpful in advance of that, if it can be done. I don't know

1 how much individual deaths are looked into, but certainly those
2 are patients often with chronic illness and look like a
3 mortality, 45 percent of the mortality was happening within
4 three days of the procedure, and to my mind those are two
5 questions, was it related to the procedure or should the
6 procedure should have been done on someone who was terribly
7 sick, but you don't know they answer to that until you look
8 directly. And context being denominator and characteristic of
9 the patient.

10

11 JEFF KRAUT: Dr. Boutin-Foster, then Dr. Strange.

12

13 CARLA BOUTIN-FOSTER: Thank you. As our Chairman said,
14 I don't know where to begin because these numbers are pretty
15 striking. So, I think if you're thinking of a study, that a
16 really comprehensive study that looks at the place where it's
17 being done in terms of the personnel, how well-trained are they,
18 how well equipped they are to carry out these procedures as well
19 as looking at the co-morbidity of the individual who's having
20 the procedure because you mentioned age, but we don't know
21 anything about their co-morbidity racial, ethnic, demographics,
22 who are the individuals who are likely to go to an outpatient-
23 based place rather than go to the hospital and are there
24 barriers that prevent them from going to the hospitals in the
25 first place that they would preferentially select an outpatient,

1 an outpatient-based place? So I think a study that looks at all
2 of that. And also following-up patients. You know, how was your
3 procedure? How were you treated? What happens? Because as
4 they're required to report procedures that will result in an
5 admission to an outside facility, but if they come back for
6 something else to the same place, I don't know if that's being
7 reported. So that was just a comment. But the question that I
8 have is how much of this information is being reported to the
9 public and also to primary care physicians, because as a primary
10 care physician I'm often ask to write the premedical clearance
11 for patients to have a procedure, and looking at this I must
12 honestly say that I'm going to think twice about that and really
13 ask where is the procedure being conducted. So I think if you
14 engage all stakeholders, the public as well as the primary care
15 providers and other providers who are making the referrals or
16 recommendations, I think that we can get at not only an answer,
17 but also solutions.

18

19 JEFF KRAUT: ...then Dr. Martin.

20

21 DR. STRANGE: I have to tell you I'm very concerned about
22 the vascular numbers to the point that we have a fiduciary - a
23 safety responsibility as this committee and patient safety is
24 paramount and to just leave it, you know, to the end of this
25 meeting and wait for the next study to come out is very

1 concerning to me, to exactly your point as a primary care
2 physician also. And I think we need to do something immediately,
3 honestly, especially when it relates to the vascular study. You
4 know, you can almost explain colonoscopies or at least you can
5 maybe understand it, but I'm not sure that we need to wait
6 three, four, six months and then come back and report this again
7 to see the same outcomes data understanding that the data as you
8 look in the *New England Journal* and other journals that have
9 come out on patient safety have been all over the place, but
10 here we are in the State of New York, as this council which is
11 supposed to represent the public citizens in terms of insuring
12 their safety for whatever we do when we pass this that I am not
13 comfortable to say Mr. Kraut, that we should just let this go
14 for our next study for the next set of data. I think we need to
15 do something now about at least that particular vascular problem
16 that we have here. We can't wait.

17

18 JEFF KRAUT: Let's come back to that after everybody's
19 had an opportunity and then. Yes, Dr. Martin.

20

21 GLENN MARTIN: So this just seems to be one of those
22 situations we have lots of data, not much information, because
23 it's just, you're missing parts of it and you're fully aware of
24 it. I guess one thing I wasn't sure of; the deaths that you
25 reported which obviously are the end result that one is most

1 concerned about, how many of those occurred in hospital?
2 Because you mentioned that a lot of them didn't seem to have
3 transfers in admissions because those obviously if they occurred
4 in a hospital, you've got a hospital chart, it's an article 28,
5 it's a lot easier to go in and investigate. You can get a much
6 quicker general feeling for the severity of that and what were
7 the contributing factors and how much of it, it may be a way of
8 getting answers quicker and getting some information. But I
9 couldn't figure out exactly -

10

11 JEFF KRAUT: Ms. Agard, I don't think you have to answer
12 that because I think it's more generic about the quality of the
13 data, but you know, there's a lot of curiosity. Any other
14 people, then I want to kind of suggest course of action. Dr.
15 Ruge.

16

17 JOHN RUGGE: Just a couple of more technical questions
18 by way of how we're able to drill down with the data we have
19 now. And we would identify which specific vascular procedures
20 account for these deaths?

21

22 NANCY AGARD: We have started to do our analysis of at the
23 procedural level, the majority of the procedures that are done
24 are of the multiple procedure angioplasties and the multiple
25 procedure thrombectomies, which historically if you look at the

1 literature the thrombectomies are the ones that are associated
2 with the most significant negative sequelae and that is what our
3 data looks like. It's not different from that.

4

5 JOHN RUGGE: What about drilling down to specific
6 providers. Are you able to identify certain outliers who have a
7 high number of adverse events, and is there any mechanism to do
8 a further investigation?

9

10 NANCY AGARD: Oddly enough our vascular providers are one
11 of the best provider reporters. One of the actions we actually
12 have taken is we've done an analysis of the most, the biggest,
13 the most frequently reporting vascular group, and we met with
14 them about their data and walked through what our concerns were
15 with them, asked them some questions about what they were doing,
16 what they weren't doing, made some suggestions about
17 developmental policy as far as inclusion and exclusion criteria
18 as far as patient selection. Those kinds of things. So we're
19 sort of mid-process with them relative to that.

20

21 JEFF KRAUT: Ms. Agard, I think what he's asking, is this
22 one group represents 50 percent of the deaths?

23

24 NANCY AGARD: I can't tell you what percent. There is one
25 group that is a very large group that has probably seven, eight,

1 ten locations that is the primary vascular access adverse event
2 reporter.

3

4 JOHN RUGGE: Just a follow-up as well. I mean, to follow
5 up on Dr. Strange and other comments, clearly there's a big
6 concern and I would think that sharing this information broadly
7 to include for example our legislators so that they can be aware
8 of this and lack of available information and have any
9 suggestion from them about how to collect better data.

10

11 JEFF KRAUT: ...and then Dr. Strange, and then I'd like to
12 wrap this up. I want to make a comment.

13

14 DR. STRANGE: So again, just to understand the provider
15 groups in the community in terms of generic could be
16 interventional radiologists, could be cardiologists, and could
17 be vascular surgeons. That's the majority of the group of
18 doctors doing these. You may have a primary who's going for a
19 course, but a lot of them have just gone for a course for a
20 weekend to go do - you have cardiologists now opening up renal
21 arteries, you have interventional radiologists that'll open up
22 any artery. You know, you have - I'm being a little facetious
23 but it's true. You have vascular surgeons who have been trained
24 to do a lot of this work because that's what they've been
25 trained to do and this is a mish-mosh. And I think we have a

1 responsibility here to stop the mish-mosh until we get the data
2 in whatever format that we want to get it in, but I don't think
3 we can wait to get it.

4

5 JEFF KRAUT: OK. So, I'll ask, do you want to respond?

6 OK.

7

8 NANCY AGARD: As far as the ESRD population, I have two
9 quality improvement groups within the advisory group that we
10 have. One based on GI, and one based on vascular. The vascular
11 group believes that the best way to identify what's going on
12 with these death numbers is really to just get the USRDS data
13 and look at it because we have such an art - what we have here
14 is adverse events. We don't have, we don't know the numbers of
15 procedures, we don't know a lot. It's the first time that this
16 sort of observation has been made, and we've talked to people at
17 USRDS. We've talked to other national experts. So we really do
18 need to get the study going. I'm not saying not to do anything
19 in the meantime. We are getting out - this is our first sort of
20 foray with the data. We have a report that is somewhat more
21 expansive than what you have here that should be posted
22 relatively soon, but it's also an initial analysis. It's not our
23 full analysis.

24

1 JEFF KRAUT: Right. And I think that's the essence here
2 is bad data drives bad policy, and we have to be clear about it,
3 and you know, we do deeply appreciate you go this to this point
4 and brought this into this room. The fact of the matter is we
5 created this policy because we knew something was wrong. We
6 knew there was an issue here from anecdotes and some high
7 profile deaths in office-based surgery that gave you know, birth
8 to this policy and the process we went. When we did that we
9 also insisted that data be collated, presented, but obviously we
10 maybe we didn't go far enough. There is limitations at that
11 time to the data that we have here. On the face of this we have
12 981 practices reporting 2000 or more adverse events which
13 resulted in 257 deaths. If any one of us in an institutional
14 setting was presented with this information our quality people -
15 this would be day and night the priority at our governance level
16 of what happened, why did it happen, give me the data, I want to
17 create a new policy. I have to change. So I understand the
18 requirement. So we own the policy, we own the outcomes, we own
19 the solution. So I think what you're hearing and unless I'm
20 reading it wrong, we are going to have to - we want to drive
21 along with the department the investigation and understanding of
22 the information so we can create good policy. The point that I
23 think Dr. Ruge made is if the legislature were aware of those
24 numbers on the face of it, they might've acted on our
25 suggestions. The fact is we don't know what the numbers mean,

1 so I wouldn't want to act out of context. I mean, there are a
2 lot of examples where we had, you know, you could do a match
3 control in an AS - we have the claims. I would suspect
4 particularly in the vascular because they have a higher age,
5 because they're ESRD, because they're Medicare and/or dually
6 eligible Medicaid, we have all the claims data. We have the
7 med-par database and we have the Medicaid database that the
8 state owns. We could probably get a good sample of those
9 patients to understand that. We just need to get you the
10 resources, the time, and the effort to do that. That's really
11 the issue. So, what I would - yes? Dr. Levin, Mr. Levin could
12 you just - so everybody can hear.

13

14 ART LEVIN: I remember when the data first began to flow
15 that the Department was not only surprised by the numbers but by
16 the severity of some of the incidents. That's another way to
17 look at this. I mean, we may have a problem with getting rates,
18 but we could look at severity. In other words, are there things
19 happening that we can compare severity levels inpatient article
20 28, am-surg, and office-based? It may be a quick way to do
21 this.

22

23 JEFF KRAUT: Right. And 'cause if we can get good data
24 to understand the site issue that you just raised, then we may
25 come back and say very quickly office-based surgery shouldn't

1 occur for these procedures because of some of the evidence and
2 there has to be evidence-driven, but it can't be done in a
3 casual way. That's the issue. So we have a meeting again in a
4 few weeks. What I'd like to do is - should we put this in a
5 committee or at the - because I do think this is a planning,
6 public health, name it, but we need some committee to put this
7 in and drive the process, and so I will leave it up to the
8 Department of Health, just not to be proscriptive and to be a
9 little more thoughtful that the Department of Health is to
10 return to us before the committee meeting day with their
11 recommendation as to which group should get involved in this.
12 What we'd like to have is a plan on how we're going to analyze
13 this and a timeframe to report back to us that's reasonable. I
14 also think quality resources of the healthcare industry are
15 collective institutions will make themselves available with that
16 particular expertise. I think the people, probably the surgical
17 societies would similarly do, nephrologists - you know, I think
18 the community here when confronted with this information would
19 more than willing to volunteer and support it both on analytic
20 but over the oversight of the Department to make sure we find
21 that and I'm hoping I'll leave the Department though to come
22 back rather than just be flippantly over proscriptive you know,
23 just having seen this. I just want to think about it a little
24 more and I would ask any one of the members to communicate with

1 the Department direction, but probably collectively we'd like to
2 know what you're saying and thinking. Yes, Dr. Martin.

3

4 GLENN MARTIN: No, while you were talking the other
5 resource that dawned on me might be useful is you have the three
6 accreditation bodies that are certifying these people as knowing
7 what they're doing, and clearly they would have some interest in
8 what the output is and the like. Certainly the joint as Jeff
9 mentioned, the joint would be all over us in one of our
10 hospitals if we had outcomes like this and they were aware of
11 it. So I think they may also be a little bit energetic in
12 helping.

13

14 JEFF KRAUT: And if the State was - you'd send in a
15 surveyor. Immediately. And that's the type of level - see
16 that, and that's the issue with office-based surgery. It's you
17 know. We're trying to grab it and we don't have controls. Dr.
18 Kalkut and then I'd like to kind of move on with the agenda. But
19 I just want to make sure - well, Dr. Kalkut why don't you do it
20 and I'll have the final word.

21

22 GARY KALKUT: I think the analogy to what would be done
23 with an organized quality program where you just stop and try to
24 figure out why this is happening with the goal really to make
25 sure it doesn't happen again. There's something preventable in

1 this and I think that pace needs to be adopted in looking at
2 this problem.

3

4 JEFF KRAUT: And I think in the absence of those
5 mechanisms, this council has, I think as Dr. Strange said, a
6 responsibility and we've never exercised that responsibility but
7 today we will. So, does anybody, I mean - I say, I threw a lot
8 out there, you know, so, but I think I've given enough latitude
9 to come back, so without being overly proscriptive, is everybody
10 comfortable with that approach? Is there any modification or
11 anything? So, we will, it'll be on an agenda of the appropriate
12 committee, the next committee day in September, and we will
13 report back two weeks later as to what heard, and it will be on
14 every agenda until we achieve a new policy. Is that fair? Ok.
15 Thank you so much. And we do appreciate all the effort you put
16 into that and the rest of the Department.

17 Now I'd like to call on Dr. Gutierrez to present the
18 regulations for our action.

19

20 ANGEL GUTIERREZ: Nothing in this report will have the
21 amount of (caffeine) you have received up until this point. I'm
22 Angel Gutierrez. I'm the chair of the Codes, Regulation, and
23 Legislation Committee. We met on July 24, and we present to you
24 for emergency adoption children's camps proposed regulations.
25 The Committee considered an emergency amendment to subpart 7.2

1 of the State Sanitary Code with regard to summer camps. The
2 proposed amendments are necessary to implement the law that
3 established the New York State Justice Center for the Protection
4 of People with Special Needs. The proposed regulation contains
5 new definitions for reportable incidents such as abuse, neglect,
6 and other significant incidents, and requires camp staff to
7 report incidents to the Justice Center and the local health
8 department. These emergency amendments have been in effect
9 since June 30, 2013 and there is no change to the versions that
10 the Council has previously approved. The current emergency
11 provision expires in mid-September and the emergency regulation
12 is needed to ensure that safeguards remain continuously in
13 effect until the present version is adopted. At the Codes
14 Committee meeting Mr. Shea from the Department recognized
15 concerns previously expressed by the Committee as well as the
16 Full Council that there have been a number of emergency
17 adoptions and the permanent rule is not yet in place. Mr. Shea
18 reiterated the importance of making sure that the permanent
19 regulation issued by the Department are consistent with those to
20 be promulgated by the Justice Center which have not yet been
21 finalized. Mr. Shea assured us that the Department is in
22 contact with the Justice Center to be on top of developments and
23 will propose a permanent regulation as soon as possible. In
24 addition, Mr. Shea noted that the Department's camps safety
25 advisory council met in April of this year to discuss the

1 emergency regulations. The body is going to discuss the
2 regulations further and report to the Department in October, but
3 in the meantime, move to recommend that the Department continue
4 moving forward with the emergency regulations. The Committee
5 unanimously voted to recommend adoption to the Full Council, and
6 I so move.

7

8 JEFF KRAUT: Motion, I have a second by Dr. Berliner. Is
9 there any discussion or any questions?

10

11 ANGEL GUTIERREZ: And Tim Shea from the Department is
12 here, so if you have any questions he can address.

13

14 JEFF KRAUT: Hearing none I'll call for a vote. All
15 those in favor, aye?

16 [Aye.]

17 Opposed? Abstaining? The motion carries.

18

19 ANGEL GUTIERREZ: For adoption also is a proposed
20 regulation for the State Planning and Research Cooperative
21 System, SPARCS. It is a proposal to amend section 400.18 to
22 update the provisions related to SPARCS. The objective of the
23 regulatory revisions were two; delete obsolete language such as
24 outdated terminology and data elements. Ensure that the
25 regulation, regulatory provisions reflect current practices.

1 Add new provisions including provisions for mandated outpatient
2 services data collection. Promote data completeness,
3 inaccuracy, and improve access to data consistent with all
4 applicable privacy rules and regulations. The proposed
5 regulation was published in the State register for public
6 comment on August 28, 2013. In response to comments received at
7 that time, the proposal was further revised. Among other things,
8 more detail was included about the new data review committee
9 which would replace the data protection board. The Department
10 republished the proposed revisions on June 11, 2014 and there
11 were no comments received. The Committee unanimously voted to
12 recommend adoption to the Full Council, and I so move.

13

14 JEFF KRAUT: I have a motion. I have a second. Dr. Bhat.
15 Is there any questions?

16

17 ANGEL GUTIERREZ: And Ms. Conroy from the Department is
18 here to answer questions as needed.

19

20 JEFF KRAUT: Are there any questions or any discussion?
21 I'm sorry, Dr. Martin.

22

23 GLENN MARTIN: So, I'll just reiterate the comment I made
24 earlier that I think overall it's a good regulation moving in
25 the right direction. I still remain concerned that the new data

1 review committee I believe is what it's called, consists of only
2 three people, two of which are - I mean as a minimum - I believe
3 consists of three people, two of whom are employees of DOH.
4 There's no indication about the need for anyone who has any
5 particular expertise in the increasingly ease of re-identifying
6 data and doing much more with big data than is currently
7 envisioned. So I remain concerned by that particular thing. I
8 realize that it's in the Commissioner's hands. He apparently
9 has a latitude to expand it, show the necessary expertise
10 informing the Committee and the like, so I am, I remain
11 concerned about that and I know this is going to go through, so
12 I just hope that the Commissioner does a good job in selecting
13 that committee going forward.

14

15 JEFF KRAUT: Ms. Conroy, you just have any comment on
16 that, or was there any follow-up subsequent to those comments
17 being made at the Committee? Could you just use the mic please.
18 And just identify yourself for the sake of...

19

20 MARYBETH CONROY: Mary Beth Conroy from the New York
21 State Department of Health. Yes, the comments from the previous
22 council meeting were duly noted and we're currently forming our
23 governance policies and reviewing them internally and taking
24 into consideration that when we do create this board to review,
25 the committee to review the data request that we will make sure

1 that the membership is fully - their skills and expertise are
2 all fully representative of what's needed to protect this highly
3 confidential data.

4

5 JEFF KRAUT: Thank you. Any other questions? Hearing
6 none I'll call for a vote. All those in favor, aye?

7

8 [aye.]

9 Opposed? Abstention? The motion carries.

10

11 ANGEL GUTIERREZ: For adoption also is the adult day
12 healthcare programs and managed long term care proposed
13 regulations. This measure would amend part 425 to enable adult
14 day healthcare programs to contract and work effectively with
15 managed long term care plans and care coordination models. As
16 more Medicaid recipients are required to enroll in managed long
17 term care plans and care coordination models. This proposal
18 will specifically allow a managed long term care plan or care
19 coordination model to order less than the full range of adult
20 day healthcare services to a particular enrollee based on an
21 enrollees individual medical needs as determined by the
22 comprehensive assessment performed by the managed long term care
23 plan or care coordination model. The managed long term care plan
24 could then enter into reimbursement agreement with the adult day
25 healthcare program operator to take into account the registrants

1 receipt of less than the full range of adult day healthcare
2 services. This would permit individuals requiring adult day
3 healthcare services as well as individuals requiring less than
4 the full range of adult day healthcare services to receive
5 services in the adult day healthcare program. The Department
6 has developed the proposed revisions to the current rule based
7 on numerous comments and has worked with the associations in the
8 New York State Office for the Aging. The Department received 130
9 comments during the most recent public comment period; 128 of
10 those in support and two in opposition. Public comments in
11 opposition expressed issues with managed long term care plans
12 and Medicare managed long term care plan reimbursements, and
13 other issues outside of the scope of this rule. The committee
14 unanimously voted to recommend adoption to the Full Council and
15 I so move.

16

17 JEFF KRAUT: I have a second, Dr. Berliner. Is there any
18 questions?

19

20 ANGEL GUTIERREZ: Ms. Olhardt is here from the Department
21 to answer questions.

22

23 JEFF KRAUT: Hearing none I'll call for a vote. All
24 those in favor, aye.

25

1 [Aye.]

2 Opposed? Abstention? The motion carries.

3

4 ANGEL GUTIERREZ: For discussion, flu mask proposed
5 regulations. Section 2.59 of title 10 of the NYCRR requires
6 healthcare personnel who have not been vaccinated against
7 influenza to wear a mask during the influenza season. The
8 Department has received feedback from facilities that are
9 subject to this regulation since it was implemented and
10 determined that it would be helpful to refine certain provisions
11 of the existing regulation and make it easier to facilities to
12 comply. The proposed amendments include; adding definitions to
13 keep terms such as "patient" or "resident" and influenza
14 vaccine. Modifying documentation requirements to bring
15 requirements into alignment with those of other vaccines.
16 Allowing facilities to accept that the stations from contractors
17 or professional schools that individuals have been vaccinated.
18 Clarifying that the vaccinations apply to facilities where
19 patients or residents are typically present at the facility and
20 eliminating the mask requirement when covered personnel
21 accompany patients in the community or when the personnel
22 provides speech therapy or communicates with someone who lip
23 reads. Susan Waltman of the Greater New York Hospital
24 Association spoke in support of the amendments and discussed the
25 resources that go into enforcement of these regulations. The

1 proposed regulation is entering into the 45 day public comment
2 period. Once finalized the permanent version will be presented
3 for adoption. Emily - Dr. Luterlaw from the Department Office of
4 Public Health is available to answer any questions from Council
5 members.

6

7 JEFF KRAUT: Are there any questions or discussions? Dr.
8 Bhat.

9

10 DR. BHAT: This particular issue about flu vaccination, a
11 few years ago it was brought in and there was a court case in
12 which they said we don't have to ask employees to get, if they
13 refuse. There's a proposal by Medicare, in 2018 in dialysis
14 arena they're going to be bringing it back and they're going to
15 be putting a penalty on those who do not comply as to how many
16 healthcare personnel is going to be vaccinated. It's under -
17 it's a proposal and there is, asking for comments on that. What
18 do we do in a situation like that when it becomes, Medicare says
19 you have to do it this way? Can we go back and see whether any
20 other alternatives to encourage, not encourage, force employees
21 to get vaccinated?

22

23 JEFF KRAUT: From, you know, the policy here, and maybe
24 someone from the Department wants to make this point - but maybe
25 not - so the issue here is the journey we've had on vaccination

1 and the State you know, and that court case never was
2 adjudicated, it was dropped as 'cause the regulation wasn't
3 fully implemented, but in the most recent set of regulations,
4 you know, we are getting significant support within the
5 institutions, and I think we hit somewhere in the 80s of
6 vaccination of health personnel. I suspect a federal regulation
7 like that would similarly maybe be challenged, but also it would
8 be helpful because it all reinforces you know, the recognition
9 of what we need to do as health providers to protect the safety
10 and the health of our patients. So I think that's something we
11 probably should be taking a look at and see how it affects and
12 maybe let the, Dr. Birkhead when he comes back, maybe he can
13 speak to that more directly another time.

14 Any other questions? All those in favor, Aye?

15

16 ANGEL GUTIERREZ: There is no vote. No vote.

17

18 JEFF KRAUT: No vote. All those in favor of that's the
19 end - is that the end of the - go ahead.

20

21 ANGEL GUTIERREZ: Last item for discussion is the SHIN-NY
22 proposed regulations. Disclosures of interest regarding this
23 proposal were declared by Mr. Levin, Dr. Martin, and Mr. Kraut.
24 The proposed regulations would establish the structure of the
25 State Health Information Network of New York, also known as

1 SHIN-NY to safeguard the security and confidentiality of patient
2 health information, specifically the proposal would; establish a
3 fully transparent SHIN-NY governance structure; require
4 certification process for entities that would be entrusted to
5 facilitate the sharing of personal health information; solidify
6 a statewide collaboration process and SHIN-NY's policy
7 standards, require providers regulated by the Department
8 utilizing a certified electronic health record or EHR to
9 participate in the SHIN-NY and share patient information and
10 clarify patient rights and the consent model regarding their
11 health information. There were a number of questions for Mr.
12 Smith of the Department and discussion among committee members
13 regarding aspects of the regulation particularly regarding
14 patient consent. Susan Waltman from the Greater New York
15 Hospital Association spoke in support of the proposed
16 regulations, particularly regarding accountability through
17 defining roles and responsibilities. She also stressed that it
18 is important for the SHIN-NY to support federal requirements for
19 meaningful use and provide clarification on community consent.
20 This proposal is entering into the 45 day public comment period.
21 Once finalized, the permanent version will be presented for
22 adoption. Steve Smith from the Office of Quality and Patient
23 Safety has joined us over the phone to answer any questions from
24 Council members.

25

1 JEFF KRAUT: OK, so this is an adoption of - this is-is
2 going to come back to us for adoption.

3

4 ANGEL GUTIERREZ: That is correct. Yes.

5

6 JEFF KRAUT: So, we're not voting. But we are taking
7 comments.

8

9 GLENN MARTIN: Not a comment, just a quick question. If I
10 was paying attention this morning, so the clock hasn't started
11 yet? It's still going through its umpteenth review and we're not
12 ready to publish it?

13

14 JEFF KRAUT: The 45 days - Steve? You want to just make
15 the point - the clock hasn't started on the rule because it
16 hasn't been published yet, right? This action permits it to be
17 published?

18

19 STEVE SMITH: That is correct. We anticipate that it will
20 be introduced into a 45 day comment period probably within the
21 next two to three weeks. At that point after the 45 day public
22 comment period the Department will consider the comments - there
23 are substantive changes that are made to the regulation, it'll
24 then go back out for 30 day comment period after which point it
25 would be adopted as regulation.

1

2 JEFF KRAUT: OK, Steve, I'm just going to repeat a
3 portion of that because we didn't have you on speaker. We
4 didn't have you on the mic. But essentially it will initiate the
5 process of the 45 day, they're going to introduce it shortly and
6 then it'll get published, it'll take comments, then another 30
7 days follow-up and then it will come back to the Council. So
8 there's a couple of bites at the apple, if you will, through a
9 variety of venues in the State. Any other questions? OK. Thank
10 you.

11

12 ANGEL GUTIERREZ: Mr. Chairman, that concludes my report.
13 Thank you.

14

15 JEFF KRAUT: Thank you very much Dr. Gutierrez.

16 Next I'm going to call on our final report for Mr. Booth to
17 give the report on the project review recommendations and
18 establishment actions. Before I do so I just want to make aware
19 on the conflict policy, the members and the Council and most of
20 our guests and some of our new members may not understand that
21 what we do is we reorganize the agenda differently than you had
22 seen it at the committee meeting and we essentially do it on the
23 topics or categories reflecting our roles and responsibilities
24 and in doing so what we've done is we've batched applications
25 where there was not a conflict, where there's unanimous vote or

1 no discussion. And you have the right as we call the batch, you
2 could say one, "I made a mistake, I do have a conflict," and Mr.
3 Booth, he will stop and will pull that out of the batch, you'll
4 leave the room if you have a conflict and then he'll call the
5 rest of the batch, so you have the right, if some awareness
6 occurred you could reconstitute the batch on the fly, so to
7 speak, and so please take a look at this as we call it. If
8 there's any issue, bring it to our attention, and then with that
9 as an introduction, I turn it over to our chairman.

10

11 CHRIS BOOTH: Thank you. The Committee met on July 24 to
12 consider the following applications.

13 Application 132378C, Samaritan Hospital. Interest declared
14 by Ms. Fine. Construct a six-story square, 191,000 square foot
15 pavilion and renovate 11,900 feet of Samaritan Hospital.
16 Additionally 60 beds will be transferred from St. Mary's
17 Hospital to Samaritan via Intra network Bed Transfer and
18 decertify 15 chemical dependency detox beds. Both the
19 Department and the Committee recommend an approval with a
20 condition and contingencies, and I so move.

21

22 JEFF KRAUT: I have a second, by Dr. Gutierrez. Is there
23 any discussion. Any questions? Hearing none, I'll call for a
24 vote. All those in favor aye.

25

1 [Aye.]

2 Opposed? Abstain? The motion carries.

3

4 CHRIS BOOTH: Application 141159C, St. Mary's Healthcare
5 Amsterdam Memorial Campus. Construct a 40,000 square foot
6 outpatient pavilion at Amsterdam Memorial Campus. Interest
7 declared by Ms. Fine. Both the Department and the Committee
8 recommended approval with conditions and contingencies. I will
9 note that we all received a letter in opposition from people
10 that had testified at the Committee meeting. The Department and
11 the Committee again, approved, recommend approval with
12 conditions and contingencies, and I so move.

13

14 JEFF KRAUT: I have a second, Dr. Gutierrez. Is there
15 any questions for the Department? Hearing none I'll call for a
16 vote. All those in favor aye.

17

18 [Aye.]

19 Opposed? Abstention? The motion carries.

20 I'm sorry, Dr. Martin abstained.

21 And Dr. Rugge abstained. Do I have enough affirmative
22 votes?

23 (17)

24 OK. Motion passes.

25

1 CHRIS BOOTH: I will batch the next two applications.
2 Application 132296C, University Hospital. Certify a joint adult
3 cardiac catheterization laboratory and PCI service with John T.
4 Mather Memorial Hospital to be located at Mather. Department
5 and the Committee recommend approval with a condition and
6 contingencies.

7 Application 132297C, John T. Mather Memorial Hospital of
8 Port Jefferson New York. Certify a joint cardiac
9 catheterization laboratory and PCI service with Stony Brook
10 University Hospital to be located at Mather. Both the Department
11 and the committee recommend approval with conditions and
12 contingencies, and I move both.

13

14 JEFF KRAUT: I have a second Dr. Gutierrez. Is there any
15 questions? All those in favor aye.

16

17 [Aye.]

18 Opposed? Abstention? The motion carries.

19

20 CHRIS BOOTH: Application 132369C, Elizabeth Seton
21 Pediatric Center. Renovate and expand facility and ad 32 net
22 new pediatric RHCF beds for a new total of 169 certified beds.
23 Department and the Committee recommend approval with conditions
24 and contingencies, and I so move.

25

1 JEFF KRAUT: I have a second, Dr. Berliner. Is there any
2 questions? All those in favor aye.

3

4 [Aye.]

5 Opposed? Abstention? The motion carries.

6

7 CHRIS BOOTH: Application 132257C, Sunshine Children's
8 Home and Rehab Center. And abstain/interest declared by Ms.
9 Carver-Cheney. Certify net new pediatric residential healthcare
10 facility beds and construct an addition to accommodate the new
11 beds. Both the Department and the Committee recommend approval
12 with conditions and contingencies, and I so move.

13

14 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
15 discussion? All those in favor aye.

16

17 [Aye.]

18 Opposed? Abstention? The motion carries.

19

20 CHRIS BOOTH: Application 141137B, Blythedale Children's
21 Hospital. Establish and construct a 24 bed pediatric ventilator
22 dependent residential healthcare facility. Both the Department
23 and the Committee recommend approval with conditions and
24 contingencies, and I so move.

25

1 JEFF KRAUT: I have a section, Dr. Gutierrez. Is there
2 any discussion? All those in favor aye.

3

4 [Aye.]

5 Opposed? Abstention? The motion carries.

6

7 CHRIS BOOTH: Application 132145E, The Rye ASC. Transfer
8 membership interest to 57 new members at .78 percent each and
9 withdraw five existing members. I will have two related motions
10 in regard to this application. One is on the application itself.
11 The second will relate to conversation on this application at
12 the Committee meeting where there was considerable conversation
13 about the charity care expectation and how to handle it when it
14 was expected not to be met and the applicant in this case had
15 discussed with the Department a proposal and it was the
16 Committee's determination it would be better not to do it as on
17 an ad-hoc basis but instead create a policy. So if a second
18 motion, when I get to it, will relate to how do we do that. But
19 first I would like to say that both the Department and the
20 Committee recommend approval with conditions and contingencies,
21 and I so move.

22

23 JEFF KRAUT: I have a second by Dr. Gutierrez on the
24 first motion, and that's the Rye ASC. Is there any discussion?
25 Hearing none, I'll call for a vote. All those in favor aye.

1

2 [Aye]

3 Opposed? Abstentions? The motion carries.

4

5 CHRIS BOOTH: The second motion is a motion that an ad-hoc
6 subcommittee be established to review the charity data relating
7 to ASC facilities and develop recommendations regarding ways the
8 charity care obligations of this facility may be satisfied.
9 That's the motion.

10

11 JEFF KRAUT: I have a motion. Second, Dr. Gutierrez. You
12 want to make mention who's going to chair the subcommittee?

13

14 CHRIS BOOTH: Yeah, Jeff and I had talked to Peter
15 Robinson about chairing that committee and we would be looking
16 for volunteers to join that committee.

17

18 JEFF KRAUT: We asked him to chair it since he's not at
19 the meeting, and he could not say no today. Dr. Bhat.

20

21 DR. BHAT: I think when you came up with these numbers for
22 charity care or Medicaid percentage, I think it was over five
23 percent?

24

1 JEFF KRAUT: Well, we didn't actually come up with the
2 numbers. We left it up to the applicants.

3

4 DR. BHAT: But a lot of things have happened since that
5 time.

6

7 JEFF KRAUT: And I think that's exactly the point. The
8 point here is a lot of the uninsured, which is charity care, may
9 have now qualified for insurance because of the Affordable Care
10 Act, and I think what we're asking the subcommittee to do in a
11 more thoughtful data-driven way is to come up with a methodology
12 of what's a reasonable expectation for those applicants that
13 we've given limited life approval where they've made a
14 commitment and have been unable to do - what's the rational
15 expectation given where they're located, the nature of what they
16 do, and the population that we're trying to get access to
17 service.

18

19 DR. BHAT: One other issue that I have, when DSRIP came up
20 with this safety net institution that taken Medicaid plus dually
21 eligible and they came up with 35 percent, I'm pretty sure this
22 particular ASC is probably taking care of a lot of patients who
23 are dually eligible-

24

1 JEFF KRAUT: Yeah, I mean, honestly, I mean, you could
2 say yes and you could also say if it's focused on ophthalmologic
3 it's going to be enormously skewed towards Medicare, so I think
4 what we're - we're just not making assumptions, we're asking
5 Peter to do that, and we're also asking if others want to
6 volunteer to serve on that committee - John?

7
8 JOHN RUGGE: I would volunteer.

9
10 JEFF KRAUT: John will volunteer, and Dr. Bhat.

11
12 DR. BHAT: I would like to be on.

13
14 JEFF KRAUT: Dr. Berliner. Ms. Carver-Cheney. That's
15 about it, guys. I'm closing the - because we were thinking of
16 two or three. But not another committee day. So he'll schedule
17 that probably either in aligning with the committee days or we
18 may do what we did before. We did an ad-hoc day or an ad-hoc
19 meeting and we'll see. Maybe it'll be done by phone or
20 telephonically, whatever the regulations permit. So we have
21 that motion with Peter chairing it. The Department of Health
22 will draft the charge statement, and it'll be reviewed and we'll
23 share it back with the Council. Could I have a vote. All those
24 in favor, aye.

25

1 [Aye.]

2 Opposed? Abstention? The motion carries. And did you
3 guys take, you guys record who the names are? If not, roll the
4 tape back.

5

6 CHRIS BOOTH: Application 141190E, HHH Acquisition LLC,
7 d/b/a the Grove at Valhalla Rehabilitation and Healing Centers.
8 Establish HHH Acquisition LLC, d/b/a the Grove at Valhalla
9 Rehabilitation and Healing Center as the new operator of the
10 Hebrew Hospital Home of Westchester, located at 61 Grasslands
11 Road, Valhalla. Both the Department and the Committee recommend
12 approval with conditions and contingencies, and I so move.

13

14 JEFF KRAUT: I have a second, Dr. Gutierrez. All those in
15 favor, aye.

16

17 [Aye.]

18 Opposed? Abstention? The motion carries.

19

20 CHRIS BOOTH: We have a certificate of amendment of the
21 certificate of incorporation of Allegheny Western Steuben Rural
22 Health Network Inc. Name change. Both the Department and the
23 Committee recommended approval, and I so move.

24

1 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
2 discussion? All those in favor, aye.

3

4 [Aye.]

5 Opposed? Abstention? The motion carries.

6

7 CHRIS BOOTH: We have a batch of applications for home
8 health agency licensures.

9 2151L, Seven Day Homecare

10 2254L, Constellation Private Duty.

11 1828L, Debbie Homecare Service.

12 1574L, Good Help at Home.

13 2110, High Standard Home care; 2124 Joy and Angels Homecare

14 Agency; 2458L, Westchester Family Care; 2425, Oceanview Manor

15 Home for Adults; 2310L, Sachem Adult Home and ALP; 2311L,

16 Southbay Adult Home; 2385, In Care Home Healthcare Group; 2392,

17 All Metro Aides; 2393L, All Metro Homecare Services of New York.

18 Both the Department and the Committee recommend approval of all

19 of these with a contingency and I so move.

20

21 JEFF KRAUT: I have a second, Dr. Berliner. Any

22 discussion? All those in favor, aye.

23

24 [Aye.]

25 Opposed? Abstention? The motion carries.

1

2 CHRIS BOOTH: I'm going to batch the next two
3 applications; 141168E, Cayuga Health System. Interest declared
4 by Mr. Booth. Establish Cayuga Health System as the active
5 parent/co-operator of Cayuga Medical Center and Schuyler
6 Hospital. Department and Committee both recommend approval with
7 a condition and contingencies.

8 Application 141283E, Lake Erie Regional Health System.
9 Interest declared by Mr. Booth. Disestablish Lake Erie Regional
10 Health System as the co-operator/active parent of TLC Health
11 Network including hospitals, nursing homes, certified home
12 health agency and long term home healthcare program. Both the
13 Department and the Committee recommend approval with a condition
14 and contingencies. I move them both.

15

16 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
17 discussion? All those in favor, aye.

18

19 [Aye.]

20 Opposed? Abstention? The motion carries.

21

22 CHRIS BOOTH: Application 141090B, Schenectady Specialty
23 Services, LLC. A conflict declared by Ms. Fine who is leaving
24 the room. Establish a diagnostic and treatment center to be
25 located at 2125 River Road, Schenectady. Both the Department

1 and the Committee recommend approval with conditions and
2 contingencies, and I so move.

3

4 JEFF KRAUT: I have a second, Dr. Gutierrez. Ms. Fine is
5 out of the room. Is there any discussion? All those in favor,
6 aye.

7

8 [Aye.]

9 Opposed? Abstention? The motion carries.

10 Please ask Ms. Fine to return.

11

12 CHRIS BOOTH: Going to batch a number of applications
13 here. 141172E, Hospicare and Palliative Care Services of
14 Tompkins County. Interest Mr. Booth. Establish Hospicare and
15 Palliative Care Services of Tompkins County as the new operator
16 of the Hospice, located at 11 Kennedy Parkway, Cortland.
17 Department and the Committee recommend approval with a condition
18 and a contingency.

19 Application 141128E, Comprehensive at Orleans, LLC. d/b/a
20 the Villages of Orleans Health and Rehabilitation Center.
21 Interest declared by Mr. Booth. Establish Comprehensive at
22 Orleans as the new operator of the Villages of Orleans Health
23 and Rehabilitation Center. Both the Department and the
24 Committee recommend approval with a condition and contingencies.

1 Application 141140E, Cortland Acquisition LLC, d/b/a Crown
2 Center for Nursing and Rehabilitation. Interest declared by Mr.
3 Booth. Establish Cortland Acquisition LLC d/b/a Crown Center for
4 Nursing and Rehabilitation as the new operator of the Crown
5 Center for Nursing and Rehabilitation. Both the Department and
6 the Committee recommend approval with a condition and
7 contingencies.

8 Application 141212E, CCRN Operator LLC, d/b/a Focus
9 Rehabilitation and Nursing Center at Otsego. Interest declared
10 by Mr. Booth. Establish CCRN Operator LLC as the new operator
11 of the Residential Health Care Facility and the long term home
12 health program both located at 128 Phoenix Mill Crossroad,
13 Cooperstown, currently operated by Otsego County. Both the
14 Department and the Committee recommend approval with conditions
15 and contingencies.

16 Application 141174E, Samaritan Home Health. Interest
17 declared by Mr. Booth. Establish Samaritan Home Health of the
18 new operator of the certified home health agency currently
19 operated by HCA Genesis located at 199 Pratt Street, Watertown.
20 Both the Department and the Committee recommend approval with
21 condition and contingencies, and I move the batch.

22

23 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
24 discussion on any of these applications? All those in favor,
25 aye.

1

2 [Aye.]

3 Opposed? Abstention? The motion carries.

4

5 CHRIS BOOTH: We have a certificate of dissolution for the
6 Pluta Cancer Center. An interest declared by Ms. Hines. The
7 Department and the Committee recommended approval, and I so
8 move.

9

10 JEFF KRAUT: I have a second, Dr. Gutierrez. Is there any
11 discussion? All those in favor, aye.

12

13 [Aye.]

14 Opposed? Abstention? The motion carries.

15

16 CHRIS BOOTH: Going to batch three home health agency
17 licensures. 2199L, Catrels Pharmacy. Interest declared by Ms.
18 Hines and Mr. Booth. 2102L, Lincolns Heart and Associates.
19 Interest declared by Ms. Hines and Mr. Booth. 2021L Residential
20 Valley Services. Interest declared by Mr. Booth. The Department
21 and the Committee recommend approval with a contingency and I
22 move the batch.

23

24 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
25 discussion? All those in favor, aye.

1

2 [Aye.]

3 Hold on....Opposed? Abstention? The motion carries. Dr.

4 Berliner.

5

6 HOWARD BERLINER: Just a question. What's the numbering

7 convention for -

8

9 JEFF KRAUT: Home health agency licensures?

10

11 HOWARD BERLINER: For home3...

12

13 JEFF KRAUT: Well, for dissolutions, dissolutions don't

14 get a number.

15

16 HOWARD BERLINER: No, 2199, 2102 - the licensures.

17

18 CHARLIE ABEL: They're sequential numbers. As the

19 applications are submitted, they are assigned a sequential

20 number.

21

22 JEFF KRAUT: But they don't have any relation to year

23 like the CONS do.

24

25 CHARLIE ABEL: No they don't.

1

2 CHRIS BOOTH: Application 141164B, Glengariff Dialysis
3 Center, LLC. A conflict declared by Dr. Bhat who is leaving the
4 room. Establish Glengariff Dialysis Center LLC as the new
5 operator of the existing six station dialysis center located at
6 141 Dosoris Lane, Glen Cove, currently operated as an extension
7 clinic by the Winthrop University Hospital Association. Both the
8 Department and the Committee recommend approval with conditions
9 and contingencies and I so move.

10

11 JEFF KRAUT: I have a second, Dr. Gutierrez. Dr. Bhat has
12 left the room. If you recall there was data requested and who
13 would like to present that data? It's usually somebody from the
14 Department of Health.

15

16 CHARLIE ABEL: I'm sorry. We, you asked for quality data,
17 and we were able to determine two things; one, we're just doing
18 Glengariff at this time?

19

20 (yes)

21

22 OK. So, in the Glengariff application we say that Atlantic
23 Dialysis was indicated as an administrative consulting agreement
24 consultant and many of us know that Atlantic Dialysis operates
25 dialysis facilities across the State so we were able to provide

1 you with a data comparison for the Atlantic Dialysis sites, and
2 I believe a specific request was made with respect to the
3 quality data specific to the Winthrop operation of that site and
4 that's here presented for you as well. All this data came off
5 of the Medicare dialysis compare website. If there are any
6 questions I can try to address them.

7

8 JEFF KRAUT: Mr. Levin

9 Mr. Levin, could you just get the mic in front of you?

10

11 ART LEVIN: In the spirit of the earlier conversation we
12 had about OBS, what does the Department do with worse-than-
13 expected outcomes? We - I know this is coming from the federal
14 database, but we have categories where the outcome is worse than
15 expected, and my question is what do we do with that
16 information? We know it now and does the Department take any
17 proactive role or should this council take a proactive role in
18 trying to figure out why those results are worse than expected,
19 and to improve them for the sake of dialysis patients.

20

21 CHARLIE ABEL: I can preface the discussion with the
22 comment that dialysis facilities are surveyed at least once
23 every three years, every facility. And while we don't have
24 someone from the - currently assigned to the surveillance unit,
25 we do have someone who, Bea Delcogliano, who used to be involved

1 in hospital and hospital services which includes the D&TC
2 service oversight division as well. So Bea, did you have
3 anything to add?

4

5 BEA DELCOGLIANO: We don't do anything per se with what's
6 from the CMS Medicare compare ESRD compare site, but we receive
7 data every year that ranks, it's a national quality data that
8 ranks our dialysis center, and per CMS rules those ones that are
9 worse are actually surveyed more frequently. We create our
10 survey schedules based on that. That's the first consideration
11 is where they're ranking in their quality, and then there's also
12 a time factor. So, while we don't use this data, they are
13 definitely surveyed based on their quality.

14

15 ART LEVIN: So, again, in the spirit of our earlier
16 discussion, it's sort of a due diligence question, we now have
17 data that tells us something, and how do we respond to this as a
18 council? I mean, this is death rate, and this is not, you know,
19 this is death rates and admissions. Those are meaningful
20 measures.

21

22 JEFF KRAUT: So, from the Department's perspective, they
23 saw - I don't want to put words, but I want to understand. For
24 the data that you have received and you have in your possession,

1 there's nothing that would indicate that this provider should
2 not be approved.

3

4 CHARLIE ABEL: That's correct. I should preface, I should
5 supplement that comment with a review of the provider's current
6 (operations) compliance status was done and the facilities are
7 in current compliance.

8

9 JEFF KRAUT: Well, compliance and quality, I mean those
10 are two slightly different things, but just on a procedural
11 basis, we've seen this data now between the last meeting. We
12 did not have a chance for the applicant to comment on it or
13 defend it or explain it, so I think I would depart from our
14 usual procedure to give them that opportunity since we're
15 discussing it and we haven't done it, but I want to have the
16 comments of the Council so if there's questions, I would then
17 ask the applicant or their representatives to come to the table
18 and just comment on this as well. Mr. Booth.

19

20 CHRIS BOOTH: So my comment would be that it appears to me
21 anyway that even though it's a federal CMS data, it is relevant
22 and would appear to should be relevant to the Department's
23 review, so not so much for applying to this application today,
24 but from a policy perspective going forward, I would urge the
25 Department to consider using the data in some fashion.

1

2 JEFF KRAUT: Dr. Martin.

3

4 GLENN MARTIN: Well, going back to my earlier comment that
5 data isn't information, when we look at worse than expected and
6 for rate of hospitalization and patient death rate both note
7 nine and note ten make clear there are lots of reasons why they
8 can occur; none of them have anything to do with the quality of
9 diaysis.

10 (Correct)

11 It would be nice if the Department could somehow using the
12 data that they have could flesh that out in future meetings so
13 we would know whether or not they're actually taking care of
14 sicker patients or whatever it would happen to be. That I think
15 would be most helpful -

16

17 JEFF KRAUT: Or frankly, when applicants are applying
18 that they basically give some interpretation to the federal data
19 to explain when they have something worse than expected. They
20 certainly use it when it says better than expected. So, could I
21 ask, if there's - Any other question? Because I do want to call
22 the applicant, but I want everybody to get their questions out
23 first. Mr. Fassler.

24

1 MICHAEL FASSLER: Little point to add on to that. In this
2 case, applicant has many locations but when two of them are
3 outlier, again, would be helpful if the department addresses
4 those couple outliers. Let's say here they have eight or nine
5 and two of them are really way below average. Applicant go to
6 the Department and say, to really gear into those, what's going
7 on in those places.

8

9 JEFF KRAUT: Right, and I think to Dr. Martin's point
10 there may be a rational explanation because of adverse selection
11 or what have you. That's the point. Are the representatives of
12 the applicant here and could they come to the table and just
13 please make a comment. You've heard some of the questions.

14

15 ANDREW BLATT: Good afternoon. I'm Andrew Blatt from
16 Pinnacle Health Consultants, and want to thank the committee for
17 allowing us to speak today. To my left is Joe ----- who is the
18 Vice President Facility Operations for Atlantic Dialysis who
19 could provide some additional information and clarity and
20 obviously answer any additional questions.

21

22 JOE: Thank you for a few minutes of time to elaborate on
23 some of the discussion that has just taken place. Instead of
24 some of the commentary that I prepared I'm going to jump right
25 to specifically the centers in that category of "worse than

1 expected." Let me just preface the fact that the data that is in
2 front of you is from 2009 to 2012. I'm not here to refute it.
3 It is data that came right from our facilities. What I will say
4 in some of the discussions about the Department of Health and
5 how frequently these centers are surveyed that three of the
6 centers, Central Brooklyn, NYRA (New York Renal Associates), and
7 also Ridgewood Dialysis have all been surveyed in the past 15
8 months with Ridgewood and Central Brooklyn being surveyed in the
9 past 75 days. The surveyors from the Department of Health found
10 no deficiencies with regard to any of the categories pertaining
11 to either mortality or hospitalization. They looked at our
12 quality assurance program and looking at the initiatives we have
13 and that all our trends are favorable, and in looking at just a
14 snapshot of what we do on a yearly, daily and a yearly basis
15 they highest acuity for a dialysis patient is within their first
16 year on dialysis and all three of those centers have first year
17 SMRs that are significantly below New York State and U.S. data.
18 So at a period of time when the patients are at their highest
19 acuity, the skilled caregivers that we have in those facilities
20 are doing their best to stabilize the healthcare needs of the
21 dialysis patients, and I think that first year mortality is very
22 important in type of consideration.
23

1 JEFF KRAUT: Are there any questions for the applicant?
2 Any other comments? Hearing none, I'll call for a vote. All
3 those in favor, aye.

4

5 [Aye.]

6 Opposed? Abstentions? The motion carries. Could you
7 please ask Dr. Bhat to return.

8 Dr. Berliner.

9

10 HOWARD BERLINER: So can we follow-up on your suggestion
11 about including some of this data in the initial staff reports
12 to us so we have it?

13

14 JEFF KRAUT: So, Charlie, the issue is that if there's
15 any application that comes in with dialysis we'd like this
16 information to be incorporated into the staff report, and we'd
17 like the applicants in a supplement - ask them when you get the
18 application for supplement to provide the data and provide the
19 council or the Department with any comment with, regarding the
20 performance that the Council should, or the Department and the
21 Council should take into account.

22

23 CHARLIE ABEL: Yep. That's our intention as well.

24

25 JEFF KRAUT: OK. Yes, Mr. Levin.

1

2 ART LEVIN: To Dr. Martin's point, this is risk
3 adjusted. Right? When we have better than, worse than, same
4 as.

5

6 GLENN MARTIN: Not according to the note?

7

8 ART LEVIN: It isn't according to the note?

9

10 JEFF KRAUT: It is or it is not?

11

12 GLENN MARTIN: I don't know. The note - I was just reading
13 what the note said, and the note says there's all sorts of
14 reasons, so I'm not sure what it means.

15

16 ART LEVIN: Because every time I have seen an expected
17 outcome, it's a risk-adjusted - expected outcome based on risk
18 adjustment. Otherwise it's a - it's the actual outcome that you
19 look at.

20

21 JEFF KRAUT: I have not read - I remember playing with
22 this data a lot, and my recollection is it is risk adjusted.
23 That was my recollection. But you know what, we'll validate
24 that.

25

1 GLENN MARTIN: We'll find out.

2

3 JEFF KRAUT: We'll find out. Mr. Booth.

4

5 CHRIS BOOTH: The final application is 141205E, Workman's
6 Circle Dialysis Management LLC, d/b/a Workman's Circle Dialysis
7 Center. Establish Workman's Circle Dialysis Management as the
8 new operator of the existing 12 station dialysis center located
9 at 3155 Grace Avenue, Bronx. Currently operated by Workman's
10 Circle Dialysis Center Inc. Both the Department and the
11 Committee recommend approval with conditions and contingencies,
12 and I so move.

13

14 JEFF KRAUT: I have a second, Dr. Gutierrez. Again, you
15 may want to comment. We have data in front of us on this
16 provider as well.

17

18 CHARLIE ABEL: Yes, we have information that one of the
19 members of this provider, both provider has partial ownership in
20 a dialysis center in Suffolk County, in New York. That data is
21 distributed to you, has been distributed to you and is provided
22 for your consideration.

23

24 JEFF KRAUT: I would note for the record this provider's
25 statistics according to the source is as expected or at or above

1 the national and the State averages. Are there any questions?

2 Hearing none I'll call for a vote. All those in favor, aye.

3

4 [Aye.]

5 Opposed? Abstentions? The motion carries. That's the -

6 that concludes -

7

8 CHRIS BOOTH: That concludes our report.

9

10 JEFF KRAUT: OK. Before I, excuse me, adjourn the

11 meeting I just want to tell you the next Committee day is

12 September 18 and the Full Council will convene on October 2.

13 Both meetings will be held in New York City. I'll have a motion

14 to adjourn.

15 So moved.

16 A second? We are adjourned. Thank you very much for a

17 very productive morning. And afternoon.

18 [end of audio]

SUMMARY OF EXPRESS TERMS

The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying

- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 225 of the Public Health Law, subject to the approval by the Commissioner of Health, Subpart 7-2 of the State Sanitary Code, as contained in Chapter 1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon filing with the Secretary of State.

SUBPART 7-2

Children's Camps

(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;

L. 2012, ch. 501)

Subdivision (o) of section 7-2.5 is amended to read as follows:

(o) The camp operator shall provide adequate supervision. *Adequate supervision* shall mean:

(1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]

(2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

(3) at camps required to comply with section 7-2.25 of this Subpart, protection from any unreasonable risk of experiencing an occurrence which would constitute a reportable incident as defined in section 7-2.25(h)(4) of this Subpart.

Section 7-2.24 is amended to read as follows:

Variance; waiver.

(a) *Variance* - in order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. The permit-issuing official shall consult with the State Department of Health and shall obtain approval from the State Department of Health for the proposed decision, prior to granting or denying a variance request for requirements in section 7-2.25 of this Subpart.

(b) *Waiver* - in order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a

waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. The permit-issuing official shall consult with the State Department of Health, and shall obtain the approval of the State Department of Health for the proposed decision, prior to granting or denying a waiver request related to the requirements in section 7-2.25 of this Subpart.

New subdivisions (h)-(m) of section 7-2.25 are added to read as follows:

(h) Definitions. The following definitions apply to Section 7-2.25 of this Subpart.

- (1) *Camp Staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the children's camp.
- (2) *Department* shall mean the New York State Department of Health.

(3) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to Section 551 of the Executive Law.

(4) *Reportable Incident* shall include those actions incorporated within the definitions of “physical abuse,” “sexual abuse,” “psychological abuse,” “deliberate inappropriate use of restraints,” “use of aversive conditioning,” “obstruction of reports of reportable incidents,” “unlawful use or administration of a controlled substance,” “neglect,” and “significant incident” all as defined in Section 488 of the Social Services Law.

(i) Reporting.

(1) In addition to the reporting requirements of section 7-2.8(d), a camp operator subject to section 7-2.25 of this Subpart and all camp staff falling within the definition of “mandated reporter” under section 488 of the Social Services Law shall immediately report any reportable incident as defined in section 7-2.25(h)(4) of this Subpart and Section 488 of the Social Services Law, where such incident involves a camper with a developmental disability, to the permit-issuing official and to the Justice Center’s Vulnerable Persons’ Central Register. Such report shall be provided in a form and manner as required by the Justice Center.

(j) Employee Screening, Training, and Code of Conduct

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(1) of this Subpart.

(2) A camp operator must ensure that camp staff, and others falling within the definition of mandated reporter under Section 488 of the Social Services Law who will or may have direct contact with campers having a developmental disability, receive training regarding mandated reporting and their obligations as mandated reporters. A camp operator shall ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(3) The camp operator shall ensure that all camp staff and others falling within the definition of "custodian" under Section 488 of the Social Services Law are

provided with a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct.

(k) Disclosure of information

(1) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the State Department of Health, and the Justice Center. The permit-issuing official, the department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (i) of this Subpart.

(2) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

(1) Incident Management.

(1) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(2) Unless delegated by the Justice Center to a delegate investigatory agency as defined in subdivision seven of Section 488 of the Social Services Law, incidents of abuse or neglect, as defined in subdivision eleven of Section 488 of the Social Services Law, shall be investigated by the Justice Center. With regard to all other reportable incidents, as defined in Section 488 of the Social Services Law, the permit-issuing official shall initiate a prompt investigation of an allegation of a reportable incident, which shall commence no later than five business days after notification of such an incident, unless the Justice Center agrees that it will undertake such investigation. Additional time for completion of the investigation

may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

- (i) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this Subparagraph (i) may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.
- (ii) All evidence must be adequately protected and preserved.

(iii) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(iv) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department, and to the Justice Center.

(v) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the department and to the Justice Center.

(vi) The investigation and written report shall be completed and provided to the department and the Justice Center within 45 days of when the incident was first reported to the Justice Center. For purposes of this

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

- (3) (i) The camp shall maintain a facility incident review committee, composed of members of the governing body of the children’s camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review panel to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review panel shall meet at least annually, and also within two weeks of the completion of a written report and remedial plan for a reportable incident.
- (ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator must file an application with the permit-issuing official, at least sixty days prior to the start of the camp operating season, or at any time in the case of exemptions sought within the first three months following the effective date of this provision. The application must provide sufficient documentation and information to demonstrate that that compliance would present undue hardship and that granting an exemption would not create an undue risk of harm to campers' health and safety. The permit-issuing official shall consult with the State Department of Health (department), and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator must meet all terms of an approved exemption(s), including the condition that it will remain in effect for one year unless revoked by the permit-issuing official, subject to department approval, or the facility changes operators. Any application for renewal shall be made within 60 days prior to the start of the camp's operating season. The procedure set forth in this Subparagraph (ii) shall be used instead of the general procedures set forth in section 7-2.24 of this Subpart.

(m) In addition to the requirements specified by subdivisions (d) and (g) of section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In

considering whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on

that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.

- required that children’s camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children’s camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children’s camp operators for reporting and cooperating with Department of Health investigations at children’s camps for children with developmental disabilities (hereafter “camps”). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children’s camps for children with developmental disabilities operate each year, with combined reports of zero to two

incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of “custodian” under section 488 of the Social Services Law (collectively “employees”) are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs

associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment,

should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be

distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children’s camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the “Cost to Regulated Parties” section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the “Cost to State and Local Government” section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives Considered:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

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Regulatory Flexibility Analysis
for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” “Local Government Mandates,” and “Paperwork” sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the

“Cost to Regulated Parties” section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in “Cost to State and Local Government” and “Local Government Mandates” portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department’s ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

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 have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

Emergency Justification

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a “state oversight agency.” These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur

pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers

with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law Sections 225, 2800, 2803, 3612, and 4010, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 2.59 is amended as follows:

§ 2.59 Prevention of influenza transmission by healthcare and residential facility and agency personnel

(a) Definitions.

(1) "Personnel," for the purposes of this section, shall mean all persons employed or affiliated with a healthcare or residential facility or agency, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients or residents to the disease.

(2) "Healthcare and residential facilities and agencies," for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health

care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and

(iii) hospices as defined in section 4002 of the Public Health Law.

(3) "Influenza season," for the purposes of this section, shall mean the period of time during which influenza is prevalent as determined by the Commissioner.

(4) "Patient or resident," for the purposes of this section, shall mean any person receiving services from a healthcare or residential facility or agency, including but not limited to inpatients and outpatients, overnight residents, adult day health care participants, and home care and hospice patients, as well as any person presenting for registration or admission at a healthcare or residential facility or agency.

(5) "Influenza vaccine" or "vaccine," for the purposes of this section, means a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA), for active immunization for the prevention of influenza disease caused by influenza virus(es), or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(b) All healthcare and residential facilities and agencies shall determine and document which persons qualify as "personnel" under this section.

(c) All healthcare and residential facilities and agencies shall document the influenza vaccination status of all personnel for the current influenza season in each individual's personnel record or

other appropriate record. Documentation of vaccination must include [the name and address of the individual who ordered or administered the vaccine and the date of vaccination]:

(1) a document, prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration; or

(2) for personnel employed by a healthcare employer other than the healthcare or residential facility or agency in which he or she is providing service, an attestation by the employer that the employee(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the healthcare employer maintains documentation of vaccination of those employees, as described in paragraph (1) of this subdivision; or

(3) for student personnel, an attestation by the professional school that the student(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the school maintains documentation of vaccination of those students, as described in paragraph (1) of this subdivision.

(d) During the influenza season, all healthcare and residential facilities and agencies shall ensure that all personnel not vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients or residents [may be] are typically present, except that:

(1) when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear shall not be required by this section, provided that this paragraph shall not be interpreted as eliminating any requirement that

personnel wear a mask pursuant to standard and transmission-based precautions not addressed by this section;

(2) personnel required to wear a mask by this subdivision, but who provide speech therapy services, may remove the mask when necessary to deliver care, such as when modeling speech; and

(3) for any person who lip reads, personnel required to wear a mask by this subdivision may remove the mask when necessary for communication.

[Healthcare and residential facilities and agencies shall supply such masks to personnel, free of charge.]

(e) Upon the request of the Department, a healthcare or residential facility or agency must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(f) All healthcare and residential facilities and agencies shall develop and implement a policy and procedure to ensure compliance with the provisions of this section. The policy and procedure shall include, but is not limited to, identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (d) of this Section.

(g) Healthcare and residential facilities and agencies shall supply surgical or procedure masks required by this section at no cost to personnel.

(h) Nothing in this section shall be interpreted as prohibiting any healthcare or residential facility or agency from adopting policies that are more stringent than the requirements of this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225 (5), 2800, 2803 (2), 3612 and 4010 (4). PHL 225 (5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL Section 2803 (2) authorizes 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. PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies and providers of long term home health care programs. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Legislative Objectives:

PHL 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses 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. PHL Article 36 addresses the services rendered by certified home health agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. The requirement of surgical or procedure masks of unvaccinated healthcare and residential facility and agency personnel in these facilities promotes the health and safety of the patients and residents they serve and support efficient and continuous provision of services.

Needs and Benefits:

In general, section 2.59 of Title 10 of the NYCRR requires healthcare personnel who have not been vaccinated against influenza to wear a mask during the influenza season. These

amendments clarify certain provisions of the existing regulation and make one substantive change.

The clarifying amendments codify the Department's interpretation of section 2.59, as published by the Department in a document entitled "Frequently Asked Questions (FAQ) Regarding Title 10, Section 2.59 'Regulation for Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel'", dated September 24, 2013. The amendments clarify that the masking requirement applies in those areas where patients or residents are "typically" present, rather than "may be" present. The amendments also define "influenza vaccine" to mean a vaccine approved as an influenza vaccine by the Food and Drug Administration (FDA), or pursuant to an Emergency Use Authorization (EUA), or as an Emergency Investigational New Drug (EIND). This clarification is important because, in the event of a novel influenza virus outbreak, such as H1N1 in 2009, new vaccines and emergency use of existing vaccines may be available or necessary to meet the requirements of the regulation.

The amendments also clarify that the regulation is not intended to require mask wear while a patient or resident is receiving services outside the home or regulated facility. This regulation is based on the reasonable expectation that patients and residents should not be exposed to influenza in their homes or in medical care facilities, by the personnel who they rely upon to care for them. However, when they choose to leave the home or facility and interact with the general public in the community, they are potentially exposing themselves to influenza from any number of sources. The risk of exposure from the healthcare provider is essentially

subsumed by the risk of general community exposures. For this reason, unvaccinated healthcare personnel who are accompanying patients are not required to wear masks while away from patient homes and off facility grounds—for example, while on public transportation, at community events, and in shops.

The final clarification amendment provides that the regulation should not be interpreted as requiring mask wear by unvaccinated personnel who provide speech therapy services, during the time that such personnel are providing care. Similarly, for any person who lip reads, unvaccinated personnel may remove the mask when necessary to communicate.

These amendments also include one important substantive change, in that they revise the documentation requirement for healthcare and residential facilities and agencies. The intent of this change is to create a more flexible system for documenting vaccination status, thereby easing the regulatory burden on regulated parties. Specifically, required documentation would include only the date of vaccination and information specifying the vaccine formulation administered. Further, where the personnel of a healthcare or residential facility or agency includes contract staff and students, the facility or agency may accept an attestation from the employer or school, stating that specified persons have been vaccinated and that the employer or school maintains the required documentation.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

These amendments do not create any new costs for regulated entities. The revised documentation requirements are expected to ease the regulatory burden on healthcare and residential facilities and agencies.

Cost to State and Local Government:

These amendments do not create any new costs for State or local government. To the extent that State or local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Cost to the Department of Health:

There are no additional costs to the State or local government. Existing staff will be utilized to educate healthcare and residential facilities and agencies about the revised reporting requirements.

Local Government Mandates:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

Paperwork:

These amendments will not result in any additional paperwork or electronic reporting. The revised documentation requirements are expected to ease the regulatory burden on regulated entities.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternative Approaches:

The alternative would be to leave the current regulation in its current form. However, doing so would continue documentation requirements for regulated parties that do not include the flexibility of this proposed amendment. There would also be no provision relating to persons who choose not to be vaccinated and who, for a medical reason, cannot wear a mask.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Of those, it is known that 3 general hospitals, approximately 237 diagnostic and treatment centers, 40 nursing homes, 69 CHHAs, 36 hospices and 860 LHCSAs are small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule. Local governments operate 18 hospitals, 40 nursing homes, 42 CHHAs, at least 7 LHCSAs, and a number of diagnostic and treatment centers and hospices.

Compliance Requirements:

All facilities and agencies must comply with the revised documentation requirement regarding the vaccination status of personnel.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that small businesses and local governments operate healthcare and residential facilities and agencies, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Small Business and Local Government Participation:

Small businesses and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

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.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

Any facility defined as a hospital pursuant to Article 28, a home services agency by PHL Article 36, or a hospice by PHL Article 40 will be required to comply. In New York State there are approximately 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs). Of those, it is known that 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, 92 certified home health agencies, 19 hospices, and 26 LHCSAs are in counties serving rural areas. These facilities and agencies will not be affected differently than those in non-rural areas.

Compliance Requirements:

All facilities and agencies must document the vaccination status of each personnel member as defined in this regulation for influenza virus, in their personnel or other appropriate record.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

These amendments do not create any new costs for small businesses or local governments. To the extent that healthcare and residential facilities and agencies are located in rural areas, the revised documentation requirements are expected to ease the regulatory burden on these entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not impose any additional burdens.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties that would require a minimization analysis.

Public and Local Government Participation:

The public and local governments are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council, as well as during the official comment period.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

Sections 600.3 and 710.5 of 10 NYCRR require that amendments to Certificate of Need (CON) applications that have been approved by the Public Health and Health Planning Council (PHHPC) be referred to the PHHPC and the regional Health Systems Agency (HSA), if applicable, for reevaluation and recommendations. An amendment is defined as:

- 1) a change in the method or terms of financing of the approved project in excess of ten percent of the approved project costs, or \$15 million, whichever is less; or
- 2) an increase in the total basic costs of construction of the project greater than \$6 million and in excess of ten percent of approved project costs, whichever is less; or
- 3) a substantial change in the terms of agreement for the land or building involved in the project; or
- 4) a reduction in the scope of the project accounting for 15 percent or more of approved project costs; or
- 5) an increase in the number and/or types of beds or services approved for the project; or
- 6) a change in the site of construction if outside the facility's planning area; or

7) a change in the applicant.

The proposed rule changes would delete subparagraphs (1), (2), (3) and (4) of paragraph (c) of section 600.3 and subparagraphs (1), (2), (3) and (4) of paragraph (b) of section 710.5 to remove from the definition of an amendment the above changes in the method or terms of a project's financing, increases in total basic project costs, changes in the terms of agreement for a project's land or building, and reductions in project scope accounting for more than 15 percent of approved costs. Approval of the proposed rule would remove the requirement that the affected changes be referred to the PHHPC (and where applicable, the regional HSA) for reevaluation and recommendation. Removal of the cited provisions would render the affected changes modifications, making them subject only to prior approval by the Commissioner, as set forth in sections 600.3(f) and 710.1(c)(3).

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by sections 2801-a(1) and 2802(1) of the Public Health Law, subdivision (b) of Section 600.3 and subdivision (b) of Section 710.5 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:

Section 600.3 is amended to read as follows:

600.3 Amendments and modifications to applications. (a) A change to an application before the Public Health and Health Planning Council has approved or contingently approved the application is hereafter referred to as a [modification] revision; a change to an application which has been approved or contingently approved by the council but for which an operating certificate has not yet been issued shall be referred to as an amendment if it meets the criteria contained in subdivision (c) of this section, and shall be referred to as a modification approvable pursuant to subdivision (f) if it does not meet the criteria contained in subdivision (c) or does not meet the criteria in subdivision (e).

(b) An application made to the Public Health and Health Planning Council, pursuant to this Part, may be modified before the council has approved or contingently approved the application. Such modifications shall be made on appropriate forms supplied by the department and submitted to the council through the central office of the department in Albany and shall be governed by the following:

[(1) nine copies of a modification must be submitted;]

[(2) 1] any modification in the information contained in the original application must

be accompanied by a satisfactory written explanation as to the reason such information was not contained in the original application;

([3] 2) the department, when reviewing a competitive batch of applications, may establish deadlines pursuant to written notification for the submission of any modification to an application; and

([4] 3) if a modification is submitted after any such deadline(s), the application shall be removed from consideration within the competitive batch being reviewed.

(c) After the Public Health and Health Planning Council has approved or contingently approved an application but prior to the issuance of an operating certificate, any change as set forth in paragraphs (1) through ([7]3) of this subdivision shall constitute an amendment to the application, and the applicant shall submit [nine copies thereof] the proposed amendment to the department's central office together with appropriate documentation explaining the reason(s) for the amendment and such additional documentation as may be required in support of such amendment. The amended application shall be referred to the health systems agency having geographic jurisdiction and the [State Hospital Review] Public Health and Health Planning Council for their reevaluation and recommendations. The approval of the Public Health and Health Planning Council must be obtained for any such amendment. Each of the following shall constitute an amendment:

[(1) a change in the method or terms of financing which results in an increase in total project costs, unless the applicant can demonstrate, to the satisfaction of the commissioner, acting on behalf of the Public Health and Health Planning Council, that such change in the method or terms of financing: (a) will not result in a more expensive

project on a present-value basis for third-party payors when evaluated over the expected life of the project; or (b) will not result in an increase in the cost of the project, on a present value basis over its expected life, in excess of ten percent of approved project costs or \$15,000,000, whichever is less;

(2) an increase in the total basic costs of construction as originally approved which is in excess of ten percent or \$15,000,000, whichever is less, of the approved total basic costs of construction provided such increase exceeds \$6,000,000 and the cost increase is not a result of factors of an emergency nature, local zoning and planning issues or inflation, addressed below in subdivision (e) of this section.

(3) a reduction in construction, renovation or modernization which accounted for 15 percent or more of the total basic costs of construction of the application as approved without a corresponding reduction in the total basic costs of construction, subject to consideration of fixed costs;

(4) a substantial change in the terms of any agreement to construct, renovate, or acquire, through a purchase, lease or other arrangement, any land or building related to the application;]

([5]1) a change in the number and/or type of beds and/or services, other than a reduction of service which would be subject to administrative review;

([6]2) a change in the location of the site of the construction if outside the facility's service area or adjacent service area; and

([7]3) any change in the applicant.

(d) For purposes of this section, the following terms shall have the following meanings:

(1) Total project cost means total costs for construction, including but not limited to

costs for demolition work, site preparation, design and construction contingencies, total costs for real property, for fixed and movable equipment, architectural and/or engineering fees, legal fees, construction manager and/or cost consultant fees, construction loan interest costs, and other financing, professional and ancillary fees and charges. If any asset is to be acquired through a leasing arrangement, the relevant cost shall be the cost of the asset as if purchased for cash, not the lease amount. (2) Total basic cost of construction means total project costs less the capitalized amount of construction loan interest and financing fees.

(e)(1) If the commissioner, acting on behalf of the Public Health and Health Planning Council, determines that increases in total project costs or total basic costs of construction are due to factors of an emergency nature such as labor strikes, fires, floods or other natural disasters or factors beyond the control of the applicant, or modifications to the architectural aspects of the application which are made on the recommendation of the department, the applicant may proceed without the need for the application to be referred back to the health systems agency[,the State Hospital Review and Planning Council] and the Public Health and Health Planning Council.

(2) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the Public Health and Health Planning Council, that increases in total project cost or total basic cost of construction were caused by delays in obtaining zoning or planning approvals which were beyond its control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council]and the Public Health and Health Planning Council pursuant to this Part. The evidence shall

demonstrate clearly that the applicant had timely pursued the zoning or planning permits, has now obtained all such required permits and approvals, and is prepared to proceed with the project.

(3) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the Public Health and Health Planning Council, that increases in the total basic cost of construction were caused by inflation in excess of that estimated and approved in the application and that such inflation has affected the total basic cost of construction as a result of delays which were beyond the applicant's control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council] and the Public Health and Health Planning Council pursuant to this Part. The evidence shall demonstrate clearly that the increase in inflation exceeds that estimated and approved in the application, and that any delays resulting in such inflationary cost increases were beyond the applicant's control.

(f) Any modification submitted subsequent to the issuance of any approval by the Council which does not constitute an amendment pursuant to the provisions of this section shall require only the prior approval of the commissioner.

(g) Failure to disclose an amendment prior to the issuance of an operating certificate shall constitute sufficient grounds for the revocation, limitation or annulment of the approval of establishment.

* * *

Section 710.5 is amended to read as follows:

710.5 Amendments. (a) Subsequent to an approval or contingent approval of an application under this Part, any change, as set forth in paragraphs (b)(1) through ([7]3) of this section, shall constitute an amendment to the application, and the applicant shall submit appropriate documentation as may be required by the commissioner pursuant to this Part in support of such amendment. The amended application shall be referred to the health systems agency having jurisdiction and the [State Hospital Review] Public Health and Health Planning Council for their reevaluation and recommendations. The approval of the commissioner shall be obtained for any such amended application.

(b) Any of the following shall constitute an amendment:

(1) a change in the method or terms of financing unless the applicant can demonstrate, to the satisfaction of the commissioner, that such change in the method or terms of financing will not result in a more expensive project on a present-value basis for third-party payors when evaluated over the expected life of the project, or that such change will not result in an increase in the cost of the project, on a present value basis over its expected life, in excess of ten percent of approved project costs or \$15 million, whichever is less;

(2) an increase in the total basic costs of construction as originally approved which is in excess of ten percent, or \$15,000,000, whichever is less, of the approved total basic costs of construction, provided such increase exceeds \$6,000,000 and the cost increase is not a result of local zoning and planning issues addressed below in paragraph (2) of subdivision (c) of this section;

(3) a reduction in construction, renovation or modernization which accounted for 15 percent or more of the total basic costs of construction of the application as approved

without a corresponding reduction in the total basic costs of construction, subject to consideration of fixed costs;

(4) a substantial change in the terms of any agreement to construct, renovate or acquire, through a purchase, lease or other arrangement, any land or building;]

([5]1) a change in the number and/or types of beds and/or services, other than a reduction of service which would be subject to administrative review;

([6]2) a change in the location of the site of the construction if outside the facility's planning area as identified in Part 709. If the change in site, within the facility's planning area, impacts geographic accessibility in such planning area, the commissioner may before making any finding that such change is in the best interest of the planning area seek the recommendation of the [State Hospital Review] Public Health and Health Planning Council and the health systems agency having geographical jurisdiction. In addition, for applications to establish diagnostic and treatment centers which were not reviewed competitively within a batch, a change of site within a planning area shall not constitute an amendment pursuant to the provisions of this section and shall require only the prior approval of the commissioner; or

([7]3) any change in the applicant.

(c)(1) If the commissioner determines that increases in total project costs or total basic costs of construction are due to factors of an emergency nature such as labor strikes, fires, floods or other natural disasters, or factors beyond the control of the applicant, or modifications to the architectural aspects of the application which are made on the recommendation of the department, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the

health systems agency and the council pursuant to this Part. However, failure of the applicant to obtain financing or appropriate environmental and zoning permits or approvals shall not be deemed to be beyond the control of the applicant.

(2) If the applicant can document by evidence acceptable to the commissioner that increases in total project costs or total basic costs of construction were caused by delays in obtaining zoning or planning approvals which were beyond its control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency and the council pursuant to this part. The evidence should clearly demonstrate that the applicant had timely pursued the zoning or planning permits and in addition that the applicant has now obtained all such required permits and approvals and is prepared to proceed with the project.

(3) If the applicant can document, by evidence acceptable to the commissioner, that increases in the total basic cost of construction were caused by inflation in excess of that estimated and approved in the application and that such inflation has affected the total basic cost of construction as a result of delays which were beyond the applicant's control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the health systems agency[, the State Hospital Review and Planning Council] and the Public Health and Health Planning Council pursuant to this Part. The evidence shall demonstrate clearly that the increase in inflation exceeds that estimated and approved in the application, and that any delays resulting in such inflationary cost increases were beyond the applicant's control.

(d) The applicant must obtain the prior approval of the commissioner for any change relating to the program scope or functional space concept of the project, total project

costs or increase in total basic costs of construction, a change in the ownership interest in the land, building or equipment relating to the proposal, a change in the location of the site of the construction, or interest rates relating to the financing of any aspect of the project, regardless of whether such change constitutes an amendment under this section.

* * *

NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by sections 2801-a(1) and 2802(1) of the Public Health Law, the Department proposes to amend subdivision (b) of Section 600.3 and subdivision (b) of Section 710.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Basis:

The proposed rule changes would revise provisions of section 600.3 and section 710.5 that require review by the Public Health and Health Planning Council (PHHPC) of certain changes to Certificate of Need (CON) applications for projects awaiting approval or already approved by the PHHPC but which have not yet proceeded to actual establishment or construction. These amendments to the rules would reduce the processing time for amended CON applications, which would result in cost savings for the applicants and in more timely access to the services to be delivered by proposed new entities or through construction activities proposed by established providers. Because of these benefits to hospitals, nursing homes, diagnostic and treatment centers (clinics) and other entities regulated by Article 28 of the Public Health Law, the Department anticipates no objection to the proposed rule changes. On the contrary, representatives of various health care provider associations have expressed support for these changes as part of a larger effort by the Department and the PHHPC to streamline the CON review process.

The Department also anticipates no objection to the technical changes being undertaken in the proposed rules. The first of these changes is to substitute reference to the Public Health and Health Planning Council for the former State Hospital Review and Planning Council and the former Public Health Council in sections 600.3 and 710.5. The second is to change the term “modification” to “revision” in section 600.3 where it refers to applications not yet acted upon by the Council. This is because the term “modification” in 600.3 also refers to applications acted upon by the Council for which subsequent proposed changes do not constitute amendments. The proposed change in terminology would resolve this ambiguity in the use of the term “modification” and do away with the confusion it sometimes causes for applicants in proposing changes to their CON applications, whether before or after Council approval. A third technical amendment would remove the provision in section 600.3 that requires applicants to submit nine copies of any proposed revision of an application. This change reflects the Department’s implementation of an electronic system for the submission and processing of CON applications, which eliminates the costs associated with the paper copies currently required of applicants.

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JOB IMPACT STATEMENT

The proposed rules simplify the process for the approval of amendment of approved CON applications for the establishment and construction of hospitals, nursing homes, clinics and other health care facilities subject to Article 28 of the Public Health Law. Because these rules represent only a change in application procedures, they will have no impact on jobs and employment opportunities, in the health care sector or elsewhere.

Pursuant to the authority vested in the Commissioner of Health pursuant to section 2803 of the Public Health Law, the Official Compilation of Title 10 of the Codes, Rules and Regulations of the State of New York (“NYCRR”) is amended to add a new Part 404, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Part 404 is added to Subchapter A of Chapter V of 10 NYCRR, to read as follows:

PART 404

INTEGRATED OUTPATIENT SERVICES

- 404.1 Background and Intent
- 404.2 Legal Base
- 404.3 Applicability
- 404.4 Definitions
- 404.5 Integrated Care Models
- 404.6 Organization and Administration
- 404.7 Treatment Planning
- 404.8 Policies and Procedures
- 404.9 Integrated Care Services
- 404.10 Environment
- 404.11 Quality Assurance, Utilization Review and Incident Reporting
- 404.12 Staffing

404.13 Recordkeeping

404.14 Application and Approval

404.15 Inspection

§ 404.1 Background and Intent

(a) Physical and behavioral health conditions (i.e., mental illness and/or substance use disorders) often occur at the same time. Persons with behavioral disorders frequently experience chronic illnesses such as hypertension, diabetes, obesity, and cardiovascular disease. These illnesses can be prevented and are treatable. However, barriers to primary care, as well as the difficulty in navigating complex healthcare systems, are a major obstacle to care. Primary care settings have, at the same time, become a gateway to the behavioral health system, as people seek care for mild to moderate behavioral health needs (e.g., anxiety, depression, or substance use) in primary health care settings.

(b) The term “integrated care” describes the systematic coordination of primary and behavioral health care services. Health care providers have long recognized that many patients have both physical and behavioral health care needs, yet physical and behavioral healthcare services have traditionally been provided and paid for separately. The growing awareness of the prevalence and cost of comorbid physical and behavioral health conditions, and the increased recognition that integrated care can improve outcomes and achieve savings, has led to increasing acceptance of delivery models that integrate physical and behavioral health care. Moreover, most patients prefer to have their physical and behavioral health care delivered in one place, by the same team of clinicians.

(c) The purpose of these regulations is to prescribe standards for the integration of physical and behavioral health care services in certain outpatient programs licensed by the Department of Health, the Office of Mental Health, and/or the Office of Alcoholism and Substance Abuse Services.

§ 404.2 Legal Base

(a) Office of Mental Health.

(1) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(2) Section 7.15 of the Mental Hygiene Law charges the Commissioner of Mental Health with the responsibility for planning, promoting, establishing, developing, coordinating, evaluating and conducting programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of persons with mental illness. Such law further authorizes the Commissioner to take all actions that are necessary, desirable, or proper to carry out the statutory purposes and objectives of the Office of Mental Health, including undertaking activities in cooperation and agreement with other offices within the Department of Mental Hygiene, as well as with other departments or agencies of state government.

(3) Section 31.04 of the Mental Hygiene Law authorizes the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults

diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

(4) Sections 31.07, 31.09, 31.13, and 31.19 of the Mental Hygiene Law authorize the Commissioner of Mental Health or his or her representatives to examine and inspect such programs to determine their suitability and proper operation. Section 31.16 authorizes such Commissioner to suspend, revoke or limit any operating certificate, under certain circumstances.

(5) Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner of Mental Health in any inspection or investigation, permitting such Commissioner to inspect its facility, books and records, including recipients' records, and making such reports, uniform and otherwise, as are required by such Commissioner.

(6) Article 33 of the Mental Hygiene Law establishing basic rights of persons diagnosed with mental illness.

(7) Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

(b) Department of Health. Section 2803 of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the provisions of Article 28 of

the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

(c) Office of Alcoholism and Substance Abuse Services.

(1) Section 19.07(c) of the Mental Hygiene Law (MHL) charges the Office of Alcoholism and Substance Abuse Services with the responsibility to ensure that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment that is effective and of high quality.

(2) Section 19.07(e) of the MHL authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to adopt standards including necessary rules and regulations pertaining to chemical dependence treatment services.

(3) Section 19.09(b) of the MHL authorizes the commissioner of Alcoholism and Substance Abuse Services to adopt regulations necessary and proper to implement any matter under his/her jurisdiction.

(4) Section 19.21(b) of the MHL requires the commissioner of Alcoholism and Substance Abuse Services to establish and enforce regulations concerning the licensing, certification, and inspection of chemical dependence treatment services.

(5) Section 19.21(d) of the MHL requires the Office of Alcoholism and Substance Abuse Services to establish reasonable performance standards for providers of services certified by the Office.

(6) Section 19.40 of the MHL authorizes the commissioner of Alcoholism and Substance Abuse Services to issue operating certificates for the provision of chemical dependence treatment services.

(7) Section 32.01 of the MHL authorizes the commissioner of Alcoholism and Substance Abuse Services to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the MHL.

(8) Section 32.07(a) of the MHL authorizes the commissioner of Alcoholism and Substance Abuse Services to adopt regulations to effectuate the provisions and purposes of Article 32 of the MHL.

(9) Section 32.05(b) of the MHL provides that a controlled substance designated by the commissioner of the New York State Department of Health as appropriate for such use may be used by a physician to treat a chemically dependent individual pursuant to section 32.09(b) of the MHL.

(10) Section 32.09(b) of the MHL provides that the commissioner of Alcoholism and Substance Abuse Services may, once a controlled substance is approved by the commissioner of the New York State Department of Health as appropriate for such use, authorize the use of such controlled substance in treating a chemically dependent individual.

(d) Pursuant to section 365-l(7) of the Social Services Law and Part L of Chapter 56 of the Laws of 2012 the Commissioners of the Office of Mental Health, Office of Alcoholism and Substance Abuse Services and Department of Health are jointly authorized to establish operating, reporting and construction requirements, as well as joint survey requirements and procedures for entities operating under the auspices of one or more such agencies in order to integrate the delivery of health and behavioral health services in an efficient and effective manner.

§ 402.3 Applicability

(a) The provisions of this Part shall apply to providers seeking approval to provide integrated care services at a single outpatient site (host site). This includes locations licensed under Article 28 of the Public Health Law as diagnostic and treatment centers, extension clinics as defined in paragraph (g) of section 401.1 of Title 10 or general hospital outpatient programs, Chemical Dependence Outpatient Services certified under Article 32 of Mental Hygiene Law or Clinic Treatment Programs licensed under Article 31 of Mental Hygiene Law.

(b) The standards apply to providers certified or licensed by at least two of the said participating state agencies. The initiative seeks to promote increased access to physical and behavioral health services at a single site and to foster the delivery of integrated services. The services are intended to supplement the care of enrolled clients of the host program who need the additional services. Whenever these standards are utilized, appropriate policy and procedural standards must be in place to ensure safety and welfare of patients and staff.

(c) The requirements of this Part shall be in addition to the requirements of the state agency that licensed or certified the proposed host site.

(d) An integrated service provider shall continue to ensure documentation as required per 18 NYCRR section 504.3, 517.3(b), 518.1(c), and 518.3(b).

(e) Integrated services providers of mental health services shall continue to ensure compliance with 18 NYCRR 505.25.

(f) Integrated services providers of substance use disorder services shall continue to ensure compliance with 18 NYCRR 505.27.

(g) With respect to billing for medical assistance, an integrated service provider shall continue to ensure compliance with 18 NYCRR 540.6(a) and 540.6(e).

§ 402.4 Definitions

For the purposes of this Part:

(a) "Behavioral health care" means care and treatment of mental illness and/or substance use disorders.

(b) "Diagnostic and treatment center" means a medical facility as defined in 10 NYCRR section 751.1 or an extension clinic as defined in 10 NYCRR 401.1(g).

(c) "Governing authority" means the entity that substantially controls the operator or provider of service and to which a state licensing agency has issued an operating certificate. The governing authority is the body possessing the right to appoint and remove directors or officers, to approve bylaws or articles of incorporation, to approve strategic or financial plans for a provider or service, or to approve operating or capital budgets for a provider of services.

(d) "General hospital outpatient program" means a distinct part or unit within a general hospital as defined by section 2801(10) of the Public Health Law through which outpatient services, other than hospital-based ambulatory surgery services, are provided.

(e) "Integrated care services" means the systematic coordination of evidence-based physical and behavioral health care in clinics licensed by one or more state licensing

agencies in order to promote health and better outcomes, particularly for populations at risk.

(f) "Integrated services provider" means a provider holding multiple operating certificates or licenses to provide outpatient services, who has also been authorized by a Commissioner of a state licensing agency to deliver identified integrated care services at a specific site in accordance with the provisions of this Part.

(g) "Medical director" is a physician who is responsible for the medical services provided by the integrated care services program, for the overall direction of the medical procedures provided and the direct supervision of medical staff in the performance of medical services.

(h) "Outpatient services" means clinic services provided by a diagnostic and treatment center or general hospital outpatient program, a mental health clinic licensed pursuant to Article 31 of the Mental Hygiene Law, or a substance disorder clinic licensed pursuant to Article 32 of the Mental Hygiene Law.

(i) "Primary care services" means services provided by a physician, nurse practitioner, or midwife acting within his or her lawful scope of practice under Title VIII of the Education Law and who is practicing in a primary care specialty.

(j) "State licensing agency" means the state agency with statutory authority to license or certify a provider of outpatient services and designated in accordance with the provisions of this Part with responsibility to monitor compliance by an integrated care services program with the provisions of this Part. State licensing agency includes the Department of Health, the Office of Mental Health, or the Office of Alcoholism and

Substance Abuse Services, as applicable.

§ 404.5 Integrated Care Models

Providers of integrated care services programs will be approved and designated to deliver integrated care services as one of the following models:

(a) Primary Care Host Model: Given the recognition that the general health care system can serve as a gateway to the behavioral health care system, treatment for substance use disorder and/or mental illness is integrated into a single outpatient physical health setting. In this model, a diagnostic and treatment center or a general hospital outpatient program shall be the host site and the Department of Health shall be responsible for monitoring compliance by an integrated care services program with the provisions of this Part.

(b) Mental Health Behavioral Care Host Model: Given that persons with mental health disorders frequently have a co-occurring substance use disorder and/or also experience chronic illnesses, treatment for substance use disorder and/or physical health is integrated into a single outpatient mental health setting. In this model, an Article 31 clinic treatment program shall be the host site and the Office of Mental Health shall be responsible for monitoring compliance by an integrated care services program with the provisions of this Part.

(c) Substance Use Disorder Behavioral Care Host Model: Given that persons with substance use disorders frequently have a co-occurring mental health disorder and/or also experience chronic illnesses, treatment for mental illness and/or physical health is integrated into a single outpatient substance use disorder treatment setting. In this model,

an Article 32 chemical dependence outpatient treatment clinic shall be the host site and the Office of Alcoholism and Substance Abuse Services shall be responsible for monitoring compliance by an integrated care services program with the provisions of this Part.

§ 404.6 Organization and Administration

(a) An operator may only promote itself as an integrated services provider if the operator has been properly certified by an appropriate state licensing agency, pursuant to this Part.

(b) Governing Body

(1) The established governing authority or operator shall be legally responsible for the quality of patient care services, for the conduct and obligations of the integrated services provider and for ensuring compliance with all Federal, State and local laws, including the New York State Public Health Law, Mental Hygiene Law, and the Education Law.

(2) In order to achieve and maintain generally accepted standards of professional practice and patient care services, the governing body shall establish, cause to implement, maintain and, as necessary, revise its practices, policies and procedures for the ongoing evaluation of the services operated or delivered by the integrated care services program and for the identification, assessment and resolution of problems that may develop in the conduct of the program.

§ 404.7 Treatment Planning

(a) An integrated service provider offering behavioral health services shall provide treatment planning for each patient. Behavioral health treatment planning is an ongoing process of assessing the behavioral health status and needs of the patient, establishing his or her treatment and rehabilitative goals, and determining what services may be provided by the program to assist the patient in accomplishing these goals. The treatment planning process includes, where appropriate, a means for determining when the patient's goals have been met to the extent possible in the context of the program, and planning for the appropriate discharge of the patient from the program. The treatment planning process is a means of reviewing and adjusting the services necessary to assist the patient in reaching the point where he or she can pursue life goals, without impediment resulting from his or her illness.

(b) Patient participation in treatment planning shall be documented by the signature of the patient or the signature of the person who has legal authority to consent to care on behalf of the patient or, in the case of a child, the signature of a parent, guardian, or other person who has legal authority to consent to health care on behalf of the child, as well as the child, where appropriate, provided, however, that the lack of such signature shall not constitute noncompliance with this requirement if the reasons for non-participation by the patient are documented in the treatment plan. The patient's family and/or collaterals (i.e., significant others) may participate as appropriate in the development of the treatment plan and should be specifically identified in the treatment plan.

(c) Each patient must have a written patient-centered treatment plan developed by the responsible clinical staff member and patient. Standards for developing a treatment plan include, but are not limited to:

(1) For mental health or substance use behavioral care host models, treatment plans shall be completed no later than 30 days after admission. For primary care host models, treatment plans shall be completed no later than 30 days after the decision to begin any mental health and/or substance use services beyond pre-admission assessment.

(2) For services provided to a recipient enrolled in a managed care plan which is certified by the Commissioner of the Department of Health or commercial insurance plan which is certified or approved by the Superintendent of the Insurance Department, treatment plans shall be prepared pursuant to such other plan's requirement as shall apply.

(3) If the patient is a minor, the treatment plan must also be developed in consultation with his/her parent or guardian unless the minor is being treated without parental consent as authorized by Mental Hygiene Law section 22.11.

(4) For patients moving directly from one program to another, the existing treatment plan may be used if there is documentation that it has been reviewed and, if necessary, updated within 14 days of transfer.

(d) The treatment plan should include physical health, behavioral health, and social service needs. In addition, specific consideration of the need for Health Home care coordination should be noted when appropriate.

(e) The treatment plan shall include identification and documentation of the following:

- (1) the patient-identified problem areas specified in the admission assessment;
- (2) the treatment goals for these problem areas (unless deferred);
- (3) the objectives that will be used to measure progress toward attainment of treatment goals and target dates for achieving completion of treatment goals;
- (4) address and identify methods and treatment approaches that will be utilized to achieve the goals developed by the patient and primary counselor;
- (5) schedules of individual and group counseling;
- (6) each diagnosis for which the patient is being treated at the program;
- (7) descriptions of any additional services (e.g., vocational, educational, employment) or off-site services needed by the patient, as well as a plan for meeting those needs; and
- (8) the signature of the qualified health professional, or other licensed individual within his/her scope of practice involved in the treatment.

(f) All treatment plans should be reviewed and updated as clinically necessary based upon the patient's progress, changes in circumstances, the effectiveness of services, and/or other appropriate considerations. Such reviews shall occur no less frequently than every 90 days, or the next provided service, whichever shall be later. For services provided to a recipient enrolled in a managed care plan which is certified by the Commissioner of the Department of Health or commercial insurance plan which is certified or approved by the Superintendent of the Insurance Department, treatment plans may be reviewed pursuant to such other plan requirement as shall apply.

(g) Treatment plan reviews shall include the input of relevant staff, as well as the recipient, family members and collaterals, as appropriate. The periodic review of the treatment plan shall include the following:

- (1) assessment of the progress of the patient in regard to the mutually agreed upon goals in the treatment plan;
- (2) adjustment of goals and treatment objectives, time periods for achievement, intervention strategies or initiation of discharge planning, as appropriate;
- (3) an evaluation of physical health status; and
- (4) the signature of the qualified health professional, or other licensed individual within his/her scope of practice involved in the treatment.

§ 404.8 Policies and Procedures

An integrated service provider shall have written policies, procedures, and methods governing the provision of services to patients, including a description of each service provided. These policies, procedures, and methods shall be reviewed annually and revised as necessary. They shall address, at a minimum, the following:

- (a) admission criteria;
- (b) evaluations and treatment plans;
- (c) screening for chemical dependence, mental health, and/or physical health issues;
- (d) the provision of medical services, including screening and referral for associated physical or behavioral health conditions;

- (e) ensuring prompt follow-up action on patients with abnormal test results or physical findings;
- (f) identification of specific support and ancillary providers, where appropriate, and methods for coordinating such service delivery;
- (g) appropriate transfer and referral procedures to and from other services;
- (h) discharge criteria;
- (i) procedures for handling patient emergencies and identification of available off-hour emergency services seven days per week, 24 hours per day, including, but not limited to, detoxification, withdrawal and acute psychiatric services;
- (j) ensuring that emergency equipment and staff prepared to care for emergencies are provided in accordance with the services provided at the host site, and equipment is maintained in working order;
- (k) the continuity of care, including regular participation of all integrated care services staff in case conferences, in-service training and staff meetings;
- (l) the prescription and administration of medication which shall be consistent with applicable Federal and State laws and regulations;
- (m) discharge criteria;
- (n) policies and procedures for investigating, controlling and preventing infections in the host site. The policies and procedures shall include those for:
 - (1) the isolation of patients with communicable or infectious diseases or patients suspected of having such diseases;
 - (2) training all personnel rendering care to such patients in the employment of standard infection control techniques;

(3) obtaining periodic reports of nosocomial infections (nosocomial infections shall include an increased incidence or outbreak of disease due to biological, chemical or radioactive agents or their toxic products occurring in patients or persons working in the host site); and

(4) reporting immediately to the regional health director or associate health commissioner for New York City affairs the presence of nosocomial infections and to the city, county or district health officer the presence of any communicable disease as defined in section 2.1 of Title 10 NYCRR (State Sanitary Code);

(o) public health education and screening with regard to tuberculosis, sexually transmitted diseases, hepatitis, and HIV/AIDS prevention and harm reduction; and

(p) the requirement of the mandatory offer of HIV testing in accordance with section 2781-a of Article 27-F of the Public Health Law.

§ 404.9 Integrated Care Services

(a) Physical Health Primary Care Services

(1) *General Principles.* Integrated services providers of primary care services shall effectively meet patient physical health needs by:

(i) providing patient care in a continuous manner by the same health care practitioner, whenever possible;

(ii) appropriately referring to other health care facilities or health care practitioners for services not available;

(iii) identifying, assessing, reporting and referring cases of suspected child abuse or neglect;

(iv) identifying, assessing, reporting and referring cases of suspected or confirmed domestic violence victims;

(v) ensuring that all staff receive education in the identification, assessment, reporting and referral of cases of suspected child abuse or maltreatment and identification and treatment of victims of domestic violence; and

(vi) developing a written plan of treatment which shall be periodically revised, as necessary, in consultation with other health care professionals.

(2) Provision of Primary Care Services

(i) All primary care services shall be provided in a manner that safely and effectively meets the needs of the patients served in the integrated care services program.

(ii) Integrated care services programs delivering primary care services must have sufficient staff and appropriate equipment to deliver primary care services.

(iii) Integrated services providers delivering primary care services shall conduct periodic reviews of its integration of primary care services with behavioral health services as part of its overall quality assurance program.

(iv) Integrated services providers delivering primary care services shall assign a medical director to be responsible for the primary care services.

(v) Primary care services provided within the specialty of OB/GYN are limited to routine gynecologic care and family planning provided pursuant to 10 NYCRR 753.

(vi) Primary care services shall not include prenatal care, dental services and ambulatory surgery which includes any procedure that requires more than minimal sedation or local anesthesia, unless specifically authorized by the Department of Health.

(vii) Health care practitioners, or their delegate, shall provide their patient complete and current information concerning his or her diagnosis, treatment and prognosis in terms the patient can be reasonably expected to understand and necessary for the patient to give informed consent prior to the start of any nonemergency procedure or treatment or both. An informed consent shall include, at a minimum, the provision of information concerning the specific procedure or treatment or both, the reasonably foreseeable risks involved, and alternatives for care or treatment, if any, as a reasonable medical practitioner under similar circumstances would disclose in a manner permitting the patient to make a knowledgeable decision. A patient also may refuse treatment to the extent permitted by law and to be fully informed of the medical consequences of his/her action.

(b) Mental Health Services

(1) Integrated services providers of mental health care shall offer each of the following mental health services, to be provided consistent with patients' conditions and needs, and which include:

(i) Outreach;

(ii) Crisis Intervention:

(a) mental health crisis intervention services must be available 24 hours a day/7 days per week.

(b) after hours coverage may be provided directly by the integrated services provider or pursuant to a Clinical Services Contract which must require, at a minimum, that in the event of a crisis, the nature of the crisis and any measures taken to address such crisis are communicated to the primary care clinician or other designated clinician involved in the individual's treatment in the primary care component of the integrated care services program on the next business day.

(iii) Psychotropic medication treatment, including injectable psychotropic medication administration for adult patients;

(iv) Psychotherapy services, including but not limited to:

(a) Family/Collateral psychotherapy;

(b) Group psychotherapy; and

(c) Complex Care Management.

(1) The following optional services may be offered:

(i) Developmental testing (for children and adolescents);

(ii) Psychological testing;

(iii) Psychiatric consultation; or

(iv) Injectable Psychotropic medication administration for patients who are minors.

(2) Notwithstanding 14 NYCRR Part 599, mental health services shall be delivered pursuant to section 404.7 of this Part.

(3) Integrated services providers delivering mental health services shall conduct periodic reviews of the integration of primary care and/or chemical dependence services as part of its overall quality assurance program.

(c) Substance Use Disorder Services

(1) For purposes of this subdivision, the term “clinical staff” shall mean staff who provide services directly to patients as prescribed in the treatment/recovery plan; including licensed medical staff, credentialed or licensed staff, non-credentialed staff, and student interns.

(2) Integrated services providers of substance use disorder services shall offer each of the following services, to be provided consistent with patients’ conditions and needs:

(i) Counseling, which can be delivered via two distinct methods:

(a) Individual counseling, which is a face-to-face service between a clinical staff member and a patient focused on the needs of the patient to be delivered consistent with the treatment/recovery plan, its development, or emergent issues. Individual counseling must be provided with a frequency and intensity consistent with the individual needs of each unique patient, as prescribed by the responsible clinical staff member; and

(b) Group counseling, which is a face-to-face service between one or more clinical staff member and multiple patients at the same time, to be

delivered consistent with patient treatment/recovery plans, their development, or emergent issues. Group counseling must contain no more than 15 patients in each group counseling session.

- (2) Education about, orientation to, and the opportunity for participation in, available and relevant peer support and mutual assistance groups; and
- (3) Chemical abuse and dependence awareness and relapse prevention.
- (4) An integrated services provider of chemical dependence services shall:
 - (i) promote the achievement and maintenance of recovery from chemical dependence and abuse;
 - (ii) improve functioning and development of necessary recovery management skills so the patient can be treated in the least intensive environment; and
 - (iii) develop individualized treatment/recovery plans to support the achievement and maintenance of recovery from chemical dependence and abuse, the attainment of economic self-sufficiency (including, where appropriate, the ability to sustain long-term productive employment), and improvement of the patient's quality of life.
- (5) Integrated services providers delivering chemical dependence services shall conduct periodic reviews of the integration of primary care and/or mental services as part of its overall quality assurance program.

§ 404.10 Environment

(a) The minimum physical plant requirements necessary for certification for existing facilities to provide integrated care services are described herein. Providers licensed or

certified by a state licensing agency after the effective date of this Part that wish to provide integrated care services or anticipate new construction or significant renovations shall comply with the requirements under Part 711 (General Standards of Construction) and Part 715 (Standards of Construction for Freestanding Ambulatory Care Facilities) of Title 10 of New York Codes, Rules and Regulations.

(b) Outpatient clinic sites proposing to integrate services pursuant to these standards must currently be in compliance with the applicable state licensing agency's environmental standards currently governing the site.

(c) Standards for Integrated Care Services Clinics. In addition to being in compliance with the applicable state licensing agency's environmental standards currently governing the site as required under subdivision (b) of this section, integrated services providers shall meet the following requirements:

(1) General Facility Requirements

(i) A current and accurate floor plan, specifying room locations, dimensions and functions will be provided to each applicable state licensing agency. Program space, except medical examination and treatment rooms, may be shared between certified outpatient services pursuant to an approved schedule. Individual and group rooms should not be utilized for multiple services simultaneously.

(ii) An adequately furnished waiting area shall be available to those waiting for services and shall be supervised to control access to the facility. There should be sufficient separation and supervision of various treatment groups (e.g. children) to ensure safety.

(iii) Programs shall ensure accessibility for person with disabilities, including availability of accessible bathroom facilities.

(iv) Sufficient space for individual and group sessions consistent with the number of people served and the service offered shall be available. Space should afford visual and acoustical privacy for both individuals served and staff.

(v) Programs shall have sufficient and appropriate furnishings and program related equipment and materials for the population served.

(vi) Areas for the proper storage, preparation and use or dispensing of medications and medical supplies and equipment shall be made available. Sharps containers shall be provided and secured, syringes and other supplies should be securely stored, and provisions for holding medical/Red Bag waste are required.

(vii) Programs shall provide for controlled access to and maintenance of records and confidentiality of all patient information.

(viii) Annual inspection and testing of the existing fire alarm system, including battery operated smoke detectors, fire extinguishers, emergency lighting systems, illuminated exit signs and environmental controls and heating/cooling systems shall be conducted.

(ix) Facilities should be maintained in a clean and responsible manner which protects the health and safety of all occupants.

(2) Specific Facility Requirements for Integrating Primary Care Services

(i) Notwithstanding Part 710 (Approval of Medical Facility Construction), Part 711 (General Standards of Construction) and Part 715 (Standards of Construction for Freestanding Ambulatory Care Facilities) of

Title 10 NYCRR, physical plant standards under this sub-clause apply to a behavioral health clinic provider authorized to integrate physical health services with no more than 3 proposed examination rooms for physical health services.

- (a) Clean Storage. A separate room or closet for storing clean and sterile supplies shall be provided. This storage shall be in addition to that of cabinets and shelves within the exam rooms or patient treatment areas.
- (b) An integrated service provider shall dispose of soiled linens and trash appropriately, either through specially-designated receptacles or separate holding room depending upon the volume of soiled materials generated.
- (c) If utilizing a receptacle for soiled linens and trash, such receptacle shall not exceed 32 gallons in capacity and shall meet the following:
 - (1) The average density of the container capacity in a room or space shall not exceed 0.5 gal/ft sq.
 - (2) A receptacle with a capacity of 32 gallon shall not exceed any 64 ft sq. area.
 - (3) Mobile soiled linen or trash collection receptacles greater than 32 gallons shall be located in a room protected as a hazardous area when not attended.

- (d) If exceeding 32 gallons in capacity at any given time, the integrated service provider shall maintain a soiled holding room.
- (1) Soiled holding is for separate collection, storage, and disposal of soiled materials.
 - (2) A soiled holding room shall be provided, if a dedicated space cannot be provided in the storage area.
 - (3) All contaminated materials shall be located and placed in a secured and sealed container and disposed of properly in. This shall be in the dedicated storage space that is secured and access is only by the Limited Service Clinic Staff.
 - (4) The containers used solely for recycling clean waste or for patient records awaiting destruction outside a hazardous storage area shall be a maximum capacity of 96-gallons. To allow the increase in size of containers used solely for recycling clean waste or for patient records awaiting destruction outside of a hazardous storage area to be a maximum of 96-gallons, but only if the provider/supplier is in compliance with sections 18/19.7.5.7.2 of the 2012 Life Safety Code.

(e) Toilet Rooms

- (1) A toilet room containing a hand-washing station shall be accessible from all examination and treatment rooms.

- (2) Public Toilet. Toilet(s) for public use shall be immediately accessible to the waiting area. In smaller units (less than four employees), the toilet may be unisex.
 - (3) Where a facility contains no more than three examination and/or treatment rooms, the patient toilet shall be permitted to serve waiting areas.
 - (4) Staff toilet and lounge shall be provided in addition to and separate from public and patient facilities.
 - (5) Centralized staff facilities are not required in small centers. In small centers, staff may utilize shared toilet facilities. Small centers less than four employees.
 - (6) Floors shall have a smooth, hard, non-absorbant surface that extends upward onto the walls at least 6 inches (152 mm).
Vinyl composition tile (VCT) shall not be used in toilet rooms.
- (f) Examination and Treatment Rooms
- (1) No more than 3 examination rooms shall be provided.
 - (2) At least one examination room shall be available for each provider who may be on duty at any one time.
 - (3) Provision shall be made to preserve patient privacy from observation from outside an examination/treatment room through an open door.
 - (4) A counter or shelf space for writing or electronic documentation shall be provided.

(g) Space Requirements

- (1) Each examination/observation room shall have a minimum clear floor area of 80 square feet (7.43 square meters).
- (2) The exam room can be a minimum of 72 square feet in size. If other exams rooms are handicap compliant or operational, assistance can be provided by the escort in and out of the exam room.
- (3) If three exams rooms are provided, two should be handicap accessible.
- (4) Room arrangement shall permit a minimum clear dimension of 2 feet 8 inches (81.28 centimeters) at each side and at the foot of the examination table, recliner, or chair.
- (5) The room has to be proportionally designed and clearances maintained in the exam room.

(h) Hand-Washing Stations

- (1) A hand-washing station shall be provided in each room where hands-on patient care is provided.
- (2) Hand sanitation dispensers shall be provided in addition to hand-washing stations.
- (3) Hand-washing basins/countertops shall be made of porcelain, stainless steel, or solid surface materials. Basins shall be permitted to be set into plastic laminate countertops if, at a

minimum, the substrate is marine-grade plywood (or equivalent) with an impervious seal.

(4) Sinks shall have well-fitted and sealed basins to prevent water leaks onto or into cabinetry and wall spaces.

(5) The water pressure at the fixture shall be regulated.

(6) Design of sinks shall not permit storage beneath the sink basin, and should accommodate ADA accessibility standards for clearance under the sink basin as required by Title 28 of the Code of Federal Regulations, Public Health Parts 35 and 36.

(i) Waiting Area

(1) The waiting area for patients and escorts shall be under staff control.

(2) The seating shall contain no fewer than two spaces for each consultation room and no fewer than 1.5 spaces for the combined projected capacity at one time of the group rooms.

(3) Where the psychiatric outpatient unit has a formal pediatrics service, a separate, controlled area for pediatric patients shall be provided.

(4) The waiting area shall accommodate wheelchairs.

(5) Provisions for drinking water shall be available for waiting patients. In shared facilities, provisions for drinking water may be outside the outpatient area if convenient for use.

(j) Corridor Allowed to be Used as a Waiting Area

- (1) Fixed furniture in egress corridor. The furniture must be securely attached to the floor or wall and can be on only one side of the corridor. Each grouping of furniture cannot exceed 50 square feet and must be at least 10 feet from other groupings.
- (2) Furniture is located so as to not obstruct access to building service and fire protection equipment, such as fire extinguishers, manual fire alarm boxes, shutoff valves, and similar equipment
- (3) Corridors throughout the smoke compartment are protected by an electrically supervised automatic smoke detection system, or the fixed furniture spaces are arranged and located to allow direct supervision by the facility staff from a nurses' station or similar space
- (4) The smoke compartment is protected throughout by an approved, supervised automatic sprinkler system.

(k) Combustible Decorations in Egress Corridors and Rooms

- (1) Combustible decorations are flame-retardant or are treated with approved fire-retardant coating that is listed and labeled for application to the material to which it is applied
- (2) The decorations meet the requirements of NFPA 701, Standard Methods of Fire Tests for Flame Propagation of Textiles and Films

- (3) The decorations exhibit a heat release rate not exceeding 100 kW when tested in accordance with NFPA 289, Standard Method of Fire Test for Individual Fuel Packages, using the 20 KW ignition source
- (4) The decorations, such as photographs, paintings, and other art, are attached directly to walls, ceiling, and non-fire rated doors in accordance with the following:
- i. Decorations on non-fire rated doors do not interfere with the operation or any required latching of the door.
 - ii. Decorations do not exceed 20 percent of the wall, ceiling, or door areas inside any room or space of a smoke compartment that is not protected throughout by an approved automatic sprinkler system.
 - iii. Decorations do not exceed 30 percent of the wall, ceiling, and door areas inside any room or space of a smoke compartment that is protected throughout by an approved supervised automatic sprinkler system.

(l) Existing openings in exit enclosures to mechanical equipment spaces that are protected by fire-rated door assemblies. These mechanical equipment spaces must be used only for non-fuel-fired mechanical equipment, must contain no storage of combustible materials, and must be

located in sprinklered buildings. This waiver allowance will be permitted only if the provider/supplier is in compliance with all other applicable 2000 LSC exit provisions, as well as with section 7.1.3.2.1(9)(c) of the 2012 LSC.

(ii) Behavioral health clinic providers authorized to integrate physical health services with more than 3 proposed examination rooms shall comply with the requirements under Part 710 (Approval of Medical Facility Construction), Part 711 (General Standards of Construction) and Part 715 (Standards of Construction for Freestanding Ambulatory Care Facilities) of Title 10 NYCRR.

(d) **Building Code Requirements**

(1) All services and facilities are required to adhere to applicable building codes as well as all local occupancy, use, building and zoning laws.

(2) A valid Certificate of Occupancy is required.

(3) NFPA 101 Life Safety Code, 2000 edition for Chapter 20 New Ambulatory Health Care, Chapter 21 Existing Ambulatory Health Care, Chapter 38 New Business, and Chapter 39 Existing Business occupancies.

(4) New York State Sanitary Code.

(5) All occupied areas shall be ventilated by natural and/or mechanical means.

(6) Air-handling duct systems shall meet the requirements of NFPA 90A.

§ 404.11 Quality Assurance, Utilization Review and Incident Reporting

(a) Quality Assurance

(1) Physical Health Services.

(i) Integrated services providers of physical health care shall ensure the development and implementation of a written quality assurance program that includes a planned and systematic process for monitoring and assessing the quality and appropriateness of patient care and clinical performance on an ongoing basis. The integrated care services program shall resolve identified problems and pursue opportunities to improve patient care.

(ii) The integrated care services program shall be supervised by the medical director. This responsibility may not be delegated.

(iii) There shall be a written plan for the quality assurance program which describes the program's objectives, organization, responsibilities of all participants, scope of the program and procedures for overseeing the effectiveness of monitoring, assessing and problem-solving activities.

(iv) The quality assurance process shall define methods for the identification and selection of clinical and administrative problems to be reviewed. The process shall include but not be limited to:

(a) the establishment of review criteria developed in accordance with current standards of professional practice for monitoring and assessing patient care and clinical performance;

(b) regularly scheduled reviews of medical charts, patient complaints and suggestions, reported incidents and other documents pertinent to problem identification;

- (c) documentation of all quality assurance activities, including but not limited to the findings, recommendations and actions taken to resolve identified problems; and
 - (d) the timely implementation of corrective actions and periodic assessments of the results of such actions.
 - (v) The scope of clinical and administrative problems selected to be reviewed for the purpose of quality assurance shall reflect the scope of services provided and the populations served at the center.
 - (vi) The outcomes of quality assurance reviews shall be used for the revision or development of policies and in granting or renewing staff privileges, as appropriate.
 - (vii) There shall be participation in the program by administrative staff and health-care professionals representing each professional service provided.
 - (viii) There shall be joint participation in the program by representatives from the behavioral health components of an integrated care services program; such participation shall include, but is not limited to, specific identification of quality improvement opportunities with respect to patient concerns and complaints, changes in regulatory requirements, or other factors, no less frequently than once every two years.
- Documentation shall be kept of all such reviews.

(ix) The findings, conclusions, recommendations and actions taken as a part of the quality assurance program shall be reported to the operator by the medical director. An annual report shall be submitted to the governing authority, which documents the effectiveness and efficacy of the integrated care services program in relation to its goals and quality assurance plan and indicate any recommendations and plans for improvement in its services to patients, as well as recommend changes in its policies and procedures.

(2) Behavioral Health Services

(i) Integrated services providers of mental health and/or chemical dependence services shall comply with all requirements of 14 NYCRR Part 599 or 822, as applicable, relating to quality assurance.

(ii) Integrated services providers of mental health and/or chemical dependence services shall prepare an annual report and submit it to its governing authority. This report must document the effectiveness and efficiency of the ambulatory care program in relation to its goals and quality assurance plan and indicate any recommendations and plans for improvement in its services to patients, as well as recommended changes in its policies and procedures.

(iii) Utilization review.

(a) Integrated services providers of mental health and/or chemical dependence services shall establish and implement a utilization

review plan. The utilization review plan must include participation by all component providers of the integrated care services program.

- (b) Integrated services providers of mental health and/or chemical dependence services may use a utilization review process developed by the state licensing agency or may develop its own utilization review process that is subject to approval by the state licensing agency.
- (c) Integrated services providers of mental health and/or chemical dependence services may perform its utilization review process internally; or it may enter into an agreement with another organization, competent to perform utilization review, to complete its utilization review process.
- (d) Utilization review must be conducted by at least one clinical staff member. No member shall participate in utilization review decisions relative to any patient he or she is treating directly.
- (e) The utilization review plan must include procedures for ensuring that retention criteria are met and services are appropriate. The utilization review plan must consider the needs of a representative sample of patients for continued treatment, the extent of the behavioral health problem, and the continued effectiveness of, and progress in, treatment. At a minimum, utilization review must include separate random samples based upon a patient's length of

stay, with larger samples for patients with longer lengths of stay. Utilization review must also be conducted for all active cases within the twelfth month after admission and every 90 days thereafter.

(f) Documentation of utilization review must be maintained providing evidence that the deliberations:

(1) were based on current progress in treatment relative to the applicable functional areas identified in the patient's comprehensive treatment/recovery plan;

(2) determined the appropriateness of continued stay at the outpatient level of care and intensity of services, as well as whether co-occurring disorder(s) require referral to outside services;

(3) determined the reasonable expectation of progress towards the accomplishment of the goals and objectives articulated in the patient's treatment/recovery plan, based on continued treatment at this level of care and intensity of services; and

(4) resulted in a recommendation regarding continuing stay, intensity of care and/or referral of this case.

(b) Incident Reporting

(1) OMH-host providers shall report incidents involving patients receiving mental health services in accordance with the provisions of 14 NYCRR Part 524.

(2) OASAS-host providers shall report incidents involving patients receiving chemical dependence services in accordance with the provisions of 14 NYCRR Part 836.

(3) DOH-host providers shall report incidents in accordance with the provisions of 10 NYCRR Part 405.6 or 10 NYCRR 751.10, as applicable.

§ 404.12 Staffing

(a) Personnel. The governing authority or operator shall ensure the employment of personnel without regard to age, race, color, sexual orientation, religion, sex or national origin. A personnel file shall be maintained for each employee.

(b) Integrated services programs that are providing primary care services shall ensure that:

(1) the health status of each employee is examined prior to the beginning of employment, which is sufficient in scope to ensure that the employee is free from a health impairment which is of potential risk to patients or which may interfere with the performance of his/her duties;

(2) a record of the following tests, procedures and examinations is maintained for all employees:

(i) a certificate of immunization against rubella which means:

(a) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of

Title 10 of the New York Codes of Rules and Regulations,
demonstrating serologic evidence of rubella antibodies;

(b) a document indicating one dose of live virus rubella vaccine was administered on or after the age of 12 months, showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization; or

(c) a copy of a document described in clause (a) or (b) of this subparagraph which comes from a previous employer or the school which the employee attended as a student; and

(ii) a certificate of immunization against measles, for all personnel born on or after January 1, 1957, which means:

(a) a document prepared by a physician, physician's assistant, specialist's assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of Title 10 of the New York Codes of Rules and Regulations, demonstrating serologic evidence of measles antibodies; or

(b) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization; or

(c) a document, indicating a diagnosis of the employee as having had measles disease, prepared by the physician, physician's assistant/specialist's assistant, licensed midwife or nurse practitioner who diagnosed the employee's measles; or

(d) a copy of a document described in clause (a), (b) or (c) of this subparagraph which comes from a previous employer or the school which the employee attended as a student;

(iii) if any licensed physician, physician's assistant/specialist's assistant, licensed midwife or nurse practitioner certifies that immunization with measles or rubella vaccine may be detrimental to the employee's health, the requirements of subparagraph (i) and/or (ii) of this paragraph relating to measles and/or rubella immunization shall be inapplicable until such immunization is found no longer to be detrimental to such employee's health. The nature and duration of the medical exemption must be stated in the employee's employment medical record and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the American Academy of Pediatrics and the Immunization Practices Advisory Committee of the U.S. Department of Health and Human Services); and

(iv) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection

of latent tuberculosis infection, prior to employment or affiliation and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat tuberculin skin test or blood assay. The medical staff shall develop and implement policies regarding positive outcomes; and

(v) an annual, or more frequent if necessary, health status reassessment to assure freedom from a health impairment which is a potential risk to the patients or might interfere with the performance of duties;

(vi) documentation of vaccination against influenza, or wearing of a surgical or procedure mask during the influenza season, for personnel who have not received the influenza vaccine for the current influenza season, pursuant to section 2.59 of Title 10 of the New York Codes of Rules and Regulations.

(3) each person delivering health care services wears identification indicating his/her name and title.

(c) Medical Director.

(1) Integrated care services programs that are providing primary care services shall have a medical director. The operator or governing authority shall be responsible for appointing a medical director who:

- (i) is qualified by training, experience, and administrative ability;
- (ii) is a physician licensed by and currently registered with the New

York State Education Department;

(iii) develops and recommends to the governing authority or operator policies and procedures governing patient care, medical staff and clinical privileges; and

(iv) is responsible for the supervision of the quality assurance program and reporting to the governing authority or operator.

(2) For integrated services providers of substance use disorder services, such medical director shall:

(i) hold a subspecialty board certification in addiction psychiatry from the American Board of Medical Specialties; or

(ii) hold an addiction certification from the American Society of Addiction Medicine; or

(iii) hold a certification by the American Board of Addiction Medicine (ABAM); or hold a subspecialty board certification in Addiction Medicine from the American Osteopathic Association;

(iv) shall possess a Federal DATA 2000 waiver (buprenorphine-certified), provided, however

(v) the program may have a consultation agreement with a full- or part-time physician who meets the requirements of this paragraph, or is exempted therefrom.

§ 404.13 Recordkeeping

(a) An integrated care services record shall be maintained for every individual who is admitted to and treated by an integrated services provider, and this may be accomplished

via a single integrated record for the individual. The integrated care record contents may be maintained in either paper (hardcopy) or electronic formats.

(b) Regardless of form or format, each integrated care services program shall establish a recordkeeping system which is maintained in accordance with recognized and accepted principles of recordkeeping.

(c) Each integrated care services program shall designate a staff member who has overall supervisory responsibility for the recordkeeping system. The recordkeeping supervisor shall ensure that:

(1) the integrated care record for each patient contains and centralizes all physical and behavioral health information which identifies the patient, justifies the treatment and documents the results of such treatment;

(2) entries in the integrated care record are current, legible to individuals other than the author, are authenticated with a signature of the person making the entry, date, and time;

(3) handwritten entries must be made in permanent, non-erasable blue or black ink or typed;

(4) information contained in the integrated care record is securely maintained, kept confidential, safeguarded from environmental damage, and made available only to authorized persons who have a need to know the information; and

(5) when a patient is treated by an outside provider, and that treatment is relevant to the patient's care, a clinical summary or other pertinent documents are obtained to promote continuity of care; if documents cannot be obtained, the reason must be noted in the integrated care record.

(d) The integrated care record format shall facilitate the ability to record the following information for each patient, as relevant:

(1) patient basic demographic information;

(2) patient physical health and behavioral health history:

(i) Physical health information

(a) physical examination reports

(b) diagnosis or medical impression

(c) diagnostic procedures/tests reports

(d) medical orders and anesthesia record

(e) immunization and drug history

(f) notation of allergic or adverse reactions to medications

(ii) Mental health information

(a) diagnosis or diagnostic impression

(b) psychosocial assessment

(c) mental health treatment history

(iii) Substance use information

(a) diagnosis or diagnostic impression

(b) the impact of the use of chemicals, including tobacco, on self and significant others

(c) prior periods of sustained recovery and how such recovery was

Supported.

(3) admission note;

(4) assessment of the patient's goals regarding basic treatment goals and needs;

- (5) treatment plan and applicable reviews;
- (6) dated progress notes that relate to goals and objectives of treatment;
- (7) discharge plan;
- (8) documentation of the services provided and any referrals made;
- (9) discharge summary;
- (10) dated and signed records of all medications prescribed by the clinic and other prescription medications being used by the patient, if applicable;
- (11) consent forms, if applicable; and
- (12) record of contacts with collaterals if applicable.

(e) Patient case records must be retained for a minimum period of six (6) years from the date of the last service provided to a patient or, in the case of a minor, for at least six years after the last date of service or three years after he/she reaches majority whichever time period is longer.

(f) Confidentiality

(1) Notwithstanding any other New York State regulation, In cases where component providers of an integrated care services program are governed by different state or federal laws and regulations protecting clinical records and information, the integrated care record shall be governed by the state and federal privacy rules and regulations that give the most protection to the record, unless it is possible to redact provisions of the record with more protection without compromising the purpose for which the record is being disclosed.

(2) An integrated care services program providing chemical dependence services must obtain patient consent prior to making any disclosures from the integrated care

record, unless the disclosure is authorized as an exception pursuant to federal regulations.

(3) AIDS and HIV information shall only be disclosed in accordance with Article 27-F of the Public Health Law.

§ 404.14 Application and Approval

(a) Application and Approval Process.

(1) Providers that possess at least two licenses/certificates from at least two separate state licensing agencies and are seeking approval to integrate services for which they are licensed or certified may submit an application to the state licensing agency of the host site.

(2) Applications shall be submitted in a format prescribed for all applicants and reviewed by the state licensing agency that regulates the services to be added, in conjunction with the state licensing agency with authority for the host clinic, as appropriate.

(3) Applications shall include information needed to demonstrate that the provider is:

(a) licensed or certified by the relevant state licensing agencies to provide services for which the provider is seeking to integrate;

(b) in compliance with all applicable requirements of the relevant state licensing agencies.

(c) in good standing at the time of application approval. A provider is in good standing if each clinic site for which the provider is licensed or certified to offer services:

(i) is licensed by the Office of Mental Health and has a 1 year or greater time frame on operating certificate (Tier 3 providers are not eligible to participate); and/or

(ii) is certified by the Office of Alcoholism and Substance Abuse Services and all of its programs have an operating certificate with partial or substantial compliance (2 or 3 years); and/or

(iii) has an operating certificate from the Department of Health and not currently under any enforcement actions;

(d) in compliance with the physical plant requirements under this Part; and

(e) a member of a health home designated by the Commissioner of Health pursuant to section 365-1 of the Social Services Law.

(4) Applications may include but not be limited to requests for information regarding services to be added and the plan for implementation, staffing, operating expenses and revenues, and utilization of services as they relate to integrated care services as described in this Part.

(5) The applicant shall supply any additional documentation or information requested by the state licensing agency of the host site, in conjunction with the other state licensing agencies as appropriate, within a stated timeframe of such request, unless an extension is obtained. The granting of a request for an extension shall be at the discretion of such state licensing agency of the host site. Failure to provide the additional documentation or information within the time prescribed shall constitute an abandonment or withdrawal of the application without any further action from the state licensing agency.

(6) The affected state licensing agency shall approve or disapprove an application in writing.

§ 404.15 Inspection

(a) The state licensing agency with authority for the host clinic shall have ongoing inspection responsibility for the integrated services clinic, pursuant to this Part. The purpose of the inspection is to ensure compliance with all applicable laws, rules, and regulations, as well as to determine the renewal term of the operating certificate or license, as applicable. The adjunct state licensing agency shall not duplicate inspection activities.

(b) The host state licensing agency shall consult with the adjunct state licensing agency on matters specific to the provision of such add-on services, as may be necessary to assure patient health and safety. Any significant deficiencies will immediately be referred for enforcement to the responsible state licensing agency. If at any point during the inspection, findings are identified that suggest imminent risk of serious harm or injury to patients, the inspector(s) will immediately contact their supervisor, who will consult with the adjunct state licensing agency, as applicable.

(c) Inspections shall be conducted utilizing a joint-licensing instrument, developed collaboratively by the three state licensing agencies. This standardized procedure will ensure consistency of the inspection process throughout the State and provide standardized reviews of the operations and services at each integrated services clinic. All deficiencies and/or corrective action will be overseen by the monitoring state licensing agency with notice to the adjunct state licensing agency or agencies, as applicable.

(d) Each integrated services clinic shall undergo an unannounced inspection which will occur prior to renewal of the Operating Certificate or License.

(1) At the start of the inspection, the inspector(s) will meet with integrated services clinic administrative staff to explain the purpose and scope of the inspection and request any documentation (e.g., policies; staffing information; etc.) that may be needed to facilitate the review.

(2) The inspection will include, but not be limited to, the following areas of review:

(f) on-site inspection of clinic appearance, conditions and general safety;

(g) evaluation of the sponsor, its management systems, and procedures;

(h) patient case record review;

(i) interviews of staff and patients;

(j) examination of staffing patterns and staff qualifications;

(k) analysis of statistical information contained in reports required to be submitted by the clinic;

(l) compliance with the reporting requirements;

(m) verification of staff credentials, as applicable;

(n) incident reporting requirements; and

(o) such other operating areas of activities as may be necessary or appropriate to determine compliance with applicable laws and regulations.

(3) At the conclusion of the inspection, the inspector(s) will meet with integrated services clinic administrative staff to discuss all deficiencies identified during the inspection.

(e) Upon completion of the inspection, a written report will be provided to the integrated services clinic which describes the results of the inspection, including each regulatory deficiency identified, if any. The provider of services shall take all actions necessary to correct all deficiencies reported. The provider of services shall submit a plan of correction to the state licensing agency with authority for the host clinic within 30 days, which states the specific actions taken or planned to achieve compliance with identified requirements. Any planned actions described in the plan of correction must be accompanied with a timetable for their implementation.

(f) If the provider of services fails, within the specified or an otherwise reasonable time, to correct any reported deficiencies, or fails to maintain satisfactory compliance with applicable laws, rules and regulations, the commissioner of the state licensing agency with authority for the host clinic may revoke, suspend or limit the operating certificate or license or levy a civil fine for such failures, in accordance with applicable regulations.

(g) Concurrently, each integrated services clinic shall undergo a fiscal viability review which will include an assessment of the financial information of the provider of services. Such information shall be submitted in intervals and in a form prescribed by the state licensing agency with authority for the host clinic, for compliance with minimum standards established by the state licensing agency, in order to determine the provider's fiscal capability to effectively support the authorized services.

(h) Providers of services that fail to meet the minimum standards of the state licensing agency with authority for the host clinic shall be required to submit a financial

recovery plan setting forth the specific actions to be taken to meet the minimum standards within a reasonable time frame.



Public Health and Health Planning Council

Project # 142005-C
Strong Memorial Hospital

Program: Hospital
Purpose: Construction

County: Genesee
Acknowledged: July 7, 2014

Executive Summary

Description

Strong Memorial Hospital, an 830-bed not-for-profit tertiary care teaching hospital, is requesting approval to acquire the private practice of Batavia Radiation Oncology Associates, LLP, which is located at 264 Bank Street, Batavia (Genesee County). Strong Memorial Hospital will convert the private practice in radiation oncology to an Article 28 extension clinic, and expand the location's offered services to also include medical oncology. Concurrently, Strong Memorial Hospital will purchase the building that the practice currently occupies from Sparks & Hops Real Estate, LLC and renovate the 7,796 gross square footage associated with the facility, bringing it into compliance with the required regulations.

The current members and their ownership interests for both Batavia Radiation Oncology Associates, LLP (the private practice), and Sparks & Hops Real Estate, LLC (the real property owner) are: Kevin Mudd, M.D. at 50%, and Jan Dombrowski, M.D. at 50%.

DOH Recommendation
Contingent Approval

Need Summary

The proposed project is a conversion of a private practice that has one (1) linear accelerator unit. Strong Memorial Hospital intends to purchase the practice of the Batavia Radiation Oncology Associates and the building on Bank Street to convert it to an extension clinic that will offer therapeutic radiology services to patients in Genesee, Orleans, and Wyoming Counties. Proposed services are: Linear Accelerator, Medical

Services-Primary Care, Radiology-Therapeutic, and Therapy-Occupational.

The number of projected Radiology-Therapeutic linear accelerator treatments is 4,500 in year 1 and 4,860 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

The total acquisition cost of \$4,475,981 is broken out as follows: \$1,150,000 to acquire the private practice, and \$3,325,981 to acquire and renovate the real property. Strong Memorial Hospital will provide funding from its accumulated surplus.

Budget:

Revenues:	\$5,418,966
Expenses:	<u>\$3,810,836</u>
Gain/ (Loss)	\$1,608,130

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. A copy of the check must also be uploaded into NYSE-CON. [PMU]
2. Submission of an executed real property purchase agreement, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]
7. The anticipated construction completion date is on or before 11/1/2014. It is the applicant's responsibility to request revised construction dates if necessary. [AES]

Council Action Date

October 2, 2014

Need Analysis

Project Description

Strong Memorial Hospital (SMH) is requesting approval to certify a radiation oncology extension clinic through the conversion of a private practice at 262 Bank Street, Batavia, 14020, in Genesee County.

Background and Analysis

The proposed project is a conversion of a private practice that has one (1) linear accelerator (linac) unit. Strong Memorial Hospital's James P. Wilmot Cancer Center intends to purchase the practice of the Batavia Radiation Oncology Associates and the building on Bank Street to convert it to an Article 28 facility to improve access to cancer care for patients in Genesee, Orleans, and Wyoming Counties. Proposed services are: Linear Accelerator, Primary Medical Care O/P, Radiology-Therapeutic, and Therapeutic-Occupational. The number of projected Radiology-Therapeutic linear accelerator treatments is 4,500 in year 1 and 4,860 in year 3.

Batavia Radiation Oncology Associates is an existing practice that has one (1) linear accelerator unit and has provided radiation oncology services in Western New York since 1989. Strong Memorial Hospital seeks to purchase the practice and building at 262 Bank Street to convert it to an Article 28 facility and to expand SMH's medical oncology services.

SMH provides services to the communities of Monroe County and also to the communities of 15 counties in the region.

In 2013, SMH (Main Campus and Two Extension Clinics) provided a total of 30,998 treatments using seven (7) linear accelerator units; this is an average of 4,428 treatments per unit.

The number of Linear Accelerator Units at SMH and their utilization is as follows:

Number of Treatments @ SMH	# Linacs	# Treatments in 2013
SMH-Main Campus	5	22,092
SMH-Two Extension Clinics	2	8,906
Total	7	30,998

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Although the operator of the proposed extension site would be Strong Memorial Hospital, which is located in the Finger Lakes Health Systems Agency (HSA) region, the clinic and the linac itself would be located in Genesee County, in the Western New York HSA region. Moreover, the applicant states that the proposed extension site will be operated to improve access to cancer care for patients in Genesee, Orleans, and Wyoming counties, all of which are located in the Western New York HSA region. Accordingly, the need for the proposed linac should be evaluated based on the need for therapeutic radiology devices in the Western New York HSA region.

The eight-county Western New York Region has a total of three facilities – two hospitals and one hospital extension clinic - providing linear accelerator services:

Current Resources	# Facilities With Linac Services				# Linac Machines		
	Hospitals	Hospital Clinics	Total		Hospitals	Hospital Clinics	Total
Eight County Western NY Region							
Genesee	0	0	0		0	0	0
Orleans	0	0	0		0	0	0
Wyoming	0	0	0		0	0	0
Allegany	0	0	0		0	0	0
Cattaraugus	0	1	1		0	1	1
Chautauqua	1	0	1		1	0	1
Erie	1	0	1		4	0	4
Niagara	0	0	0		0	0	0
Total Western NY Region	2	1	3		5	1	6
Total Three County- Genesee, Orleans, Wyoming	0	0	0		0	0	0

The table below shows a need for 17 MEV devices (linear accelerators) in the eight-county Western New York HSA region:

Linac Need in Western NY	Total W. NY
# of Cancer Cases/Year	10,063
60% will be Candidates for Radiation Therapy	6,038
50% of (2) will be Curative Patients	3,019
50% of (2) will be Palliative Patients	3,019
Course of Treatment for Curative Patients is 35 Treatments	105,666
Course of Treatment for Palliative patients is 15 Treatments	45,285
The Total Number of Treatments [(5)+(6)]	150,951
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	23.22
Existing/Approved Resources (Upon Approval of 142005)	7.00
Remaining Need for MEV Machines	16.2

Based on 709.16, there is a need for two linear accelerators in the three-county area (Genesee, Orleans, and Wyoming) addressed by the applicant:

	Total for Three County Area (Genesee, Orleans, Wyoming)
# of Cancer Cases/Year	894
60% will be Candidates for Radiation Therapy	536
50% of (2) will be Curative Patients	268
50% of (2) will be Palliative Patients	268
Course of Treatment for Curative Patients is 35 Treatments	9,387
Course of Treatment for Palliative patients is 15 Treatments	4,023
The Total Number of Treatments [(5)+(6)]	13,410
Need for MEV Machines	
(Each MEV Machine has Capacity for 6,500 Treatments)	2.06
Existing/Approved Resources (Upon Approval of 142005)	1.00
Remaining Need for MEV Machines	1.1

The number of current and projected Radiology-Therapeutic and primary care visits is as follows:

	Current Year	Year 1	Year 3
Radiology-Therapeutic	11,715	11,715	12,075
Primary Care	0	1,288	1,840
Total	11,715	13,003	13,915

Conclusion and Recommendation

The proposed project will improve access to therapeutic radiology for cancer patients in Genesee, Orleans, and Wyoming counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Strong Memorial Hospital (SMH) seeks approval to certify a radiation oncology extension clinic through the conversion of a private practice in Batavia. Per the applicant, SMH has a long-standing relationship with Batavia Radiation Oncology Associates, a private practice located at 262 Bank Street, Batavia that provides radiation oncology services in western New York.

Strong Memorial Hospital intends to renovate the facilities and expand the services offered to medical oncology. The addition of this extension clinic will further the mission of SMH in developing a community-based, patient-centered cancer care model, while providing access to more advanced cancer treatment, molecular diagnostics, and inpatient care for more complex and challenging cancer problems.

Site	Approved Services
Strong Memorial Hospital Outpatient Extension Clinic 262 Bank Street Batavia, New York 14020	Linear Accelerator Primary Medical Care Medical Services – Primary Care Therapy – Occupational

First year staffing will consist of 20.8 FTEs, including registered nurses, technicians, and therapists. It is expected to remain at that level through the third year of operation.

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, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized as follows:

Date: July 28, 2014
Seller: Batavia Radiation Oncology Associates, LLP
Purchaser: Strong Memorial Hospital (A Division of University of Rochester)
Acquired Assets: Acquire all furniture, fixtures, equipment, supplies, inventory and eighty-eight thousand dollars of accounts receivable free and clear of any liens, and encumbrances.
Excluded Assets: Medical records, cash, deposits, income tax refunds, Medicare provider number(s), Medicare bad debt recovery claims, software licenses and the corporate and financial records or accounts receivables in excess of eighty-eight thousand dollars.
Assumed Liabilities: Liabilities arising after closing of the Asset Purchase Agreement.
Purchase Price: \$1,150,000
Payment: \$1,150,000 at closing (equity from accumulated surplus of Strong Memorial Hospital)

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 outstanding Medicaid and Assessment liabilities

Real Property Purchase Agreement

The applicant has submitted a draft real property purchase agreement, which is summarized as follows:

Seller: Sparks & Hops Real Estate, LLC
Purchaser: Strong Memorial Hospital (A Division of University of Rochester)
Acquired Assets: Acquire real property reference tax map parcel numbers 71.082-1-12 and 71.082-1-12/p located at 264 Bank Street (mailing address 262 Bank Street) Batavia, NY free and clear of all liens, security interest, and encumbrances. Includes the existing buildings, improvements, all leases, all permits, all service contracts, all site plans and reports.
Purchase Price: \$1,975,000
Payment: \$1,975,000 at closing (equity from accumulated surplus of Strong Memorial Hospital)

As noted above, the members and their interest of (Sparks & Hops Real Estate, LLC (sellers of the real property) and Batavia Radiation Oncology Associates, LLP (sellers of the private practice) are the same.

Total Project Costs

Total project costs for building acquisition, renovation and acquisition of moveable equipment is estimated at \$3,325,981, which is broken down as follows:

Building Acquisition	\$1,975,000
Renovation & Demolition	601,058
Design Contingency	60,106
Construction Contingency	60,106
Fix Equipment	15,500

Architect/Engineering Fees	54,000
Construction Manager Fees	39,000
Other Fees	341
Movable Equipment	199,933
IT including Telecommunications	300,755
CON Application Fee	2,000
CON Processing Fee	<u>18,182</u>
Total Project Cost	\$3,325,981

Project costs are based on a November 1, 2014 start date, with a one month construction period. Strong Memorial Hospital will fund total project cost from their accumulated funds.

In support of the building acquisition cost, the applicant has provided a real property appraisal from a Member of Appraisal Institute (MAI).

Funding for the proposed transactions is as follows:

Equity: For the Acquisition of the private practice	\$ 1,150,000
Equity for the Total Project Cost (including purchase of building):	<u>3,325,981</u>
Total:	<u>\$4,475,981</u>

BFA Attachment A is Strong Memorial Hospital (A Division of the University of Rochester) 2012 and 2013 certified financial statement, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted first year's operating budget, in 2014 dollars, as summarized below:

	Current Year	Incremental Year One	Year One	Incremental Year Three	Year Three
Revenues:	\$2,487,692	\$1,961,149	\$4,448,841	\$2,931,274	\$5,418,966
Expenses:					
Operating	\$1,705,257	\$1,551,302	\$3,256,559	\$1,683,076	\$3,388,333
Capital	<u>\$498,187</u>	<u>\$(75,684)</u>	<u>\$422,503</u>	<u>\$(75,684)</u>	<u>\$422,503</u>
Total Expenses	\$2,203,444	\$1,475,618	\$3,679,062	\$1,607,392	\$3,810,836
Revenues over Expenses (Loss)	<u>\$284,248</u>	<u>\$485,531</u>	<u>\$769,779</u>	<u>\$1,323,882</u>	<u>\$1,608,130</u>
Utilization: (treatments)	11,715	1,288	13,003	2,200	13,915
Cost per Treatment	\$188.09		\$282.94		\$273.87

Utilization by Payor source for the current year and the first year subsequent to the change in operator, is summarized below:

	<u>Current Year</u>	<u>Years One & Three</u>
Medicaid Fee-For-Service	1.91%	1.91%
Medicaid Managed Care	12.55%	12.55%
Medicare Fee-For-Service	9.71%	9.71%
Medicare Managed Care	16.67%	16.67%
Commercial Fee-For-Service	49.77%	49.77%
Commercial Managed Care	1.86%	1.86%
Private Pay & All Other	7.53%	7.53%

Utilization and expense assumptions were developed using historical experience adjusted for added volume. Costs for the first year are expected to be covered at approximately 82.7% of projected volume or 10,753 visits.

Capability and Feasibility

Strong Memorial Hospital's \$4,475,981 in total acquisition costs is comprised of the following: \$1,150,000 to acquire the private practice, and \$3,325,981 to acquire and renovate the building. Strong Memorial Hospital will provide funding from its accumulated surplus. BFA Attachment A is Strong Memorial Hospital's 2012-2013 certified financial summary, which indicates the availability of sufficient resources.

Working capital requirement is estimated at \$635,139, which appears reasonable based upon two months of third years expenses and will be provided from the applicant. Review of BFA Attachment A, Strong Memorial Hospital 2012 and 2013 financial summary, indicates sufficient resources to fund the working capital.

The budget projects positive results for both first and third years at \$769,779 and \$1,608,130, respectively. Revenues are based on prevailing reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

As shown on BFA Attachment A, Strong Memorial Hospital has maintained a positive working capital position and a positive net asset position, and for 2012 through 2013, generated an average income from operations of \$109,704,876.

BFA Attachment B is Batavia Radiation Oncology Associates, LLP and Affiliate Historic Financial Summary for the years from 2008 through 2012, which shows the facility has maintained a positive working capital position, a positive net asset position, and generated positive operating surplus during this five year time frame.

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.

<h2>Attachments</h2>

BFA Attachment A	Financial Summary for 2012 and 2013, Strong Memorial Hospital
BFA Attachment B	Financial Summary for 2008 through 2012, Batavia Radiation Oncology Associates, LLP and Affiliate
BHFP Attachment	Map



Public Health and Health Planning Council

Project # 141060-E
Phoenix House of New York, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: New York
Acknowledged: March 31, 2014

Executive Summary

Description

Phoenix House of New York, Inc. requests approval to become the operator of the Article 28 diagnostic and treatment center (DTC) currently operated by Phoenix House Foundation, Inc.

The aforementioned change is a transfer within the not-for-profit parent company to one of its affiliates. BFA Attachment B is the proposed organizational chart. Phoenix Houses of New York, Inc. is proposing to add the following service to its Article 28 DTC: Chemical Dependency-Rehabilitation O/P. Existing Services that will also transfer are as follows: Certified Mental Health services O/P, Dental O/P, and Medical Services-Primary Care.

In addition, the applicant seeks to change the main clinic designation from the W. 74th Street, Manhattan site to the Jay St., Brooklyn site.

DOH Recommendation
Contingent Approval

Need Summary

Phoenix House Foundation, Inc. (PHF) proposes to establish Phoenix House of New York, Inc. (PHNY)

as the new operator of PHF and to add Chemical Dependence Rehabilitation O/P services at five sites. These sites are Brooklyn, South Kourtright, LI City, New York City, and Shrub Oak sites.

PHNY is an affiliate of PHF. The applicant does not project any change in utilization.

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 is no project cost involved with this transfer of the Article 28 diagnostic & treatment center.

The applicant has demonstrated the capability to proceed in a financially feasible manner and 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 evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of the Certificate of Assumed Name of Phoenix Houses of New York, Inc., as acceptable to the Department [CSL]
4. Submission of a photocopy of the amended Bylaws of Phoenix Houses of New York, Inc., acceptable to the Department [CSL].
5. Submission of a photocopy of a resolution from the Board of Directors of Phoenix Houses of New York, Inc. authorizing the submission of the application, acceptable to the Department [CSL].
6. Submission of evidence of the transfer of the operational assets from Phoenix House Foundation, Inc., 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

October 2, 2014

Need Analysis

Analysis

Chemical Dependence Rehabilitation O/P is proposed at the following locations:

50 Jay Street, Brooklyn, 11201
County Road, 513 Old Rt. 10, South Kourtright, 13842
34-11 Vernon Blvd., Long Island City, 11106
Jack Aron Bldg., 164 W. 74 th Street, NYC, 10023
Shrub Oak Clinic, 3151 Stoney Street, Shrub Oak, 10588

In addition, the Center will begin providing optometry, well child and/or family planning services at the five sites. Based upon the recommendation of the Public Health and Health Planning Council, these services no longer require certification by the Department.

The Brooklyn site is located in a Health Professional Shortage Area (HPSA) for Primary Care Services for Medicaid Eligible-Bedford/Stuyvesant.

The table below presents information on selected birth-related health indicators and well-child indicators in New York County and the State; it also presents information on the NYS Prevention Agenda 2017 Objective (PA 2017 Objective). It shows that the 'Adolescent Pregnancy Rate' is significantly higher for New York County than that for the State and the 2017 PA Objective. The percentages for the three 'Well Child' health indicators are slightly higher (that is better) for New York County than those for the State; however, these percentages are significantly below those for the PA 2017 Objective.

Birth-Related and Well Child Related Health Indicators, NYSDOH	New York County	New York State	PA 2017 Objective
Adolescent pregnancy rate per 1,000 females – Aged 15-17 years. (2012)	37.6	22.6	25.6
% of children aged 0-15 months who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	83.6	83.2	91.3
% of children aged 3-6 years who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	83.4	81.7	91.3
% of children aged 12-21 years who have had the recommended # of well child visits in government sponsored insurance programs. (2012)	61.4	60.4	67.1

Conclusion

The applicant does not project any change in utilization. The proposed addition of services will improve access to care for communities served by the five affected sites.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The following six sites are currently operated by Phoenix House Foundation, Inc., (Operating certificate number 7002298R):

Site	PFI	Site	PFI
Jack Aron Building 164 W 74th St New York, NY 10023 (Current Main Site)	1567	Phoenix House Jay Street 50 Jay St Brooklyn, NY 11201	7748
Mobile Dental Van 34-11 Vernon Blvd Long Island City, NY 11106	6657	Shrub Oak Clinic Stoney Street Shrub Oak, NY 10588	3977
34-11 Vernon Boulevard Long Island City, NY 11106	2567	South Kortright Ext Clinic County Rd 513 Old Rt 10 South Kortright, NY 13842	4686

This application proposes to establish Phoenix Houses of New York, Inc. as the new Article 28 operator of these sites. Phoenix House Foundation, Inc. (the current operator), will then become the Active Parent over Phoenix Houses of New York, Inc.

Character and Competence

Phoenix Houses of New York, Inc. is an existing New York State corporation. The members of Phoenix Houses of New York, Inc. Board of Directors are:

Wole C. Coaxum, Chairman
Richard H. Block
Maureen Case
Allan H. Cohen
Tony DiSanto
Peter W. Emmerson
Tommy Gallagher
Charlie Walk

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreements

The applicant has submitted a draft rental agreement for the following sites to be occupied for Article 28 purposes, the terms of which are summarized below:

Lessor:	Phoenix House Foundation, Inc.
Lessee:	Phoenix Houses of New York, Inc.
Premises:	* 430 sq. ft. located at 164 West 74 th St., NY, NY 10023 * 1,878 sq. located at 34-11 Vernon Blvd., Long Island City, NY 11101 * 2,700 Sq. Ft. located at 50 Jay St., Brooklyn, NY 11201
Term:	5 Years with a (5) year optional renewal
Rental:	74 th St Clinic: \$7,762 (\$18.05 per sq. ft.) Jay St Clinic: \$23,031 (\$8.53 per sq. ft.) LIC Clinic: \$16,772 (\$8.93 per sq. ft.)
Provisions:	Lessee will pay for repairs and maintenance. Lessor is responsible for all utilities.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the first and third year of operations after the change in corporate structure as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Revenues:	\$500,669	\$584,114
Expenses:		
Operating	440,435	440,435
Capital	<u>47,565</u>	<u>47,565</u>
Total Expenses	\$488,000	\$488,000
Net Income:	<u>\$ 12,699</u>	<u>\$96,114</u>
Utilization: Visits	4,302	5,019
Cost Per Visit:	\$ 113.43	\$ 97.23

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid Fee-for-Service	85%	0%
Medicaid Managed Care	15%	100%

In 2013, Medicaid Fee-for-Service is 94% and OASAS is 6%.

Expense and utilization assumptions are based on the current Article 28 historical experience of Phoenix House Foundation, Inc. in New York County.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$81,334, which appears reasonable based on two months of first year expenses. The applicant will provide equity from its existing current operations. BFA Attachment A is the certified financial statements for 2012 and 2013 of Phoenix House Foundation, Inc. and affiliates, which reveals the availability of sufficient funds for the equity contribution.

The submitted budget indicates an incremental net income of \$12,669 and \$96,114 for first and third years, respectively. Revenues reflect current reimbursement methodologies for primary care services using historical experience.

BFA Attachment A is a financial summary of Phoenix House Foundation, Inc. and Affiliates. As shown in Attachment A the facility had average positive working capital position and an average positive net asset position. Also, the facility incurred an operating loss of \$3,529,882 and \$682,181 for years 2012 and 2013 respectively. The applicant has indicated that the reason for the losses in 2012 and 2013 were as follows: the net expenses in Phoenix House Foundation, Inc. (the Parent company) reflects a transfer of the Texas region to invest in the start-up of their insurance initiative, where a new diversification of revenues was being sought to offset the decline of government support for the adolescent programs. Also, investments were made in Phoenix Houses of California in call center costs, outreach, and other staff to diversify the types of clients served and payment sources. The applicant has indicated that with these initiatives, the entities will be profitable in 2014.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	2012-2013 Financial Statements
BFA Attachment B	Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify Phoenix Houses of New York, Inc. as the new operator of Phoenix House Foundation Inc., change the main site designation to Phoenix House Jay Street and certify additional services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141060 E

Phoenix House Foundation, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of the Certificate of Assumed Name of Phoenix Houses of New York, Inc., as acceptable to the Department [CSL]
4. Submission of a photocopy of the amended Bylaws of Phoenix Houses of New York, Inc., acceptable to the Department [CSL].
5. Submission of a photocopy of a resolution from the Board of Directors of Phoenix Houses of New York, Inc. authorizing the submission of the application, acceptable to the Department [CSL].
6. Submission of evidence of the transfer of the operational assets from Phoenix House Foundation, Inc., 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141258-E
Harlem East Life Plan

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** June 13, 2014

Executive Summary

Description

SES Operating Corp. d/b/a Harlem East Life Plan, an existing Article 28 diagnostic and treatment center located at 2367-2369 Second Avenue, New York, requests approval to transfer 3% of Stuart Steiner's (sole shareholder) interest via gifts to the following four individuals: 1.0% to Sheila Steiner (his wife), 1.0% to Jonathan Steiner (his son), 0.5% to Dominique Steiner (his daughter), and 0.5% to Joanne King (his employee). While the percentage ownership of the four minority shareholders does not meet the threshold requiring Public Health and Health Planning Council (PHHPC) approval, SES Operating Corp. d/b/a Harlem East Life Plan anticipates future transactions, which may cross the threshold and desires PHHPC approval of all the proposed new owners.

SES Operating Corp. d/b/a Harlem East Life Plan began operating on August 31, 1999. At that time, Stuart Steiner and Eugene Silbermann M.D. were its shareholders. On July 30, 2003, Dr. Silbermann passed away and through the redemption of his shares from his widow, Mary Ann Phipps Silbermann, and notification to the DOH on October 27, 2004, Stuart Steiner became the sole shareholder.

SES Operating Corp. d/b/a Harlem East Life Plan corporation stock will split on a five-for-one ratio in

relation to this application, increasing the number authorized shares of the corporation from 200 shares of no par value common stock to 1,000 shares of no par value common stock.

DOH Recommendation
Contingent Approval

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

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

Subject to the noted contingency, 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 evidence of approval from the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a copy of the executed stock transfer certificate acceptable to the Department of Health. [BFA]
4. Submission of copies of a dated and executed Certificate of Amendment and a Certificate of Incorporation of SES Operating Corp., acceptable to the Department. [CSL]
5. Submission of a copy of the corporation's By-laws, acceptable to the Department. [CSL]
6. Submission of a copy of a dated and executed Consent Related to Stock Split, acceptable to the Department. [CSL]
7. Submission of copies of dated and executed Transfers of Stock Power, 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

October 2, 2014

Program Analysis

Project Proposal

SES Operating Corp. d/b/a Harlem East Life Plan (HELP), an existing Article 28 diagnostic and treatment center approved in 1999 to provide primary medical care and a methadone maintenance treatment program (MMTP), seeks to formally transfer 3% of shares to four (4) individuals.

While the percentage ownership of the four minority shareholders does not meet the threshold requiring the Council's approval, HELP anticipates future transactions which may cross the threshold and now requests approval of all the proposed new owners. No programmatic changes are anticipated.

Character and Competence

The proposed members and ownership percentages are as follows:

<u>Owners</u>	<u>Percentage</u>
Stuart Steiner*	97.0%
Jonathan Wesley Steiner	1.0%
Sheila A. Steiner	1.0%
Dominique S. Steiner	0.5%
Joanne A. King	0.5%

**not subject to character & competence review*

Ms. King has 17 years of experience as the Administrative Director of Harlem East Life Plan. Mr. Jonathan Steiner and Ms. Dominique Steiner are children of, and Mrs. Sheila Steiner is the wife of the majority owner, Stuart Steiner. Jonathan and Dominique have been involved with the facility since 2002 and 2007, respectively. According to the Steiners' personal statements of qualifications, as family members of the president and through his guidance, they have developed a thorough knowledge and understanding of the management of the facility.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

Stuart Steiner, the sole shareholder of SES Operating Corp. d/b/a Harlem East Life Plan, is gifting 3% of his common stock to three family members and one employee.

BFA Attached A is SES Operating Corp.'s 2012 and 2013 financial summary which show's average positive working capital of \$1,268,754 and average positive shareholder equity of \$3,656,435. During this same two year period net operating income averaged \$3,398,744.

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 2012-2013- SES Operating Corp. d/b/a Harlem East Life Plan

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 3 % membership interest to three (3) new members from one (1) current member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141258 E

Harlem East Life Plan

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval from the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a copy of the executed stock transfer certificate acceptable to the Department of Health. [BFA]
4. Submission of copies of a dated and executed Certificate of Amendment and a Certificate of Incorporation of SES Operating Corp., acceptable to the Department. [CSL]
5. Submission of a copy of the corporation's By-laws, acceptable to the Department. [CSL]
6. Submission of a copy of a dated and executed Consent Related to Stock Split, acceptable to the Department. [CSL]
7. Submission of copies of dated and executed Transfers of Stock Power, 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141044-E
Saratoga Center for Care, LLC d/b/a Saratoga Center for Rehab and Skilled Nursing Care

Program: Residential Health Care Facility
Purpose: Establishment

County: Saratoga
Acknowledged: February 10, 2014

Executive Summary

Description

Saratoga Center for Care, LLC, is seeking approval to become established as the new operator of Saratoga County Maplewood Manor Nursing Home, an existing 277-bed, public county, residential health care facility (RHCF) located at 149 Ballston Avenue in Ballston Spa, Saratoga County, and to decertify 20 RHCF beds, resulting in a total of 257 remaining RHCF beds at the facility.

On November 30, 2012, the County of Saratoga Legislature approved the divestiture of Maplewood Manor to reduce the County subsidies of the Manor's operating losses and sponsored a not-for-profit Local Development Corporation, Maplewood Manor Local Development Corporation (MMLDC), to facilitate the sale of the Manor's assets and operations.

Saratoga Center for Care, LLC ownership is as follows:

Jeffrey Vegh	50%
Alan Schwartz	50%

Jeffrey Vegh has a 15% membership interest in Livingston Hills Nursing & Rehabilitation center, a 120-bed RHCF, located in Livingston, as of October 1, 2013.

DOH Recommendation
Contingent Approval

Need Summary

Saratoga Center for Care, LLC seeks approval to become the established operator of Saratoga County

Maplewood Manor Nursing Home, a 277-bed Article 28 residential health care facility (RHCF), located at 149 Ballston Avenue, Ballston Spa, 12020, in Saratoga County. The facility also seeks approval to reduce their RHCF certified bed capacity by 20 beds, resulting in a 257-bed facility.

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 is no purchase price for the operating assets.

There are no project costs associated with this proposal.

Budget:	Revenues:	\$21,860,147
	Expenses:	<u>\$21,703,784</u>
	Gain:	\$ 156,363

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 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; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of an annual report, for two years, to the DOH demonstrating substantial progress with the implementation of the plan. The report 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 and Departmental approval of a quality assurance plan to be put in place to ensure that the quality of care at the facility will be maintained during the transition period related to ownership transfer. [LTC]
5. Programmatic review of the plan to reduce the bed count by twenty beds and reopen the forty bed Schuyler Hall unit. This review may include an on-site walk-through of the facility to review the unit in which the proposed bed reduction will occur and of the Schulyer Hall unit to be reopened. [LTC]
6. Submission of a personal loan commitment for working capital acceptable to the Department of Health. [BFA]
7. Submission of a loan commitment for working capital acceptable to the Department of Health. [BFA]
8. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
9. Submission of an executed Certificate of Amendment of the Articles of Organization of Saratoga Center for Care LLC, acceptable to the Department. [CSL]
10. Submission of the executed Amended and Restated Operating Agreement of Saratoga Center for Care LLC, acceptable to the Department. [CSL]
11. Submission of an executed lease agreement between 149 Ballston Ave LLC and the applicant, 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

October 2, 2014

Need Analysis

Background

There will be a change in bed capacity at this facility upon approval of this application by the Public Health and Health Planning Council, as shown in the table below.

<u>Saratoga County Maplewood Manor</u> RHCf Beds	<u>Current</u>	<u>Proposed</u> <u>Action</u>	<u>Upon</u> <u>Completion</u>
	277	(20)	257

Saratoga County Maplewood Manor Nursing Home's utilization was 98.6% in 2010, 98.1% in 2011, and 90.2% in 2012. Utilization as of August 6, 2014 is 80.5%. According to the applicant, the facility reports their census has increased to 84.5%, and with the reduction of 20 certified beds utilization will increase to 91.1%. The proposed operator also plans to make the following future changes to the facility to further improve census, case mix, and marketing:

- Add a state of the art ADL suite and rehabilitation gym;
- Change from one large dining area to restaurant style dining;
- Change from large ward social rooms to main street type of environment;
- Hire an internal admission's director, a marketing person, and a screener in the Albany area;
- Accept Medicaid pending residents and assist appropriate residents in applying for and enrolling in Medicaid post admission;
- Ensure residents can be admitted "real time";
- Create areas of particular expertise by examining the ability to provide stroke recovery care, a Congestive Heart Failure Recurrence Prevention Program, a Cardiac Telemetry Monitored Rehab Program, an Intensive Wound Care Program, and bariatric care to residents;
- Institute a telemedicine program in the hopes of returning residents to their home community while retaining their doctors via teleports;
- Invite community leadership organizations and their members to utilize the facility space for meetings and functions, and encourage staff to volunteer in organizations and events; and
- Maintain regular contact with all local and regional health care providers at their sites to provide them with information regarding the new ownership, and listen to what the community needs from the facility that was not provided in the past.

Analysis

There is currently a need for 215 beds in Saratoga County as indicated in Table 1 below. However, the overall occupancy for Saratoga County is 93.5% for 2012 as indicated in Table 2.

Table 1: RHCf Need – Saratoga County

2016 Projected Need	1,004
Current Beds	789
Beds Under Construction	0
Total Resources	789
Unmet Need	215

Table 2: Saratoga County Maplewood Nursing Home/Saratoga County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Saratoga County Maplewood Manor Nursing Home	98.6%	98.1%	90.2%
Saratoga County	97.5%	96.9%	93.5%

Saratoga County Maplewood Manor Nursing Home's utilization was 98.6% in 2010, 98.1% in 2011, and 90.2% in 2012. The reason for the decline in utilization, as noted by the applicant, is due to the current operator's lack of investment in the facility. There has been a lack of investment in the physical plant, marketing, and services that would fill beds and attract quality payors. In addition, the proposed operator was told of an existing, self-imposed, moratorium on new admissions by the facility, through either the cessation of new admissions or as a result of a very cumbersome process of accepting admissions, leaving the potential resident with no alternative than to go elsewhere. The facility's CMI is 0.86. Lastly, the facility has been operating under certified bed capacity since it closed a 40-bed unit on November 13, 2012 due to budgetary issues. The facility has agreed to decertify 20 RHCf beds to help with some of these issues.

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.

Saratoga County Maplewood Manor Nursing Home's Medicaid admissions for 2011 and 2012 was 28.2% and 50.6%, respectively. This facility exceeded Saratoga County 75% rates in 2011 and 2012 of 11.9% and 16.9%, respectively.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Saratoga County Maplewood Manor	Saratoga Center for Rehab and Skilled Nursing Care
Address	149 Ballston Avenue Ballston Spa, NY 12020 PFI: 0825	Same
RHCf Capacity	277	257
ADHC Program Capacity	N/A	N/A
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Saratoga	Saratoga Center for Care LLC d/b/a Saratoga Center for Rehab and Skilled Nursing Care Members: Jeffrey Vegh 50% Alan Schwartz 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Livingston Hills Nursing & Rehab (NY)	10/2013 to present
Forest Manor Health Care Center (NJ)	12/2010 to 12/2013
Kepler Center for Nursing and Rehabilitation (PA)	06/2013 to present
Oakmont Center for Nursing & Rehabilitation (PA)	03/2014 to present
Excel Center for Nursing and Rehabilitation (MA)	05/2014 to present
The Harborview Center for Nursing and Rehabilitation (MA)	05/2014 to present

Individual Background Review

Jeffrey Vegh holds active Nursing Home Administrator licenses, in good standing, in New York and New Jersey. Mr. Vegh was the managing member at Forest Manor Health Care Center, located in Hope NJ, from December 2010 until it was sold on December 31, 2013. Prior employment was as the nursing home administrator of Forest Manor Health Care Center from February 2007 through December 2009 and nursing home administrator at Bayview Nursing and Rehabilitation Center from July 2003 through February 2007. Mr. Vegh discloses the following ownership interest:

Livingston Hills Nursing & Rehab (NY)	10/2013 to present
Forest Manor Health Care Center (NJ)	12/2010 to 12/2013
Kepler Center for Nursing and Rehabilitation (PA)	06/2013 to present
Oakmont Center for Nursing & Rehabilitation (PA)	03/2014 to present
Excel Center for Nursing and Rehabilitation (MA)	05/2014 to present
The Harborview Center for Nursing and Rehabilitation (MA)	05/2014 to present

Alan Schwartz is employed as the CEO of Zenith Care LLC since October 2012. Prior employment was as CEO with Triple Health Partners from 2009 to 2012. Both employers are in healthcare financial consulting. Mr. Schwartz discloses no healthcare facility interests.

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 Livingston Hills Nursing & Rehabilitation, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements. Please refer to BNHLC Attachment A for details on citations for Certification Surveys and Complaint Surveys at the facility for the period identified. Citations listed in the attachment may not translate into an enforcement action and should not be interpreted as such.

A review of operations for Forest Manor Health Care Center in the state of New Jersey, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Kepler Center for Nursing & Rehabilitation and Oakmont Center for Nursing and Rehabilitation in the state of Pennsylvania, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for The Harborview Center for Nursing and Rehabilitation and Excel Center for Nursing and Rehabilitation in the state of Massachusetts, 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, contingent approval is recommended.

Financial Analysis

Facility Transition Agreement

On December 16, 2013, Saratoga County and Saratoga Center for Care, LLC entered into a transition agreement with the acknowledgement of Maplewood Manor Local Development Corporation (MMLDC), the landlord. Previously, Saratoga County and MMLDC entered into a lease agreement with exclusive option to purchase and acquire the facility assets and Saratoga County has a leaseback agreement whereas the County leases the Facility Assets back from MMLDC for operating purposes.

Asset Purchase Agreement

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

Date:	December 16, 2013
Seller:	MMLDC
Purchaser :	Saratoga Center for Care, 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:	\$0 for the operating interest
Payment of Purchase Price:	Not applicable per the facility transition agreement.

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.

The Real Property has been purchased for \$14,100,000 by 149 Ballston Ave, LLC, which is owned by Leon Melohn who is not associated with the proposed members of the operations.

Lease Agreement

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

Date:	March 20, 2014
Premises:	A 277 bed RHC located at 149 Ballston Ave in Ballston Spa.
Landlord:	149 Ballston Ave, LLC
Tenant:	Saratoga Center for Care, LLC
Terms:	3 years commencing on the execution of the lease with a 3 year and additional 4 year option to renew.
Rental:	\$1,957,020.60 for the first year, \$2,826,432.10 for the second year, \$3,924,327.50 for the third year, \$4,042,057.33 for the fourth year and 3% increase thereafter to 10 years.
Provisions:	Tenant is responsible for insurance, utilities and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting that there is no relationship between landlord and tenant.

Operating Budget

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

	<u>Total</u>
Revenues:	
Medicaid	\$13,491,897
Medicare	3,861,149
Private Pay	<u>4,481,750</u>
	21,834,796
Other revenues*	<u>25,351</u>
Total Revenues	\$21,860,147
Expenses:	
Operating	\$19,685,418
Capital	<u>2,018,366</u>
Total Expenses	<u>\$21,703,784</u>
Net Income	<u>\$156,363</u>
Utilization: (patient days)	91,930
Occupancy	98.0%

*Other revenues are vending machine and cafeteria income.

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

- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on 2014 Medicaid pricing rates with no trend.
- Medicare and Private Rates are based on the experience of the County.
- Overall utilization is projected at 98.0%, while utilization by payor source is expected as follows:

Medicaid	76.0%
Medicare	9.0%
Private Pay	15.0%
- Breakeven occupancy is projected at 97.41%.

Capability and Feasibility

There is no purchase price for the operations and there are no project costs.

Working capital requirements are estimated at \$3,617,297, based on two months of the first year expenses, of which \$1,808,647 will be satisfied with a personal loan from the proposed members and the remaining \$1,808,650 will be satisfied through a loan from Hallmark Capital at 4% over five years with a 25 year amortization. Letters of interest for both the personal loan and the working capital loan have been supplied by the bank. BFA Attachment A is the Net Worth of the proposed members.

The submitted budget indicates that a net income of \$156,363 would be maintained during the first year following change in ownership. DOH staff has reviewed the difference between the current 2012 net operating loss of \$5,552,802, as shown on BFA Attachment C, and the first year budgeted net income of \$156,363 and has concluded that the difference is mainly due to the reduction in employee fringe benefits of \$5,408,500 and reduction of staff of \$538,526. The facility will no longer participate in the County benefit plan. As of August 31, 2014, the facility has an occupancy level of 91.1% utilizing 257 beds based on the 20 RHCF bed decertification. The first year budget is based on the 2011 occupancy levels of 98.1% with an approximate correlation of payor mix between the third party payors. The more than two year decrease in utilization was due to practices that were approved by the county in order to decrease their operational losses, which included the creation of a committee to approve all admissions without the acceptance of Medicaid pending residents, and in the fall of 2012 the closure of a 40 RHCF bed wing. The proposed owners will put in place a \$2,500,000 renovation after final approval of this application by the Public Health and Health Planning Council with the following business plan to improve operations:

- Reconstructing the facility to accommodate patients through rehabilitation and therapies with an ADL suite and rehab gym. Also enhancing the Memory Care Unit.
- Readdress the accessibility of family members to administration and admissions.
- Create external and internal marketers for the RHCF to access referrals from area hospitals.
- The acceptance of Medicaid pending patients and assist in the patients applying for Medicaid eligibility.
- Begin negotiating HMO contracts for resident referrals.
- Instituting a telemedicine program to attract residents within their community.
- Possessing an astute awareness of community needs.

BFA Attachment B is the pro-forma balance sheet of Saratoga County Maplewood Manor, which indicates positive members' equity of \$2,418,647 as of the first day of operations. It is noted that assets include \$590,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be \$1,828,647. 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.

As shown on BFA Attachment C , the facility maintained positive working capital in 2011-2013 and experienced negative equity and an average net loss from operations of \$10,269,757 for the period shown. The county cannot maintain its current operation due to reoccurring losses from year to year and has therefore decided to sell the facility to a new operator who is an experienced team of nursing home providers.

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	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Saratoga County Maplewood Manor, 2011-2013
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Saratoga Center for Care, LLC as the new operator of Saratoga County Maplewood Manor Nursing Home, an existing 277-bed, public county RHCF and decertify 20 RHCF beds resulting in a total of 257 remaining RHCF beds at the facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141044 E

Saratoga Center for Care, LLC d/b/a Saratoga
Center for Rehab and Skilled Nursing Care

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of an annual report, for two years, to the DOH demonstrating substantial progress with the implementation of the plan. The report 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 and Departmental approval of a quality assurance plan to be put in place to ensure that the quality of care at the facility will be maintained during the transition period related to ownership transfer. [LTC]
5. Programmatic review of the plan to reduce the bed count by twenty beds and reopen the forty bed Schuyler Hall unit. This review may include an on-site walk-through of the facility to review the unit in which the proposed bed reduction will occur and of the Schulyer Hall unit to be reopened. [LTC]
6. Submission of a personal loan commitment for working capital acceptable to the Department of Health. [BFA]
7. Submission of a loan commitment for working capital acceptable to the Department of Health. [BFA]
8. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
9. Submission of an executed Certificate of Amendment of the Articles of Organization of Saratoga Center for Care LLC, acceptable to the Department. [CSL]
10. Submission of the executed Amended and Restated Operating Agreement of Saratoga Center for Care LLC, acceptable to the Department. [CSL]
11. Submission of an executed lease agreement between 149 Ballston Ave LLC and the applicant, 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141235-E
Safire Rehabilitation of Northtowns, LLC

County: Erie
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: June 3, 2014

Executive Summary

Description

Safire Rehabilitation of Northtowns, LLC is requesting approval to become the new operator of Sheridan Manor, LLC d/b/a Sheridan Manor Nursing Home, an existing proprietary LLC and a 100-bed Residential Health Care Facility (RHCF) located at 2799 Sheridan Drive, Tonawanda. Ownership of the facility operation before and after the requested change is as follows:

Far Rockaway. As of August of 2013, Robert Schuck has 25.0% membership in South Shore Healthcare Facility, a 100-bed RHCF located in Freeport.

DOH Recommendation
Contingent Approval

Need Summary

Sheridan Manor LLC's utilization was 95.9% in 2010, 94.5% in 2011, and 96.0% in 2012. Current utilization, as of August 6, 2014, is 96.0%. While the county falls below the Department's planning optimum, the facility has exceeded the county overall utilization and expects it to increase following approval of this application.

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

Program Summary

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

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

<u>Current</u>	
Sheridan Manor, LLC	
<u>Name</u>	<u>Percentages</u>
William Richard Zacher	30.34%
Laura Z. Otterbein	30.33%
Wendy Zacher Schmidt	30.33%
Richard Platschek	4.50%
Solomon Abramczyk	4.50%

<u>Proposed</u>	
Safire Rehabilitation of Northtowns, LLC	
<u>Name</u>	<u>Percentages</u>
Moshe Steinberg	4.0%
Judy Landa	32.0%
Richard Platschek	32.0%
Solomon Abramczyk	16.0%
Robert Schuck	16.0%

As of October of 2012, Solomon Abramczyk and Richard Platschek have 4.5% membership interest each in Williamsville Suburban Nursing Home, a 220-bed RHCF located in Williamsville, and Ridgeview Manor Nursing Home, a 120-bed RHCF located in Buffalo. Solomon Abramczyk also has 63% membership in Park Gardens Rehabilitation and Nursing Center, a 200-bed RHCF located in Riverdale.

Judy Landa has 25.75% membership in West Lawrence Care Center, a 215-bed RHCF located in

Financial Summary

There are no project costs associated with this application.

BUDGET:	Revenues:	\$7,899,643
	Expenses:	<u>6,943,836</u>
	Gain:	\$ 955,807

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 an executed building lease acceptable to the Department of Health. [BFA]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of 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 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. [RNR]
4. Submission of an annual report, for two years, to the DOH demonstrating substantial progress with the implementation of the plan. The report 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]
5. Submission of an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
6. Submission of Asset and Real Estate Purchase Agreements (from Sheridan Manor to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Northtowns, LLC) that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Sheridan Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [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

October 2, 2014

Need Analysis

Background

Safire Rehabilitation of Northtowns, LLC seeks approval to become the established operator of Sheridan Manor LLC, a 100-bed Article 28 residential health care facility, located at 2799 Sheridan Drive, Tonawanda, 14150 in Erie County.

Analysis

There is currently a surplus of 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 91.2% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,748
Beds Under Construction	0
Total Resources	5,748
Unmet Need	-457

Sheridan Manor LLC's utilization was 95.9% in 2010, 94.5% in 2011, and 96.0% in 2012. Although the county utilization falls below the Department's 97% planning optimum, the facility is very close to it and because of the facility's modest size (100 beds) the 96.0% occupancy rate represents a vacancy of only one bed below the 97% optimum.

Table 2: Sheridan Manor LLC/Erie County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Sheridan Manor LLC	95.9%	94.5%	96.0%
Erie County	93.9%	92.1%	91.2%

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.

Sheridan Manor LLC's Medicaid admissions rates for 2011 and 2012 were 6.4% and 9.9%, respectively. This facility did not exceed the Erie County 75% rates in 2011 and 2012 of 23.4% and 22.1%, respectively, and will be required to follow the contingency plan as noted below.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

<u>Facility Information</u>	<u>Existing</u>	<u>Proposed</u>														
Facility Name	Sheridan Manor, LLC	Safire Nursing and Rehabilitation Care of Northtowns														
Address	2799 Sheridan Drive Tonawanda, NY. 14150	Same														
RHCF Capacity	100	Same														
ADHC Program Capacity	N/A	N/A														
Type of Operator	Proprietary	Proprietary														
Class of Operator	Limited Liability Company	Limited Liability Company														
Operator	Sheridan Manor, LLC	Safire Rehabilitation of Northtowns, LLC <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td colspan="2"><u>Managing Members</u></td> </tr> <tr> <td>Richard Platschek</td> <td style="text-align: right;">32%</td> </tr> <tr> <td>Solomon Abramczyk</td> <td style="text-align: right;">16%</td> </tr> <tr> <td colspan="2"><u>Members</u></td> </tr> <tr> <td>Judy Landa</td> <td style="text-align: right;">32%</td> </tr> <tr> <td>Robert Shuck</td> <td style="text-align: right;">16%</td> </tr> <tr> <td>Moshe Steinberg</td> <td style="text-align: right;">4%</td> </tr> </table>	<u>Managing Members</u>		Richard Platschek	32%	Solomon Abramczyk	16%	<u>Members</u>		Judy Landa	32%	Robert Shuck	16%	Moshe Steinberg	4%
<u>Managing Members</u>																
Richard Platschek	32%															
Solomon Abramczyk	16%															
<u>Members</u>																
Judy Landa	32%															
Robert Shuck	16%															
Moshe Steinberg	4%															

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brookhaven Rehabilitation and Health Care Center	09/2004 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	09/2004 to 11/2005
West Lawrence Care Center	09/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	09/2004 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Individual Background Review

Richard 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
South Shore Rehabilitation and Nursing Center	02/2014 to present

Solomon Abramczyk is a non-registered certified public accountant. He has been employed at Park Gardens Rehabilitation and Nursing Center LLC as the operator and Executive Director for the last ten years. Mr. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC	2002 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present

Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Judy Landa reports no employment during the past ten years. Ms. Landa discloses the following ownership interest in health care facilities:

Brookhaven Rehabilitation and Health Care Center	04/2001 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	11/2002 to 01/2009
Franklin Center for Rehabilitation and Nursing	11/2002 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	01/1997 to 11/2005
West Lawrence Care Center	09/2003 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center	02/2014 to present
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Moshe Steinberg lists his employment as the president of LTC Bill Right, a medical supplies company located in Lakewood, New Jersey. Previously, Mr. Steinberg was employed as the vice president of Amazing Surgical Supply, Inc., a surgical equipment and supplies company located in Brooklyn, New York. Mr. Steinberg 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 Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Accidents.

A review of operations for Brookhaven Rehabilitation & Health Care Center, LLC 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 Highfield Gardens Care Center of Great Neck, Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, West Lawrence Care Center, Park Gardens Rehabilitation and Nursing Center LLC, Silver Lake Specialized Rehabilitation and Care Center, Dumont Center for Rehabilitation and Nursing Care, Williamsville Suburban LLC, Ridge View Manor LLC, and Sheridan Manor LLC reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset and Real Estate Purchase Agreement

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

Date:	July 6, 2012
Seller:	Sheridan Manor, LLC d/b/a Sheridan Manor Nursing Home
Purchaser :	Richard Platschek as Buyer's designee to be transferred to Safire Rehabilitation of Northtowns, LLC once all necessary approvals have been obtained.
Purchased Assets:	The real property and 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:	\$0 for the operating interest and real property.

Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

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.

Assignment and Assumption Agreement

An executed assignment and assumption agreement has been submitted by the applicant assigning all assets and liabilities as stated in the Asset Purchase Agreement from Richard Platschek to Safire Rehabilitation of Northtowns, LLC.

Lease Agreement

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

Premises:	A 100 bed RHCf located at 2799 Sheridan Drive, Tonawanda
Landlord:	Sheridan DR HC, LLC
Tenant:	Safire Rehabilitation of Northtowns, LLC
Terms:	10 years commencing on the execution of the lease.
Rental:	Annual rent is \$29,004 (\$2,417 per month).
Provisions:	Tenant is responsible for general liability insurance, utilities and maintenance and is a triple net lease.

The lease arrangement is an arm's length agreement. The proposed members have no ownership interest in the current holding company which owns the premises. Effective at the time of closing, Richard Platschek will assign the real property to Sheridan Dr HC, LLC, the ownership of which is as follows: Solomon Abramczyk (16%), Robert Schuck (16%), Richard Platschek (32%), Benjamin Landa (32%) and Moshe Steinberg (4%).

Operating Budget

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

Revenues:

Medicaid	\$4,399,221
Medicare	2,005,147
Private Pay/Other	<u>1,495,275</u>
Total	\$7,899,643

Expenses:

Operating	\$6,772,983
Capital	<u>170,852</u>
Total	\$6,943,836

Net Income \$955,807

Total Patient Days 34,770

- 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 95.3%
- Utilization by payer source is anticipated as follows:

Medicaid	76 %
Medicare	12%
Private/Other	12%
- Breakeven utilization is projected at 83.73 %.

Capability and Feasibility

There are no project costs associated with this application. Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

Working capital requirements are estimated at \$1,157,306 based on two months' of first year expenses and will be satisfied from the proposed member's equity. An affidavit from proposed applicant member, Judy Landa, states that she is willing to contribute resources disproportionate to her ownership percentage. Review of BFA Attachment A, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of \$955,807 would be maintained during the first year following change in ownership. BFA Attachment G is the budget sensitivity analysis based on May 31, 2014 utilization of 96.3% for the facility, which shows the budgeted revenues would decrease by \$777,582 resulting in a net income in year one of \$178,225. BFA Attachment B is the pro-forma balance sheet of Sheridan Manor, LLC. As shown, the facility will initiate operation with negative \$1,404,496 members' equity due to the proposed members retiring the current debt obligation through a mortgage after closing. 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.

Review of BFA Attachment C, financial summary of Sheridan Manor, shows negative working capital, net equity and a net profit from operations of \$88,426 and \$279,551 as of December 31, 2013 and May 31, 2014, respectively. Richard Platschek and Solomon Abramczyk acquired membership interest in Ridgeview Manor as of October of 2012, and were able to obtain the following financial improvements:

- Additional third party revenues of \$650,000 in Medicaid rate increases,
- \$200,000 in Medicare rate increases,
- Increased facility efficiencies, such as renegotiate purchase contracts, by approximately \$750,000.

Review of Attachment D, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCs 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 Attachment E, financial summary of West Lawrence Care Center, shows the RHC had negative working capital, positive equity and an average net loss of \$584,209 for 2011-2013. The facility has since revised their financial management practices by renegotiating contracts and securing payer rate increases and has maintained a net income of \$481,774 as of May 31, 2014.

Review of Attachment F, financial summary of Park Gardens Rehabilitation and Nursing Center, shows the RHC had positive net income of \$5,025,153 as of June 30, 2014.

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	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Safire Rehabilitation of Northtowns, LLC
BFA Attachment C	Financial Summary, Sheridan Manor Nursing Home, 2011- June 30, 2014
BFA Attachment D	Financial Summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA Attachment E	Financial Summary, West Lawrence Care Center
BFA Attachment F	Financial Summary, Park Gardens Rehabilitation and Nursing Center
BFA Attachment G	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Safire Rehabilitation of Northtowns, LLC as the new operator of the nursing home located 2799 Sheridan Drive, Tonawanda, formerly operated as Sheridan Manor, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141235 E

Safire Rehabilitation of Northtowns, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease acceptable to the Department of Health. [BFA]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of 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 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. [RNR]
4. Submission of an annual report, for two years, to the DOH demonstrating substantial progress with the implementation of the plan. The report 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]

5. Submission of an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
6. Submission of Asset and Real Estate Purchase Agreements (from Sheridan Manor to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Northtowns, LLC) that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Sheridan Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141237-E
Safire Rehabilitation of Southtowns, LLC

County: Erie
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: June 4, 2014

Executive Summary

Description

Safire Rehabilitation of Southtowns, LLC, is requesting to become the new operator of Ridge View Manor, LLC d/b/a Ridgeview Manor Nursing Home, an existing proprietary 120-bed Residential Health Care Facility (RHCF) located at 300 Dorrance Avenue, Buffalo. Ownership of the facility operation before and after the requested change is as follows:

Current

Ridge View Manor, LLC

<u>Name</u>	<u>Membership</u>
William Richard Zacher	30.34%
Laura Z. Otterbein	30.33%
Wendy Zacher Schmidt	30.33%
Richard Platschek	4.50%
Solomon Abramczyk	4.50%

Proposed

Safire Rehabilitation of Southtowns, LLC

<u>Name</u>	<u>Membership</u>
Moshe Steinberg	4.0%
Judy Landa	32.0%
Richard Platschek	32.0%
Solomon Abramczyk	16.0%
Robert Schuck	16.0%

As of October 2012, Solomon Abramczyk and Richard Platschek have 4.5% membership interest each in Williamsville Suburban Nursing Home, a 220-bed RHCF located in Williamsville, and Sheridan Manor Nursing Home, a 100-bed RHCF located in Tonawanda. Solomon Abramczyk also has 63% membership in Park Gardens Rehabilitation and Nursing Center, a 200-bed RHCF located in Riverdale.

Judy Landa has 25.75% membership in West Lawrence Care Center, a 215-bed RHCF located in

Far Rockaway. As of August of 2013, Robert Schuck has 25.0% membership in South Shore Healthcare Facility, a 100-bed RHCF located in Freeport.

DOH Recommendation
Contingent Approval

Need Summary

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:	\$10,621,649
	Expenses:	<u>8,993,029</u>
	Gain:	\$ 1,628,620

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. 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. [RNR]
3. Submission of an annual report for two years to the DOH, demonstrating substantial progress with the implementation of the plan. The report 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 an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
5. Submission of an executed building lease acceptable to the Department of Health. [BFA]
6. Submission of an Asset and Real Estate Purchase Agreements (from Ridge View Manor) to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Southtowns, LLC that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Ridge View Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [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

October 2, 2014

Need Analysis

Background

Safire Rehabilitation of Southtowns, LLC, seeks approval to become the established operator of Ridge View Manor LLC, a 120-bed Article 28 residential health care facility, located at 298 Dorrance Avenue, Buffalo, 14220 in Erie County.

Analysis

There is currently a surplus for 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 91.2% for 2012 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,748
Beds Under Construction	0
Total Resources	5,748
Unmet Need	-457

Ridge View Manor LLC’s utilization was 95.1% in 2010, 92.6% in 2011, and 92.5% in 2012. The applicant noted the reason for the soft utilization is due to mismanagement by the former operators. During this period the former operator, William Zacher, died, and the subsequent operators did not perform any audits or file any cost reports, which resulted in the forgoing of all capital-based reimbursements. This further resulted in the owners becoming financially challenged, undergoing bankruptcy, and losing talented staff after failing to meet payroll. The facility’s reputation in the community began to suffer as well, which adversely affected the utilization rates. Furthermore, the Berger Commission’s recommendation to close one of the operator’s facilities resulted in an even further decline in utilization at this location.

Utilization as of August 6, 2014, was 95.8%. Utilization has increased during the period the proposed operators have been involved with the facility’s operation. The proposed operators plan to increase utilization by addressing deficiencies that contributed to the previous substandard occupancy. Remedies to be instituted include:

- Retaining accountants to prepare backlogged cost reports;
- Submission of cost reports that will allow for the resumption of reimbursements;
- Using reimbursement revenue to perform improvements to resident’s rooms;
- Recruitment of talented staff; and
- Restoring the reputation of the facility.

Table 2: Ridge View Manor LLC/Erie County

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Ridge View Manor LLC	95.1%	92.6%	92.5%
Erie County	93.9%	92.1%	91.2%

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.

Ridge View Manor LLC's Medicaid admissions for 2011 and 2012 was 3.9% and 7.7%, respectively. This facility did not exceed the Erie County 75% rates in 2011 and 2012 of 23.4% and 22.1%, respectively, and will be required to follow the contingency plan as noted below.

Conclusion

It is expected that approval of the proposed change of ownership will result in more consistent utilization rates and better management of the facility and help maintain a needed source of RHCf care for the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Ridge View Manor, LLC	Safire Nursing and Rehabilitation Care of Southtowns
Address	298 Dorrance Avenue Buffalo, NY. 14220	Same
RHCf Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Ridge View Manor, LLC	Safire Rehabilitation of Southtowns, LLC <u>Managing Members:</u> Richard Platschek 32% Solomon Abramczyk 16% <u>Members:</u> Judy Landa 32% Robert Shuck 16% Moshe Steinberg 4%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brookhaven Rehabilitation and Health Care Center	09/2004 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	09/2004 to 11/2005
West Lawrence Care Center	09/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	09/2004 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Individual Background Review

Richard 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
South Shore Rehabilitation and Nursing Center	02/2014 to present

Solomon Abramczyk is a non-registered certified public accountant. He has been employed at Park Gardens Rehabilitation and Nursing Center LLC as the operator and Executive Director for the last ten years. Mr. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC	2002 to present
Silver Lake Specialized Rehabilitation and Care Center	06/2008 to 04/2014
Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Williamsville Suburban LLC	10/2012 to present
Ridge View Manor LLC	10/2012 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	02/2014 to present

Judy Landa reports no employment during the past ten years. Ms. Landa discloses the following ownership interest in health care facilities:

Brookhaven Rehabilitation and Health Care Center	04/2001 to 02/2009
Fort Tryon Center for Rehabilitation and Nursing	11/2002 to 01/2009
Franklin Center for Rehabilitation and Nursing	11/2002 to 01/2009
Highfield Gardens Care Center of Great Neck (formerly Wedgewood Care Center)	01/1997 to 11/2005
West Lawrence Care Center	09/2003 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center	02/2014 to present
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Moshe Steinberg lists his employment as the president of LTC Bill Right, a medical supplies company located in Lakewood, New Jersey. Previously, Mr. Steinberg was employed as the vice president of Amazing Surgical Supply, Inc., a surgical equipment and supplies company located in Brooklyn, New York. Mr. Steinberg 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 Brookhaven Rehabilitation & Health Care Center, LLC for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Accidents.

A review of operations for Brookhaven Rehabilitation & Health Care Center, LLC 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 Highfield Gardens Care Center of Great Neck, Fort Tryon Center for Rehabilitation and Nursing, Franklin Center for Rehabilitation and Nursing, West Lawrence Care Center, Park Gardens Rehabilitation and Nursing Center LLC, Silver Lake Specialized Rehabilitation and Care Center, Dumont Center for Rehabilitation and Nursing Care, Williamsville Suburban LLC, Ridge View Manor LLC, and Sheridan Manor LLC 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.

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 and Real Estate Purchase Agreement

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

Date:	July 6, 2012
Seller:	Ridgeview Manor, LLC d/b/a Ridgeview Manor Nursing Home
Purchaser :	Richard Platschek as Buyer's designee to be transferred to Safire Rehabilitation of Southtowns, LLC once all necessary approvals have been obtained.
Purchased Assets:	The real property and 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:	\$0 for the operating interest and real property.

Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

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.

Assignment and Assumption Agreement

An executed assignment and assumption agreement has been submitted by the applicant assigning all assets and liabilities as stated in the Asset Purchase Agreement from Richard Platschek to Safire Rehabilitation of Southtowns, LLC.

Lease Agreement

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

Premises: A 120-bed RHCf located at 298 Dorrance Avenue, Buffalo, NY
Landlord: Dorrance Ave HC, LLC
Tenant: Safire Rehabilitation of Southtowns, LLC
Terms: 10 years commencing on the execution of the lease.
Rental: Annual rent is \$29,004 (\$2,417 per month).
Provisions: Tenant is responsible for general liability insurance, utilities and maintenance and is a triple net lease.

The lease arrangement is an arm's length agreement. The proposed members have no ownership interest in the current holding company which owns the premises. Effective at the time of closing, Richard Platschek will assign the real property to Dorrance Ave HC, LLC. Ownership of Dorrance Ave HC, LLC is as follows: Solomon Abramczyk (16%), Robert Schuck (16%), Richard Platschek (32%), Benjamin Landa (32%) and Moshe Steinberg (4%).

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	\$4,934,417
Medicare	4,023,460
Private Pay/Other	<u>1,663,772</u>
Total	\$10,621,649
Expenses:	
Operating	\$8,708,796
Capital	<u>284,233</u>
Total	\$8,993,029
Net Income	\$1,628,620
Total Patient Days	41,724

- 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 95.3%.
- Utilization by payor source is anticipated as follows:

Medicaid	70 %
Medicare	19%
Private/Other	11%
- Breakeven utilization is projected at 80.7%.

Capability and Feasibility

There are no project costs associated with this application. Since the liabilities exceed the assets of the company being acquired, no cash will exchange hands as of the change of ownership date. After change of ownership, the buyers intend to take a mortgage and retire all outstanding liabilities.

Working capital requirements are estimated at \$1,498,838 based on two months' of first year expenses and will be satisfied from the proposed member's equity. An affidavit from proposed applicant member, Judy Landa, states that she is willing to contribute resources disproportionate to her ownership percentage. Review of BFA Attachment A, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of \$1,628,620 would be maintained during the first year following change in ownership. BFA Attachment G is the budget sensitivity analysis based on May 31, 2014 current total utilization of 94.1% for the facility, which shows the budgeted revenues would decrease by \$1,601,528 resulting in a net income in year one of \$27,092. BFA Attachment B presents the pro-forma balance sheet of Ridgeview Manor, LLC. As shown, the facility will initiate operation with negative \$245,829 members' equity due to the proposed members retiring the current debt obligation through a mortgage after closing. 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.

Review of BFA Attachment C, financial summary of Ridgeview Manor, shows negative working capital, net equity and a net profit from operations of \$276,510 and \$139,107 as of December 31, 2013 and May 31, 2014, respectively. Richard Platschek and Solomon Abramczyk acquired membership interest in Ridgeview Manor as of October of 2012, and were able to obtain the following financial improvements:

- Additional third party revenues of \$850,000 in Medicaid rate increases,
- \$250,000 in Medicare rate increases,
- Increased facility efficiencies, such as renegotiate purchase contracts, by approximately \$900,000.

Review of Attachment D, financial summaries of proposed member Richard Platschek's affiliated homes, shows the three RHCFs 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 Attachment E, financial summary of West Lawrence Care Center, shows the RHCF had negative working capital, positive equity and an average net loss of \$584,209 for 2011-2013. The facility has since revised their financial management practices by renegotiating contracts and securing payer rate increases and has maintained a net income of \$481,774 as of May 31, 2014.

Review of Attachment F, financial summary of Park Gardens Rehabilitation and Nursing Center, shows the RHCF had positive net income of \$5,025,153 as of June 30, 2014.

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	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Safire Rehabilitation of Southtowns, LLC
BFA Attachment C	Financial Summary, Ridgeview Manor Nursing Home, 2011- June 30, 2014
BFA Attachment D	Financial summary of proposed member, Richard Platschek, affiliated Nursing Homes
BFA Attachment E	Financial Summary, West Lawrence Care Center
BFA Attachment F	Financial summary, Park Gardens Rehabilitation and Nursing Center
BFA Attachment G	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Safire Rehabilitation of Southtowns, LLC as the new operator of the nursing home located at 300 Dorrance Avenue, Buffalo, formerly operated as Ridge View Manor, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141237 E

Safire Rehabilitation of Southtowns, LLC

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. [RNR]
3. Submission of an annual report for two years to the DOH, demonstrating substantial progress with the implementation of the plan. The report 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 an Asset and Real Estate Purchase Agreement that accurately designates both the buyers and the sellers and is acceptable to the Department. [LTC]
5. Submission of an executed building lease acceptable to the Department of Health. [BFA]
6. Submission of an Asset and Real Estate Purchase Agreements (from Ridge View Manor) to Mr. Platschek and then from Mr. Platschek to Safire Rehabilitation of Southtowns, LLC that are acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed Articles of Organization that is acceptable to the Department. [CSL]
9. Submission of a fully executed, proposed Certificate of Amendment to Ridge View Manor, LLC's Articles of Organization or Articles of Dissolution, as the case may be. [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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 142050-E
 BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing

Program: Residential Health Care Facility **County:** Tompkins
Purpose: Establishment **Acknowledged:** August 12, 2014

Executive Summary

Description

BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing (BTRNC) is seeking approval to be established as the new operator of Reconstruction Home and Health Care Center, Inc. d/b/a Beechtree Care Center, an existing 120-bed voluntary residential health care facility (RHCF) located at 318 South Albany Street, Ithaca, NY (Tompkins County). Upon the change in ownership, the facility will transition from a voluntary/not-for-profit to a proprietary facility.

BTRNC, LLC is the current receiver of Beechtree Care Center. On September 1, 2013, the current operator of Beechtree Care Center entered into an Operations Transfer Agreement with BTRNC, LLC to sell and acquire the operating interests of the 120-bed facility. The purchase price for the operations of Beechtree Care Center is \$10.

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

Current Owner

Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center	<u>Membership</u>
	100.00%

Current Receiver - Proposed Operator/Owner

BTRNC, LLC, d/b/a Beechtree Center for Rehabilitation and Nursing	<u>Membership</u>
Efraim Steif	39.90%
Uri Koenig	60.00%
David Camerota	0.10%

Also, a separate but related real estate company, 318 South Albany Street, LLC, will acquire the facility's property. Ownership of the real estate before and after the requested change is as follows:

Current Owner

Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center	<u>Membership</u>
	100.00%

Proposed Owner

318 South Albany Street, LLC	<u>Membership</u>
Efraim Steif	40.00%
Uri Koenig	60.00%

BFA Attachment A presents a summary net worth statement of the proposed members of BTRNC. All 3 of the proposed members have ownership interest in the following RHCF facilities: Bridgewater Center for Rehabilitation & Nursing, LLC; Central Park Rehabilitation and Nursing Center; and Pine Valley Center for Rehabilitation and Nursing.

DOH Recommendation
 Contingent Approval

Need Summary

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

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

BTRNC will acquire the operating interest in the RHCF for \$10, and 318 South Albany Street, LLC will acquire the RHCF real property for \$4,534,158 by taking over

the facility's liabilities, as stated in the asset purchase agreement.

There are no project costs associated with this proposal.

Year 1 budget total	Revenues	\$8,608,375
	Expenses	<u>\$8,606,963</u>
	Gain/(Loss)	\$1,412
Year 3 budget total	Revenues	\$8,824,840
	Expenses	<u>\$8,649,764</u>
	Gain/(Loss)	\$175,076

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 evidence of site control acceptable to the Department. [CSL]
4. Submission of a copy of a Certificate of Amendment to the Articles of Organization for BTRNC, LLC acceptable to the Department. [CSL]
5. Submission of a copy of an amended Operating Agreement for BTRNC, LLC acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 2, 2014

Need Analysis

Background

BTRNC, LLC seeks approval to become the established operator of Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center, a 120-bed Article 28 residential health care facility located at 318 South Albany Street, Ithaca, 14850, in Tompkins County.

Analysis

There is currently a need for 118 beds in Tompkins County as indicated in Table 1 below. However, the overall occupancy for Tompkins County is 92.9% for 2012, as indicated in Table 2, well below the 97 percent planning optimum.

Table 1: RHCF Need – Tompkins County

2016 Projected Need	478
Current Beds	420
Beds Under Construction	-60
Total Resources	360
Unmet Need	118

Beechtree Care Center's utilization was 97.9% in 2010, 98.1% in 2011, and 97.1% in 2012. This facility has historically exceeded the Department's planning optimum and continues to do so under the current receiver.

Table 2: Beechtree Care Center/ Tompkins County Occupancy

Facility/County	% Occupancy	% Occupancy	% Occupancy
	2010	2011	2012
Beechtree Care Center	97.9%	98.1%	97.1%
Tompkins County	96.2%	96.5%	92.9%

Current utilization, as of August 6, 2014 was 99.2%. The applicant is the current receiver for the facility and noted the reason utilization has increased above the Department's planning optimum is due to the following:

- Hiring a new admissions director with experience in LTC admissions and external marketing;
- Hiring a new Medical Director, who in turn hired a nurse practitioner at the facility 3 days a week to help reduce hospitalizations. The nurse practitioner is a new service to the facility;
- Hiring a new therapy company to provide services, which has improved outcomes, length of stay management, and quality of care; and
- Hiring a contractor to screen Medicaid patients within the catchment area to ease admissions of Medicaid-eligible residents to the facility.

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.

Highland Park Rehabilitation and Nursing & Hudson Park Rehabilitation and Nursing	06/2011 to present
Vestal Park Rehabilitation and Nursing	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present

Diagnostic and Treatment Center:

Bridgewater Center for Dialysis	03/2012 to present
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Adult Day Health Care:

Riverside Manor Adult Care (closed)	09/2009 to 07/2010
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Adult Home:

The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present
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Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Dialysis (operator)	03/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing Center & Hudson Park Rehabilitation and Nursing Center	06/2011 to present ²
Vestal Park Rehabilitation and Nursing Center	06/2011 to present ¹
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present ²
Cortland Park Rehabilitation and Nursing Center	06/2011 to present ²
Colonial Park Rehabilitation and Nursing Center	06/2011 to present ²
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is the President of FRS Healthcare Consultants, Inc., and formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. Mr. Steif discloses the following health care facility interests:

Bridgewater Center for Rehabilitation & Nursing (Rec/Op)	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing (Rec/Op)	12/2004 to present
Central Park Rehabilitation and Nursing Center (Rec/Op)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Dialysis	03/2012 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006
Chestnut Park Rehabilitation and Nursing	06/2011 to present ²
Cortland Park Rehabilitation and Nursing	06/2011 to present ²
Colonial Park Rehabilitation and Nursing	06/2011 to present ²
Highland Park Rehabilitation and Nursing &	06/2011 to present ²
Hudson Park Rehabilitation and Nursing	06/2011 to present ²
Vestal Park Rehabilitation and Nursing	06/2011 to present ¹
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

David Camerota is a licensed NY nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota discloses the following health care facility interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Rehabilitation and Nursing	03/2011 to present
Bridgewater Center for Dialysis	03/2012 to present

Receiverships:

Highland Park Rehabilitation and Nursing &	06/2011 to present ²
Hudson Park Rehabilitation and Nursing Center	06/2011 to present ²
Vestal Park Rehabilitation and Nursing Center	06/2011 to present ¹
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present ²
Cortland Park Rehabilitation and Nursing Center	06/2011 to present ²
Colonial Park Rehabilitation and Nursing Center	06/2011 to present ²
Riverside Center for Rehabilitation and Nursing	03/2012 to present ²
Capstone Center for Rehabilitation and Nursing	03/2012 to present ²
Northeast Center for Rehabilitation and Nursing	11/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Beechtree Center for Rehabilitation and Nursing	09/2012 to present
The Pavillion at Claxton Manor (on Folts Campus)	10/2013 to present

¹PHHPC Approved 12/2013 as Operator; in process to complete transfer.

² PHHPC Approved 04/2014 as Operator; in process to complete transfer.

Character and Competence - Analysis

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

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.

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

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of operations for Bridgewater Center for Rehabilitation & Nursing, LLC, and Central Park Rehabilitation and Nursing Center, for the period identified above, results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of operations for the Beechtree Center for Rehabilitation and Nursing, Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Folts Center for Rehabilitation and Nursing, Highland Park Rehabilitation and Nursing Center, Hudson Park Rehabilitation and Nursing Center, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, Westchester Center for Rehabilitation and Nursing, Riverside Manor Adult Care, Van Duyn Center for Rehabilitation and Nursing, The Pavillion at Claxton Manor, and Bridgewater Center for Dialysis 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.

Conclusion

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.

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:	September 1, 2013
Transferor:	Reconstruction Home and Health Care Center, Inc., d/b/a Beechtree Care Center
Transferee:	BTRNC, LLC
Purchase Price:	\$10 Payable at closing

Assets Transferred: All rights, title and interest in the assets including trade name, leasehold improvements, equipment and furniture, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone numbers, fax numbers and all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and medical records custody agreement.

Assumed Liabilities: Obligations of transferor under or which may arise in connection with the provider agreement and the assets, assumed by transferee pursuant to the terms hereof and the assignment of provider agreement.

Asset Purchase Agreement

The change in ownership of the real estate has been effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date: September 1, 2013
 Seller: Reconstruction Home and Health Care Center, Inc.
 Purchaser: 318 South Albany Street, LLC
 Purchased Assets: Seller's right, title and interest in that certain plot, piece and parcel of land and building, fixtures, equipment, improvements and depreciable assets occupied by or used by the facility and located at 318 South Albany Street, Ithaca, NY, the land lying in the bed of any street or highway in front of 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 in 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 all reserves maintained by or for seller with respect to the HUD loans or underlying bonds thereof and all of the goodwill symbolized and associated with the facility, and any other assets located at or used in connection with the facility.

Liabilities Assumed : The only liabilities the purchaser is assuming are as follows:

- The outstanding balance of the HUD loans (\$4,065,000)
- The outstanding interest on bonds (\$175,062)
- Prepayment penalty (\$45,200)
- Trustee fees (\$30,000)
- Cayuga county legal and publication costs (\$25,000)
- Title and Recording fees (\$45,000)
- Seller's legal fees (\$50,000)
- Cain Brothers Fees (\$150,000)
- OMIG liability (\$589,782)
- Medicaid retro (\$207,691)
- Fees due to Berkadia (estimated late fees) (\$12,500)
- Settlement agreement with Cayuga Medical Center at Ithaca, Inc. (\$250,000)

Total liabilities listed above are approximately \$5,645,235. However, the total liabilities to be assumed by the purchaser equals \$4,534,158, as it excludes an estimated amount held by the bond trustee of approximately \$1,111,077.

Purchase Price: \$4,534,158
 Payment of Purchase Price: Assumption of liabilities at closing which was on December 20, 2013

The purchase price of operations and real estate is proposed to be satisfied as follows:

Operations - Equity from BTRNC Members	\$10
Real Estate - HUD loan (22 years and 9 months @ 4.24%)	<u>\$5,304,600</u>
Total	\$5,304,610

BFA Attachments A and B are the proposed members' net worth summaries for BTRNC and 318 South Albany Street, LLC, which reveal sufficient resources to meet the equity requirements.

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.

Lease Agreement (Company to Agency)

The applicant has submitted an executed Company to Agency lease agreement, the terms of which are summarized as follows:

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: 318 South Albany Street, LLC
Lessee: Tompkins County Industrial Development Agency
Term: 10 years 1 month terminating 2/1/2024
Rental: \$1 per year
Provisions: Triple net lease

Leaseback Agreement (Agency to Company)

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

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: Tompkins County Industrial Development Agency
Lessee: 318 South Albany Street, LLC
Term: 10 years 1 month terminating 2/1/2024
Rental: \$10 per year
Provisions: Triple net lease

Reimbursement Lease Agreement and Medicaid Capital

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

Date: December 20, 2013
Premises: A 120-bed RHCF located at 318 South Albany Street, Ithaca, NY
Lessor: 318 South Albany Street, LLC
Lessee: BTRNC, LLC
Term: 23 year lease
Rental: \$599,877 per year (\$49,989.75 per month)
Provisions: Triple net lease

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.

With the change from a voluntary to a proprietary facility, the reimbursement methodology would be changed from reimbursement based on interest and depreciation for the HUD mortgage to reimbursement based on interest and amortization for the remainder of the 22 years 9 months HUD mortgage term. The facility however, does not have a mortgage as the facility is leased from a related entity. The related entity is charging the rent based on interest and amortization owed on the current HUD mortgage loan.

Operating Budget

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

	<u>Per Diem</u>	<u>Year 1 Total</u>	<u>Year 3 Total</u>
Revenues:			
Medicaid	\$155.32	\$4,054,905	\$4,156,829
Medicare	322.85	1,506,098	1,543,964
Private Pay/Other	281.15	<u>3,047,372</u>	<u>3,124,046</u>
Total		\$8,608,375	\$8,824,839
Expenses:			
Operating		\$8,007,076	\$ 8,027,633
Capital		<u>599,887</u>	<u>622,131</u>
Total		\$8,606,963	\$8,649,764
Net income/loss		<u>\$1,412</u>	<u>\$ 176,076</u>
Utilization: (patient days)		41,610	42,657
Occupancy		95.00%	97.39%

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

- Utilization by payor source is expected as follows: Medicaid 62.74%; Medicare 11.21%; Private Pay/Other 26.05%.
- Breakeven utilization is projected at approximately 95% for the RHCF.

Capability and Feasibility

On September 1, 2013, through an Operational Transfer Agreement, BTRNC acquired the operating interest of Reconstruction Home and Health Care Center, Inc., an existing 120-bed voluntary residential health care facility.

BTRNC will acquire the operating interest in the RHCF for \$10, and 318 South Albany Street, LLC will acquire the RHCF's real property for \$4,534,158 through the acquisition of the above listed liabilities of the facility. There is a relationship via similar members between 318 South Albany Street, LLC (the landlord) and BTRNC (the nursing home operator). There are no project costs associated with this proposal.

Working capital requirements for total operations are estimated at \$1,434,494, based on two months of year 1 expenses, which appears reasonable. Working capital will be satisfied from the applicant members' equity. This is presented on BFA Attachment A, which shows adequate resources to cover the working capital requirements.

BFA Attachment C is the pro-forma balance sheet of BTRNC, which indicates positive members' equity of \$1,434,494 as of 12/31/2012.

BFA Attachment D is the pro-forma balance sheet for 318 Albany Street, LLC, which indicates negative equity of \$872 as of 12/20/2013. The owners indicate that they will cover any losses of the entity. As shown on BFA Attachment B, the net worth of the owners of 318 Albany Street, LLC, the realty owners have enough resources available to cover any losses.

The submitted total budget indicates that a net income of \$1,412 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:

Total projected income Year 1	\$8,608,365
Total projected expenses Year 1	8,606,953
Total projected net income Year 1	\$1,412
Total annual 2012 income	\$7,556,226
Total annual 2012 expense	8,752,359
Total annual 2012 net income (loss)	(\$1,196,133)
Total incremental net income (loss)	\$1,197,545

Medicaid revenues are expected to decrease by \$861,015 as the result of a decrease in patient days from 2012 to 2015 and a decrease in the average daily rate from \$156.49 per patient day in 2012, to \$155.32 per patient day in 2015. However, it is estimated that net revenue across all payors will increase by approximately \$1,197,545 as the results of the following:

- Medicare and Private Pay/Other revenues are expected to increase in total by approximately \$1,697,499 from 2012 to 2015.
- The average daily rate for Medicare will be increasing from \$300.45 per patient day in 2012, to \$322.85 per patient day in 2015.
- The average daily rate for Private Pay/Other will be going from \$213.29 per patient day in 2012, to \$281.14 per patient day in 2015.
- Patient days are anticipated to increase by 1,801 for Medicare and 2,459 for Private Pay/Other.
- The remaining increase in revenues is classified as “all other” and incorporates non-patient specific revenues, e.g., cafeteria services. The amount associated with this is an increase of \$208,134 over the current year.
- Despite a cost increase related to rental expense, there is an overall net decrease in cost of approximately \$145,396 due to the complete elimination of interest expense.

Based on the above, 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 E for the year 2012, BTRNC generated an average net loss of \$1,134,680, had an average negative net asset position and had an average negative working capital position. The reason for the 2012 loss is due to several operational difficulties over the last few years, which include inefficiencies in admissions, operational issues with the previous medical director and operational issues with the previous therapy company. These issues impacted the ability of the facility to generate profits from operations.

In order to resolve these issues the facility has done the following:

- The receiver has installed a new admissions director to improve the facility's presence in the community, as well as allow for quicker admission decisions at the facility.
- A new medical director was hired to improve care and avoid patient hospitalizations.
- A new nurse practitioner was hired to work 3 days per week to provide better medical management and help to reduce hospitalizations.
- The facility revised internal nursing and medical policies and processes to improve the care and outcomes of the patients.
- The facility also hired a new therapy company to provide necessary therapy services, with the objective to improve therapy outcomes, length of stay management and quality of care.

As shown on BFA Attachment F, for the years 2010 through 2012, Bridgewater Center for Rehabilitation and Nursing, LLC generated an average operating surplus of \$288,457, had an average positive net asset position of \$461,913, and had an average positive working capital position of \$222,964.

As shown on BFA Attachment G, for the years 2010 through 2012, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing generated an average operating surplus of \$434,863, had an average positive net asset position of \$2,600,993, and had an average positive working capital position of \$4,631,666.

As shown on BFA Attachment H, for the years 2010 through 2012, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center generated an average operating surplus of \$287,300, the net asset position turned positive in 2011, and as of 2012, it was a positive \$15,200. During this time period, the RHC had an average positive working capital position of \$2,239,042.

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	Net Worth of BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing Proposed Members
BFA Attachment B	Net Worth of 318 Albany Street, LLC Proposed Members
BFA Attachment C	Pro-forma Balance Sheet, BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing Proposed Members
BFA Attachment D	Pro-forma Balance Sheet, 318 Albany Street, LLC
BFA Attachment E	Financial Summary, BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, Bridgewater Center for Rehabilitation and Nursing, LLC
BFA Attachment G	Financial Summary, Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing
BFA Attachment H	Financial Summary, CPRN, LLC d/b/a Central Park Rehabilitation and Nursing Center
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing, the current receiver, as the new operator of Beechtree Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142050 E

BTRNC, LLC d/b/a Beechtree Center for
Rehabilitation and Nursing

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 evidence of site control acceptable to the Department. [CSL]
4. Submission of a copy of a Certificate of Amendment to the Articles of Organization for BTRNC, LLC acceptable to the Department. [CSL]
5. Submission of a copy of an amended Operating Agreement for BTRNC, LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141082-E
Eddy Visiting Nurse Association

Program: Certified Home Health Agency
Purpose: Establishment

County: Rensselaer
Acknowledged: February 27, 2014

Executive Summary

Description

Home Aide Services of Eastern New York, Inc. d/b/a Eddy Visiting Nurses Association is seeking approval of a change in controlling person that will result when Catholic Health East, Inc. (CHE) and Trinity Health Corporation merge into CHE Trinity, Inc. The surviving corporation will be called CHE Trinity, Inc.

There is no acquisition cost or purchase agreement involved in the transition of Catholic Health Care System as the sole corporate member. There will be no change in lease arrangements or result in any programmatic changes. The sole corporate member arrangement is expected to: promote the sharing of clinical best practices and joint training opportunities; integrate and centralize administrative functions; produce cost savings and efficiencies through group purchasing; improve staff recruitment and retention and enhance the system's marketing presence.

BFA Attachment A is an organizational chart of before and after the change.

DOH Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this application.

Program Summary

The purpose of this application is to seek approval of a change in controlling person that will result when Catholic Health East, Inc., (CHE) and Trinity Health Corporation merge into CHE Trinity, Inc. The surviving corporation will be called CHE Trinity, Inc.

Financial Summary

There are no project costs associated with this project and there will be no change in the daily operations.

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 amendment to the Certificate of Incorporation of Home Aide Service of Eastern New York, Inc., acceptable to the Department. [CSL]
2. Submission of the amended bylaws of Home Aide Service of Eastern New York, Inc., acceptable to the Department. [CSL]
3. Submission of an executed amendment to the Certificate of Incorporation of LTC (Eddy), Inc., acceptable to the Department. [CSL]
4. Submission of the amended bylaws of LTC (Eddy), Inc., acceptable to the Department. [CSL]
5. Submission of an executed amendment to the Certificate of Incorporation of Northeast Health, Inc., acceptable to the Department. [CSL]
6. Submission of the amended bylaws of Northeast Health, Inc., acceptable to the Department.
7. Submission of an executed amendment to the Certificate of Incorporation of St. Peter's Health Partners, Inc., acceptable to the Department. [CSL]
8. Submission of the amended bylaws of St. Peter's Health Partners, Inc., acceptable to the Department. [CSL]
9. Submission of the executed Restated and Amended Articles of Incorporation of CHE Trinity, Inc., acceptable to the Department. [CSL]
10. Submission of the bylaws of CHE Trinity, Inc., acceptable to the Department. [CSL]
11. Submission of an executed amendment to the Certificate of Incorporation of Catholic Health East, 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

October 2, 2014

Program Analysis

Program Description

Home Aide Services of Eastern New York, Inc. d/b/a Eddy Visiting Nurse Association, a not-for-profit corporation, currently operates an Article 36 certified home health agency (CHHA) and long term home health care program (LTHHCP). Their approved CHHA geographic service area includes Albany, Columbia, Greene, Rensselaer, Schenectady and Saratoga counties and their LTHHCP geographic service area includes Albany, Columbia, Greene, Rensselaer and Saratoga counties. The current proposal seeks approval for a change in controlling person as described below. There will be no changes to the geographic service area, or the scope of services provided by Home Aide Services of Eastern New York, Inc. d/b/a Eddy Visiting Nurse Association as a result of this transaction.

This change in controlling person also affects the following Article 36-licensed agencies that are affiliated with St. Peter's Health Partners, and separate applications are being reviewed simultaneously with this one.

- Eddy Licensed Home Care Agency (2424-L)
- Senior Care Connection, Inc. (2423-L)

The purpose of this application is to seek approval of a change in controlling person that will result when Catholic Health East, Inc., its great-great-grandparent organization, and CHE Trinity, Inc., Catholic Health East's sole member, merge into Trinity Health Corporation (Trinity Health). The surviving corporation will be called CHE Trinity, Inc. (CHE Trinity).

Catholic Health East, Inc., a Pennsylvania nonprofit corporation, and Trinity Health, an Indiana nonprofit, are two national Catholic health care systems with operating entities in twenty states. Catholic Health East, Inc. and Trinity Health have determined it is in the best interests of both to merge through a two-step process. Step one involved the creation CHE Trinity, Inc., an Indiana nonprofit, which became the sole member of Catholic Health East, Inc. and Trinity Health in June 2013. Step two is the merger Catholic Health East, Inc. and CHE Trinity into Trinity Health, with the surviving corporation to be called CHE Trinity, Inc.

Catholic Health East, Inc., Trinity Health, and CHE Trinity, Inc. currently have mirror boards. Of the 19 individuals on these boards, two are current or former board members of St. Peter's Health Partners and St. Peter's Health Care Services, and the others have served on the board of directors of Catholic Health East, Inc.

Catholic Health East, Inc. is the sole member of St. Peter's Health Partners, which is the sole member of Northeast Health, Inc., which is the sole member of LTC (Eddy), Inc., which is the sole member of each of the Article 36 entities.

The proposed Board Members of CHE Trinity, Inc. comprises the following individuals:

Kevin Barnett – Director
Senior Investigator, Public Health Institute

Suzanne T. Brennan, CSC – Director
President and Executive Director, Holy Cross Ministries

James D. Bentley, Ph.D. – Director
Retired
Affiliations:

- Board Member, Catholic Health East (5/13 – Present)
- Board Member, Holy Cross Hospital (2003 – 2008)
- Board Member, Trinity Health (2010 – Present)

Joseph Betancourt, MD – Director
Physician, Massachusetts General Hospital
Affiliations:

- Board Member, Trinity Health (2012 – Present)
- Board Member, Neighborhood Health Plan (2013 – Present)

George M. Philip, Esq. – Director

Retired

Affiliations:

- Board Member, St. Peter's Hospital (1992 – 2013)
- Board Member, Catholic Health East (2003 – 2013)

Larry Warren – Director

Retired

Affiliation:

- Board Member, Trinity Health (2011 – 2013)

Sister Kathleen Marie Popko, RN – Director

President, Sisters of Providence

Affiliations:

- Board Member, Catholic Health East (2009 – 2013)
- Board Member, Sisters of Providence Health System (2009 – 2013)
- Board Member, St. Joseph of the Pines Health System, Inc. (2009 – Present)
- Board Member, Mary's Meadow at Providence Place (2009 – Present)

David Southwell – Director

Retired

Affiliation:

- Director/Chair, ChildServe (2002 – 2008)

Roberta Waite, RN – Director

Associate Professor of Nursing & Assistant Dean of Faculty Integration and Evaluation of Community Programs, Drexel University

Barbara K. Wheeley, RSM (Clinical Psychologist, MD) – Director

Retired

Affiliations:

- Board Member, Mercy Medical, Inc. (1989 – 2013)
- Board Member, Catholic Health East (2010 – 2013)
- Board Member, Trinity Health (2013 – Present)

Melanie C. Dreher, Ph.D., RN – Director

Dean, College of Nursing, Rush University Medical Center

Affiliations:

- Board Member, Wewmark (3/08 – Present)
- Board Member, Trinity Health (2012 – 2013)

Richard J. Gilfillan, MD – Director

President/CEO, CHE Trinity Health, Inc.

Mary Catherine Karl, CPA – Director

Retired

Affiliations:

- Board Member, BayCare Health System
- Board Member, St. Anthony's Hospital (2000 – 2010)
- Board Member, BayCare Health System Insurance (2006 – 2010)
- Board Member, Catholic Health East
- Board Member, Surgical Safety Institute (2004 – Present)

Stanley Urban – Director

Retired

Affiliation:

- Board Member, Adirondack Health (2007 – Present)

Linda J. Werthman, RSM (Master's social work, Michigan) – Director

Adjunct Associate Professor of Social Work, University of Detroit Mercy

Affiliation:

- Board Member, Trinity Health (2009 – 2013)

The proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and Home Aide Services of Eastern New York, Inc. comprise the following individuals:

Robert J. Bylancik – Director

Retired

Affiliations:

- Board Member, Living Resources, Inc. (2007 – 2012)

Barbara D. Cottrell, Esq. – Director

Chief Clerk, Rensselaer County Family Court, NYS Office of Court Administration

Affiliations:

- Member, Board of Trustees, St. Peter's Hospital
- St. Peter's Addiction Recovery Center (2003 – 12/07)

Anne G. DiSarro – Director

Retired

Rev. Kenneth J. Doyle – Director

Pastor of Parish, Diocesan Chancellor for Public Information, Roman Catholic Diocese of Albany
Affiliation:

- Board Member, St. Peter's Hospital (2004 – 12/07)

John D. Filippone, MD – Director

Cardiologist, SPHP Medical Associates

Harold D. Gordon, Esq. – Director

Attorney, Couch White, LLP

Ronald L. Guzior, CPA – Director

Partner, Sax BST Advisory Network/Bollam, Sheedy Torani & Co.

George Hearst III – Director

Publisher/CEO, Times Union

Sr. Phyllis Herbert, RN – Director

Program Director – Honor Court, 820 River St. (Alcoholism/Drug Treatment)

Robert W. Johnson, III, Esq. – Director

Partner, Martin, Shudt, Wallace, DiLoreenzo & Johnson

Beverly M. Karpiak – Director

Supervisor of student teachers, College of St. Rose

Michael T. Keegan – Director

Regional President, Albany & Hudson Valley Division, M & T Bank

John M. Lang – Director

Retired

Norman I. Massry – Director

Principal, Massry Realty Partners

Affiliation:

- Board Member, St. Peter's Hospital (2007 – 12/09)

Sr. Kathleen M. Natwin – Director

Retired

Volunteer – Board Member, Community Outreach, Daughters of Charity, St. Louise Provence

Affiliations:

- Board Member, Seton Manor (2012 – Present)
- Board Member/Sponsor, Catholic Health System (2002 – Present)
- Board Member, Mt. St. Mary's Hospital (2002 – Present)

Curtis N. Powell – Director

Vice President, Human Resources, Rensselaer Polytechnic Institute

James K. Reed, MD – Director

President, St. Peter's Health Partners, Catholic Health East

Affiliation:

- Director, Rubin Dialysis Centers (1997 – 2011)

Alan M. Sanders, MD – Director

Senior Partner/Physician, Upstate Infectious Disease Association, LLP

Chief of Department of Medicine, St. Peter's Hospital

James A. Slavin, MD – Director

President/Owner, Practitioner, Burdett Orthopedics, PC

Affiliations:

- Board Member, Unity House of Troy (2009 – Present)
- President/Owner, Burdett Orthopedics (1998 – Present)

Anthony P. Tartaglia, MD – Director

Retired

Lisa M. Thorn, MD – Director

Family Physician Member, Averill Park site Medical Director, Capital Care Medical Group

Affiliation:

- Physician Member, Capital Care Medical Group, Averil Park (2006 – Present)

Sr. Kathleen M. Turley – Director

Leadership Team Member, Sisters of Mercy

All of the above proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and Home Aide Services of Eastern New York, Inc. are affiliated with the following entities:

- St. Peter's Hospital of the City of Albany
- Our Lady of Mercy Life Center
- Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
- Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
- Eddy Licensed Home Care Agency, Inc.
- Glen Eddy, Inc. (Terrace at Glen Eddy)
- Hawthorne Ridge, Inc.
- Heritage House Nursing center, Inc.
- Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association
- Memorial Hospital
- Samaritan Hospital of Troy
- Senior Care Connection, Inc. d/b/a Eddy SeniorCare
- Sunnyview Hospital and Rehabilitation Center
- The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
- The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
- The Marjorie Doyle Rockwell Center, Inc.
- Seton Health System, Inc. d/b/a St. Mary's Hospital
- Seton Health at Schulyer Ridge Residential Healthcare

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 State of Michigan's Department of Licensing and Regulatory Affairs, Bureau of Health Care Services indicated no issue with the licensure of Linda Werthman's Masters Social Worker License. The Bureau of Health Care Services has never taken disciplinary action against this individual or license.

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 all attorneys.

The Bureau of Professional Credentialing has indicated that Sister Mary Anne Weldon's NHA license 04039, issued January 1, 1991, is currently in voluntary inactive status. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license

A seven year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Alabama

Mercy Medical – Mobile County Home Care
Mercy Medical – Baldwin County Home Care
Mercy Medical – Mercy LIFE of Alabama (PACE)

California

Saint Agnes Medical Center
Saint Agnes Home Health & Hospice

Connecticut

Saint Mary Home, Inc. – Chronic Convalescent Nursing Home
Saint Mary Home, Inc. – Frances Ward Towers Residential Care Home
The McAuley Center, Inc. – Assisted Living Service Agency

Delaware

St. Francis Hospital, Inc. d/b/a/ Saint Francis Healthcare

Florida

Holy Cross Hospital, Inc.
Holy Cross Hospital Home Health Agency
Physician Outpatient Surgery Center, LLC
Mercy Hospital, Inc.
BayCare Health System (10 hospitals) (2003-2013)
St. Anthony's Hospital (2000 – 2010)

Georgia

St. Joseph Hospital of Atlanta
St. Joseph's Foundation
Mercy Senior Care
St. Joseph's Mercy Care Services, Inc.
Good Samaritan Hospital, Inc.
St. Mary's Hospital
St. Mary's Health Care System, Inc. – Home Health
St. Mary's Health Care System, Inc. – Home Hospice
St. Mary's Health Care System, Inc. – Hospice House
St. Mary's Health Care System, Inc. – Assisted Living License

Idaho

Saint Alphonsus Regional Medical Center – Boise
Saint Alphonsus Regional Medical Center – Nampa
Saint Alphonsus Regional Medical Center – Baker City Nursing Facility
Saint Alphonsus Regional Medical Center – Baker City Hospital

Illinois

Loyola Center for Home Care and Hospice
Loyola University Medical Center – Hospice Agency
Loyola University Medical – Ambulatory Surgical Treatment Center
Gottlieb Home Health Services
Gottlieb Memorial Hospital Hospice
Gottlieb Memorial Hospital Pharmacy
Gottlieb Memorial Hospital Pharmacy Controlled Substances
Gottlieb Memorial Hospital Mammography Facility

Indiana

Saint Joseph's Regional Medical Center – South Bend Campus (1/12– Present)
Saint Joseph's Regional Medical Center (1/12– Present)
Saint Joseph VNA Home Care (1/12– Present)
Sanctuary at St. Pauls (1/12– Present)
Sanctuary at Holy Cross (1/12– Present)

Iowa

Mercy Medical Center – Clinton
Mercy Living Center North
Mercy Medical Center – Dubuque
Mercy Medical Center – North Iowa/Mason City
Mercy Medical Center – Sioux City
The Alverno Health Care Facility
ChildServe (2002 – 2008)

Maryland

Holy Cross Hospital of Silver Spring
Holy Cross Hospital of Silver Spring
Sanctuary at Holy Cross
Holy Cross Hospital (2003 – 2008)

Massachusetts

The Mercy Hospital (8/12– Present)
Sisters of Providence Health System (2009 – 2013)
Mary's Meadow at Providence Place (2009 – Present)

Michigan

Saint Mary's Health Care
St. Joseph Mercy – Ann Arbor Psychiatric
St. Joseph Mercy – Saline
St. Joseph Mercy – Livingston
St. Joseph Mercy – Oakland
St. Joseph Mercy – Oakland Psychiatric
St. Joseph Mercy – Port Huron
St. Joseph Mercy – Port Huron Helistop
Mercy Health Partners – Mercy Campus
Mercy Health Partners – Hackley Campus
Mercy Health Partners – Hackley Campus Psychiatric
Mercy Health Partners – Lakeshore Campus
St. Mary Mercy Hospital
St. Mary Mercy Hospital – Psychiatric
Chelsea Community Hospital
Mercy Hospice
Mercy Hospice Grayling
Mercy Hospice – Cadillac
Mercy VNS and Hospice Services

Michigan

Sanctuary at Mcauley
Sanctuary at the Abbey
Sanctuary at Bellbrook
Sanctuary at St. Mary's
Sanctuary at the Park
Sanctuary at Fraser Villa
Sanctuary at St. Joseph's Village #1 (3/2005-Present)
Sanctuary at St. Joseph's Village #2 (3/2005-Present)
Marycrest Manor
Sanctuary at White Lake
Sanctuary at the Oaks #2 (4/2005-Present)
Sanctuary at the Oaks #1 (4/2005-Present)
Sanctuary at the Shore
Mercy Bellbrook/Frances Warde (2/2010-Present)
Mercy Bellbrook/McAuley (2/2010-Present)
Sanctuary at Bellbrook
Sanctuary at Woodland #1 (4/2005-Present)
Sanctuary at Woodland #2 (4/2005-Present)
Sanctuary at Fraser Villa
Sanctuary at Mercy Village #2 (4/2005-Present)
Sanctuary at Mercy Village #1 (4/2005-Present)

Nebraska

Mercy Home Care

New Jersey

Our Lady of Lourdes Medical Center
Lourdes Medical Center of Burlington County
Saint Michael's Medical Center, Inc. – 12 Months
St. Francis Medical Center

New York

Northeast Health, Inc.
St. Peter's Addiction Recovery Center (2003 – 12/07)
Seton Manor (2012 – Present)
Catholic Health System (2002 – Present)
Mt. St. Mary's Hospital (2002 – Present)
St. Peter's Hospital of the City of Albany
Our Lady of Mercy Life Center
Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
Eddy Licensed Home Care Agency, Inc.
Glen Eddy, Inc. (Terrace at Glen Eddy)
Hawthorne Ridge, Inc.
Heritage House Nursing center, Inc. d/b/a Eddy Heritage House Nursing and Rehabilitation Center
Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (CHHA)
Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (LTHHCP)
Memorial Hospital
Samaritan Hospital of Troy
Senior Care Connection, Inc. d/b/a Eddy SeniorCare
Sunnyview Hospital and Rehabilitation Center
The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
The Marjorie Doyle Rockwell Center, Inc.
Father Baker Manor (Nursing Home)
Mercy Hospital Skilled Nursing Facility

New York

St. Francis Home of Williamsville (Nursing Home)
Mercy Living Center (Nursing Home)
Uihlein Living Center (Nursing Home)
Seton Health System, Inc. d/b/a St. Mary's Hospital
Seton Health at Schulyer Ridge Residential Healthcare
St. Peter's Health Partners d/b/a Eddy Village Green at Beverwyck
St. James Mercy Hospital
Adirondack Medical Center (Hospital)
Adirondack Medical Center/Lake Placid (Hospital)
Sisters of Charity Hospital of Buffalo, NY
Kenmore Mercy Hospital
Mercy Hospital of Buffalo
Niagara Homemakers Services, Inc. d/b/a Mercy Home Care of Western New York
St. Vincent's Home for the Aged
St. Elizabeth's Home of Lancaster, New York
McAuley-Seton Home Care Corporation (LHCSA)
Mercy Uihlein Health Corporation
Mercy Health-Care Center, Inc.
The Uihlein Health Corporation, Inc.
Mcauley Manor at Mercycare (Nursing Home)
Adult Day services, Mercycare Break
Hospice associated with St. James Mercy Hospital
Catholic Health System Program of All-Inclusive Care for the Elderly, Inc.

North Carolina

St. Joseph of the Pines, Inc. Family Care Home Zeno Villa at St. Joseph of the Pines (3/18/11-8/26/13)
St. Joseph of the Pines, Inc. Family Care Home Constance Cottage (11/28/11-2014)
St. Joseph of the Pines, Inc. Family Care Home Mary Manor (2004-2014)
St. Joseph of the Pines, Inc. Adult Care Home The Coventry
St. Joseph of the Pines, Inc. Nursing Facility St. Joseph of the Pines Health Center
St. Joseph of the Pines Belle Meade and Pine Knoll at St. Joseph of the Pines
St. Joseph of the Pines, Inc. St. Joseph of the Pines Home Care
LIFE St. Joseph of the Pines, Inc. Adult Day Health Home
St. Joseph of the Pines Health System, Inc. (2002 – Present)

Ohio

Mount Carmel East – Columbus (2004-2014)
Mount Carmel West (2004-2014)
Mount Carmel St. Anne's (2004-2014)

Oregon

St. Alphonsus Regional Medical Center – Ontario

Pennsylvania

Mercy Suburban Hospital
Nazareth Hospital
Mercy Catholic Medical Center of Southeastern Pennsylvania d/b/a Mercy Fitzgerald Hospital and
Mercy Hospital of Philadelphia
St. Agnes Continuing Care Center Living Independently for Elders
Mercy Home Health
St. Agnes Continuing Care Center d/b/a/ Mercy Life Broad Street
St. Agnes Continuing Care Center d/b/a Mercy Life/North Hancock Street
Mercy Family Support Home Care Agency Facility
Mercy Home Health, Health Care Facility
St. Mary Medical Center
Mercy Life Center Corporation Mercy Behavioral Health

Pennsylvania

Mercy Life Center Corporation Outlook Manor
Mercy Behavior Health Munhall Manor
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Behavioral Health Mercy Behavioral Health - LTSR(2)
Mercy Life Center Corporation Garden View Manor
Mercy Life Center Corporation Monarch Springs LTSR
Mercy Life Center Corporation Extended Acute Care Unit - LTSR
Mercy Life Center Corporation Mercy Behavior Health
Mercy Life Center Corporation Mercy Behavioral Health Psychiatric Rehabilitation Clubhouse
Mercy Life Center Corporation d/b/a Mercy Behavior Health Psychiatric Rehab
Mercy Life Center Corporation Mercy Behavioral Health Partial Hospitalization
Mercy Life Center Corporation Mercy Behavioral Health Outpatient
Mercy Behavioral Health
Mercy Life Center Corporation d/b/a/ Mercy Behavioral Health Mercy Behavioral Health Ross Adult Training Facility-Seniors
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Life Center Corporation Mercy Behavioral Health Wexford Employ. Svcs.
Mercy Life Center Corporation Mercy Behavioral Health - Brookline Employment Services
Mercy Life Center Corporation Mercy Behavioral Health - Beachview ATF
Mercy Life Center Corporation Mercy Behavioral Health LTSR I - The Journey Home
Mercy Life Center Corporation Mercy Behavioral Health Family Living Home
Mercy Life Center Corporation Mercy Behavioral Health Reedsdale Center
Mercy Life Center Corporation Mercy Behavioral Health - Baldwin ATF
Mercy Life Center Corporation Mercy Behavioral Health Ross Adult Training Facility - SENI

California

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CCR Title 22 70739(a) – Infection Control for findings on June 2, 2008.

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CA Health and Safety Code Death during or within 24 hours of surgery for findings on September 9, 2008.

Saint Agnes Home Health and Hospice, was fined fifty thousand dollars (\$50,000.00) pursuant Health and Safety Code 1279.1(c) and CCR Title 22 70223(6)(2) for findings on October 11, 2010.

Saint Agnes Home Health and Hospice, was fined three thousand dollars (\$3,000.00) pursuant Health and Safety Code 1279.1(ab)(4)(F) – Pressure Ulcer State 3 or 4.

Saint Agnes Home Health and Hospice, was fined one thousand dollars (\$1,000.00) pursuant Health and Safety Code 1279.1(ab)(1)(O) – Retention of Foreign Object.

Saint Agnes Home Health and Hospice, was fined eight hundred dollars (\$800.00) pursuant Health and Safety Code - State 3 or 4 Pressure Ulcer.

Connecticut

St. Mary's Home, West Hartford, CT: Based on an inspection of the facility conducted October 29, 2007 St. Mary's Home was cited for violations of Connecticut State Agencies (Public Health Code). The facility was fined seven hundred and forty-five dollars (\$745.00) for the Class A violation of Section 19-13-D8t(j)(2)(L) - Chronic and convalescent nursing homes and rest homes with nursing supervision: Director of nurses.

Florida

BayCare-Home Care Sarasota, Sarasota, Florida was fined three thousand dollars (\$3,000.00) pursuant to a Survey Deficiency – Failed to Ensure Physicians Plan of Care for repeat of Class III

deficiency 2004, 2005, 2006 and 2007 for Violations of 59A-8.0215(2) – Plan of Care and 59A-8.0095(3), - Personnel

Saint Anthony's Hospital, St. Petersburg, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of December 12, 2007 for Aspen State Regulation H0022 ((2) Coordination of Care. Each hospital shall develop and implement policies and procedures on discharge planning which address: (a) Identification of patients requiring discharge planning; (b) Initiation of discharge planning on a timely basis; (c) The role of the physician, other health care givers, the patient, and the patient's family in the discharge planning process; and (d) Documentation of the discharge plan in the patient's medical record including an assessment of the availability of appropriate services to meet identified needs following hospitalization.)

Holy Cross Hospital, Fort Lauderdale, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of June 1, 2009 for Aspen State Regulation H0031 ((2) Transfer Procedures. Each hospital providing emergency services and care shall establish policies and procedures which incorporate the requirements of Chapter 395, F.S., relating to emergency services. The policies and procedures shall incorporate at a minimum: (a) Decision protocols identifying the emergency services personnel within the hospital responsible for the arrangement of outgoing and incoming transfers; and H0037 (Each hospital shall maintain records of all patients who request emergency care and services, or persons on whose behalf emergency care and services are requested, for a period of 5 years.)

Maryland

St. Catherine's Nursing Center was fined fifteen thousand dollars (\$15,000) pursuant to Survey Deficiencies for inspection findings of July 9, 14 and 15, 2009 for violations of COMAR 10.07.09.08 C (5) (c) (Resident's Rights and Services. C. A resident has the right to: (5) Be free from: (c) Sexual abuse), 10.07.09.15 D (1) (Abuse of Residents, D. Investigations. A nursing facility shall: (1) thoroughly investigate all allegations of abuse) and 10.07.09.15. D (2) (Abuse of Residents, D. Investigations. A nursing facility shall: (2) Take appropriate action to prevent further incidents of abuse while the investigation is in progress, and after that.)

New York

Adult Care Facilities:

Hawthorne Ridge, Inc. d/b/a Hawthorn Ridge was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated March 28, 2012 for inspection findings of September 14, 2010 for violations 18 NYCRR Part 486.5(a)(4)(iii) – Endangerment.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

Licensed Home Health Care Agencies, Certified Home Health Agencies, Long Term Home Health Care Agencies, Hospice:

Eddy Visiting Nurse Association/Wesley VNA was fined three thousand five hundred dollars (\$3,500.00) pursuant to a stipulation and order dated August 19, 2010 for inspection findings of July 22, 2008 and

October 1, 2008 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(a) – Patient Assessment and Plan of Care; 763.6(b) – Patient Assessment and Plan of Care and 763.11(b) – Governing Authority.

McCauley-Seton Home Care Corporation was fined six thousand five hundred dollars (\$6,500.00) pursuant to a stipulation and order dated July 11, 2011 19, 2010 for inspection findings of December 17, 2009 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; 763.6(e) – Patient Assessment and Plan of Care; 763.11(a) – Governing Authority; and 763.11(b) – Governing Authority.

McCauley-Seton Home Care Corporation was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated June 10, 2013 for inspection findings of September 15, 2011 for violations of 10 NYCRR Sections 763.11(b) – Governing Authority; 763.5(a) – Patient Referral, Admission and Discharge; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; and 763.7(a) – Clinical Records.

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.

Residential Health Care Facilities:

Our Lady of Mercy Life Center was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated August 16, 2010 for inspection findings of June 1, 2009 for violations 10 NYCRR Section 415.12 – Quality of Care.

St. Francis Home of Williamsville was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated January 18, 2012 for inspection findings of October 28, 2010 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

St. Francis Home of Williamsville was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 10, 2012 for inspection findings of January 24, 2011 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

Adirondack Medical Center – Mercy was fined \$2,000 pursuant to a stipulation and order signed by the facility on September 1, 2014 for inspection findings of August 13, 2008, August 20, 2009 and October 1, 2009 for violations of 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision. 415.12(l)(1) Quality of Care: Nutritional Status, 415.12(h)(l)(2), 415.26 Administration, 415.27(a-c) Quality Assessment and Assurance.

Adirondack Medical Center – Uihlein was fined twenty thousand dollars \$20,000 pursuant to a stipulation and order signed by the facility September 1, 2014 for inspection findings of August 8, 2008, September 28, 2009, January 22, 2010 and March 22, 2011 for violations of 10 NYCRR:

- August 8, 2008 – 10 NYCRR Section 415.3(e)(2)(ii)(b) Notification of Changes, 415.11(c)(3)(i) Comprehensive Care Plans, 415.12(l)(1) Quality of Care: Unnecessary Drugs, 415.12(m)(2) Quality of Care: Medication Errors, 415.15(b)(1)(i)(ii) Physician Services, 415.26 Administration, 415.18(a) Pharmacy Services, 415.26(b)(3)(1) Governing Body, 415.15(a) Medical Director, and 415.27(a-c) Quality Assessment and Assurance.
- September 28, 2009 and January 22, 2010 – 10 NYCRR Section 415.12(h)(1)(2) Quality of Care: Accidents and Supervision, and 415.12 Quality of Care: Highest Practical Potential.
- March 22, 2011 – 10 NYCRR 415.4(b)(1)(ii) Investigate/Report Allegations and 415.26 Administration.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Hospitals and Diagnostic & Treatment Centers:

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

Managed Long Term Care Plans and Pace Programs:

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Responses were received from the states listed above with the exception of the States of Iowa and Maryland. Although the responses received from each of these states did not include all of the health care facility located in each respective state, the responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely affect 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

Capability and Feasibility

There are no significant issues of capability or feasibility associated with this application. There will be no change in the daily operations of each health care facility.

BFA Attachment B is the pro-forma balance sheet of Home Aide Service of Eastern New York, Inc., which shows on the first day of operations, therefore maintaining positive working capital.

BFA Attachment C is the financial summary of the Home Aide Service of Eastern New York, Inc., which has maintained positive net asset positions, and experienced a net loss from operations in 2013 and as of February, 28, 2014. Home Aide Service of Eastern New York, Inc. is a part of the Eddy Affiliates who absorbs the net losses through their operations as shown on BFA Attachment C. The net losses are attributed to the conversion of the Long Term Health Program to manage care.

BFA Attachment D is the financial summary for the eight months ended as of February 28, 2014, for the CHE Trinity Health, Inc., which has maintained positive working capital, net asset position, and a net profit from operations of \$212,967,000. The financial statements for Catholic Health East and Trinity Health were combined as of July 1, 2013, to begin the current fiscal year in anticipation of the merger.

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	Organizational Chart
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summaries for Home Aide Service of Eastern New York, Inc. 2013 and the eight months ended 2/28/2014
BFA Attachment D	Financial Summary for CHE Trinity Health- The eight months ended 2/28/2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application for a change in controlling person that will result when Catholic Health East, Inc. (CHE) and Trinity Health Corporation merge into CHE Trinity, Inc. The surviving corporation will be CHE Trinity, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

141082 E

Eddy Visiting Nurse Association

APPROVAL CONTINGENT UPON:

1. Submission of an executed amendment to the Certificate of Incorporation of Home Aide Service of Eastern New York, Inc., acceptable to the Department. [CSL]
2. Submission of the amended bylaws of Home Aide Service of Eastern New York, Inc., acceptable to the Department. [CSL]
3. Submission of an executed amendment to the Certificate of Incorporation of LTC (Eddy), Inc., acceptable to the Department. [CSL]
4. Submission of the amended bylaws of LTC (Eddy), Inc., acceptable to the Department. [CSL]
5. Submission of an executed amendment to the Certificate of Incorporation of Northeast Health, Inc., acceptable to the Department. [CSL]
6. Submission of the amended bylaws of Northeast Health, Inc., acceptable to the Department.
7. Submission of an executed amendment to the Certificate of Incorporation of St. Peter's Health Partners, Inc., acceptable to the Department. [CSL]
8. Submission of the amended bylaws of St. Peter's Health Partners, Inc., acceptable to the Department. [CSL]
9. Submission of the executed Restated and Amended Articles of Incorporation of CHE Trinity, Inc., acceptable to the Department. [CSL]
10. Submission of the bylaws of CHE Trinity, Inc., acceptable to the Department. [CSL]
11. Submission of an executed amendment to the Certificate of Incorporation of Catholic Health East, acceptable to the Department. [CSL]

APPROVAL CONDITIONED 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: July 24, 2014
SUBJECT: Certificate of Amendment of the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("the corporation")

The above-referenced and attached proposed Certificate of Amendment, dated March 13, 2014, is being submitted for Public Health and Health Planning Council approval. The corporation operates an Article 28-A nursing home company, and therefore, pursuant to sections 2854 and 2855 of the Public Health Law, amendments to its certificate of incorporation require the approval of the Public Health and Health Planning Council as well as the Commissioner's consent.

As explained more fully in the attached letter dated March 14, 2014 from Tamar R. Rosenberg, attorney for the corporation, the proposed amendments are necessary to explicitly include among the corporation's purposes the support of the charitable, scientific and educational purposes of Brookdale Hospital Medical Center, an affiliated entity ("Brookdale"). The inclusion of this purpose is to ensure that the corporation is legally authorized to guaranty Brookdale's payment obligations on financing that Brookdale will be receiving under the New York State Health Facility Restructuring Program. Pursuant to section 2856 (3) (c), the corporation is obliged to obtain the approval of the Department prior to making a guaranty of payment or encumbering its real property.

Please note that the attorney's letter also refers to a Certificate of Amendment of the Certificate of Incorporation of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc., a related entity that is not established pursuant to either Article 28 or Article 28-A. Therefore the filing of its Certificate of Amendment does not require the approval of the Public Health and Health Planning Council.

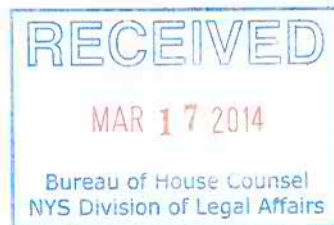
The proposed Certificate of Amendment of the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. is in legally acceptable form.

Attachments

EPSTEIN
BECKER
GREEN

Attorneys at Law

Tamar R. Rosenberg
T: 212.351.4514
F: 212.878.8600
TRosenberg@ebglaw.com



March 14, 2014

VIA FEDERAL EXPRESS

Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237

Expedited Review
Requested

**Re: Certificate of Amendment – The Schulman and Schachne
Institute for Nursing and Rehabilitation, Inc.**

Dear Ms. Callahan:

I am writing to request the consent of the New York State Department of Health (“NYSDOH”) to the filing with the New York Secretary of State of the proposed Certificate of Amendment to the Certificate of Incorporation of (i) The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (“SSI”) enclosed as *Exhibit 1-a*; and (ii) The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. (“SBSI Fund”) enclosed as *Exhibit 2-a*.

We respectfully request that the two Certificates of Amendment be reviewed as quickly as possible, given that they are required to be filed by The Dormitory Authority of the State of New York (“DASNY”) in conjunction with critical financing provided through the New York State Health Facility Restructuring Program, as described below.

SSI and SBSI Fund are affiliates of Brookdale Hospital Medical Center (“Brookdale Hospital”), an Article 28 licensed hospital located in Brooklyn, New York. SSI’s purposes are to operate a licensed nursing home. SBSI Fund’s purposes are to conduct fundraising and engage in grantmaking and other activities to promote the health of the community.

DASNY is providing up to \$78 million in critical financing to Brookdale Hospital pursuant to the New York State Health Facility Restructuring Program under Section 2815 of the New York State Public Health Law, to fund Brookdale Hospital’s capital improvement projects and cash flow needs. As a condition of the loan transaction, DASNY is requiring that SSI and

Mary Callahan, Esq.
New York State Department of Health
March 14, 2014
Page -2-

SBSI Fund (together with other affiliates of Brookdale Hospital) guaranty Brookdale Hospital's payment obligations through a mortgage on their real property and a security interest in their other property and assets. The governing boards of SSI and SBSI Fund have each determined that issuing the guaranty and the related mortgage and security interest to DASNY is in the best interests of each respective entity and have duly authorized the Certificate of Amendment of each entity pending receipt of all required approvals thereto.

Although SSI and SBSI Fund have historically operated in support of and in conjunction with Brookdale Hospital and its various affiliated organizations, the purposes set forth in their Certificate of Incorporation do not expressly provide for supporting Brookdale Hospital. For SSI and SBSI Fund to each have the clear authority to issue the guaranty, mortgage and security interest to DASNY, their Certificates of Incorporation must be amended to provide that their purposes include supporting Brookdale Hospital and its charitable health care mission. The enclosed Certificates of Amendment would modify their purposes accordingly.

The consent of the NYSDOH is required for the filing of SSI's and SBSI Fund's Certificates of Amendment under Section 803(a)(i) of the New York Not-for-Profit Corporation Law. A copy of SSI's Certificate of Incorporation, together with all amendments thereto, is enclosed as *Exhibit 1-b*, and a copy of SBSI Fund's Certificate of Incorporation, together with all amendments thereto, is enclosed as *Exhibit 2-b*.

Thank you for your assistance. Please call me at (212) 351-4514 if you have any questions or require additional information.

Very truly yours,



Tamar R. Rosenberg

Enclosures

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

**THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

The undersigned, Arthur J. Fried, Esq., hereby certifies that he is the Assistant Secretary of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on January 11, 1968 under Section 402 of the NPCL. The name under which the Corporation was formed is Brookdale Hospital Center Nursing Home Company, Inc.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and is a Type D corporation under Section 201 of the NPCL and shall continue to be a Type D corporation after this Certificate of Amendment becomes effective.
4. Paragraph II of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to provide nursing home accommodations and engage in related activities, is hereby amended to clarify and expand the purposes of the Corporation to include benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, including in particular, The Brookdale Hospital Medical Center, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, including The Brookdale Hospital Medical Center, and said Paragraph II of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

"II. The Company is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving the delivery of quality, efficient, effective and economical health care

and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System," a system of affiliated health care providers and related corporations, by:

(i) providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the New York State Public Health Law; and

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a Type B New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Company's Board of Directors from time to time."

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the unanimous approval of the Corporation's sole member, acting through its Board of Trustees, at a duly constituted meeting of such Board of Trustees, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: One Brookdale Plaza, Brooklyn, New York 11212, Attn: General Counsel.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on March 13, 2014.

A handwritten signature in black ink, appearing to read "Arthur J. Fried". The signature is written in a cursive style with a large initial "A".

By: Arthur J. Fried, Esq.
Title: Assistant Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

Filed By:

Jay E. Gerzog, Esq.
Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of October, 2014, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Shulman and Schachne Institute for Nursing and Rehabilitation, Inc., dated March 13, 2014.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council

FROM: James E. *[Signature]* Dering, General Counsel

DATE: July 16, 2014

SUBJECT: Proposed Certificate of Amendment to the Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.

Attached is the proposed Certificate of Amendment to the Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. This not-for-profit corporation seeks approval to change its corporate name to "Elizabeth Seton Pediatric Center," its current assumed name. The Public Health Council established the corporation as the operator of a nursing home in New York County in 1987. 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 April 15, 2014 from Marsena M. Farris, attorney for the corporation. As explained in that letter, the name change is intended to more accurately reflect the corporation's sponsorship by the Sisters of Charity of St. Vincent de Paul of New York and to honor St. Elizabeth Seton.

The Department has no objection to the Proposed Certificate of Amendment of the Certificate of Incorporation, which is in legally acceptable form.

JED: sls
Attachments

April 15, 2014

VIA FEDERAL EXPRESS

Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, Room 2484
Empire State Plaza
Albany, New York 12237-0031

Re: New York Foundling Hospital Center for Pediatric,
Medical and Rehabilitative Care, Inc.

Dear Ms. Callahan:

I enclose for the consent of the Public Health & Health Planning Council pursuant to Section 804 of the Not-for-Profit Corporation Law the proposed Certificate of Amendment of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. (the "Corporation"), a licensed Article 28 facility. The Corporation seeks to change its corporate name to "Elizabeth Seton Pediatric Center" by filing the enclosed Certificate of Amendment to its Restated Certificate of Incorporation executed by Patricia Tursi and dated January 13, 2014.


Elizabeth Seton was the first native-born American Catholic Saint and was the forerunner of the Sisters of Charity of St. Vincent de Paul of New York. The Sisters of Charity are the corporate members of the Corporation under the Not-for-Profit Corporation Law. The purpose of the proposed name change is to more accurately reflect the Corporation's sponsorship by the Sisters of Charity and to honor St. Elizabeth Seton. The Board of Directors of the Corporation has determined that changing the Corporation's name to "Elizabeth Seton Pediatric Center" is in the Corporation's best interest and the Sisters of Charity, the members, have consented. Currently, the Corporation operates under the d/b/a "Elizabeth Seton Pediatric Center" pursuant to a Certificate of Assumed Name filed by the Department of State.

Also enclosed are copies of the Certificate of Incorporation of the Corporation filed on February 17, 1987 and its Restated Certificate of Incorporation filed on October 26, 2012.

Mary Callahan, Esq.
April 15, 2014

Please call me at (212) 504-6095 if you have any questions or comments. Thank you in advance for your assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Marsena M. Farris".

Marsena M. Farris

MMF/er
Enclosures

cc: Ms. Colleen Frost, Public Health & Health Planning Council
Ms. Patricia Tursi
Brian T. McGovern, Esq.

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the Chief Executive Officer of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc., does hereby certify that:

1. The name of the corporation is NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 19, 1987. The law under which the Corporation was formed was the New York Not-for-Profit Corporation Law.

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 as defined in Section 201 of that law.

4. The Certificate of Incorporation is amended to change the Corporation's name. Article First of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

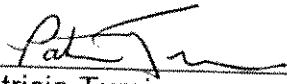
"The name of the corporation is ELIZABETH SETON PEDIATRIC CENTER (hereinafter called the "Corporation")."

5. The above amendment to the Certificate of Incorporation was authorized by a vote of the majority of the Members of the Corporation at a duly convened and held meeting in accordance with Section 802 of the Not-for-Profit Corporation Law.

6. The Corporation designates the Secretary of State of the State of New York as its agent 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 served upon him or her as follows:

300 Corporate Boulevard South
Yonkers, New York 10701

IN WITNESS WHEREOF, I have signed this Certificate of Amendment to the Certificate of Incorporation this 13th day of January, 2014, and I affirm that the statements contained herein are true under penalties of perjury.



Patricia Tursi
Chief Executive Officer

STATE OF NEW YORK
DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 24, 2013.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.

RESTATED CERTIFICATE OF INCORPORATION
OF
NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.
(Under Section 805 of the New York Not-for-Profit Corporation Law)

The NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC. (the "Corporation"), does hereby certify:

1. The name of the Corporation is
NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC,
MEDICAL AND REHABILITATIVE CARE, INC.
2. The Certificate of Incorporation of the Corporation was filed with the Department of State on February 19, 1987 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 of the State of New York and is a type B corporation under Section 201 of said Law.
4. The Members and the Board of Directors of the Corporation have declared it necessary and advisable that the Certificate of Incorporation of the Corporation be amended to effect certain changes consistent with the requirements of the Not-for-Profit Corporation Law of the State of New York and the Internal Revenue Code of 1986, as amended. To effect such amendment, the Certificate of Incorporation is amended as follows:

(a) ARTICLE THIRD, which sets forth the corporate purposes, shall be amended by replacing the text in subsection V(b) of such Article with the following:

Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations which (1) is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, (2) has corporate purposes that are consistent with the general purposes set forth in this Certificate of Incorporation, and (3) would be operated by the Sisters of Charity of St. Vincent de Paul of New York, or if not possible, would be operated by another organization under the auspices or recognition of the Roman Catholic Church.

(b) ARTICLE FIFTH, shall be amended to change the county in which the office of the Corporation is located from the county of New York, State of New York to the County of Westchester, State of New York.

(c) ARTICLE SIXTH, shall be amended to change the office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation to 300 Corporate Boulevard South, Yonkers, New York 10701.

(d) ARTICLE NINTH provides that there shall be eleven Members of the Corporation from the community of Sisters of Charity of St. Vincent de Paul of New York. This Article shall be amended to read as follows:

NINTH: The Corporation shall have members who at all times shall consist of three to eleven persons who are members of the religious community known as the Sisters of Charity of St. Vincent de Paul of New York or who are members of any successor Roman Catholic organization or order that is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. There are no holders of any certificates evidencing capital contributions or subventions.

(e) ARTICLE TENTH provides that each subscriber of the initial Certificate is at least nineteen years old. This Article shall be deleted in its entirety.

(f) ARTICLE ELEVENTH sets forth provisions required by the Secretary of the Department of Housing and Urban Development in connection with financing for the Corporation's development project in the City of Yonkers, New York. This Article shall be renumbered and amended by replacing "ARTICLE ELEVENTH" with "ARTICLE TENTH" wherever such term appears.

5. The Members and Board of Directors of the Corporation have declared that it would be in the best interests of the Corporation for its Certificate of Incorporation to be restated so that all of the above amendments and all previous amendments are reflected in one current document. Therefore, the Certificate of Incorporation is hereby restated as amended to read as set forth in the attached.

6. At meetings held on June 25th, 2012 and June 25th, 2012, the Members and the Board of Directors of the Corporation, respectively, adopted, by resolution, the foregoing amendments to the Certificate of Incorporation of the Corporation and authorized the restatement of the Certificate of Incorporation of the Corporation.

ARTICLES OF INCORPORATION

OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.

(Under the New York Not-for-Profit Corporation Law)

FIRST:

The name of the Corporation is

**NEW YORK
FOUNDLING HOSPITAL
AND REHABILITATIVE CARE, INC.**

NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL
AND REHABILITATIVE CARE, INC.

SECOND:

The Corporation is a corporation as defined in subparagraph (a)(5) of
Section 102 of the Not-for-Profit Corporation Law. It shall be a type B corporation under
Section 201 of said Law.

THIRD:

The purposes for which the Corporation is formed are:

I.

To provide care, services and accommodations for ill, infirm,
disabled, handicapped and adolescent children.

To provide residential health related facility care, services and
accommodations for children with supportive services.

To provide day care, supportive services, recreational facilities,
therapeutic services, counseling and such other services and facilities as may be useful in
supporting and meeting the needs of medically ill children.

II.

To lease, alter, reconstruct, operate, maintain, supervise, manage, conduct and operate
residential health care and facilities subject to obtaining the approval of the Public Health
Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the
foregoing.

III.

To solicit contributions for the attainment and accomplishment of all of
the foregoing purposes.

IV.

The Corporation shall have and may exercise all powers necessary or
convenient to effect, or which are conducive to the attainment of, any or all of the foregoing
purposes, subject to such limitations as are provided by law.

V.

With respect to the foregoing purposes, however, the Corporation shall be
subject to the following limitations and restrictions:

(a)

The Corporation shall not be operated for pecuniary profit or
financial gain and no part of the net earnings of the Corporation shall inure to the benefit of any
director, member or individual having a personal and private interest in the activities of the
Corporation, nor shall any of such net earnings be used otherwise than for charitable, religious,
educational, humanitarian or scientific purposes, nor shall any part of the activities of the
Corporation consist of carrying on propaganda, or otherwise attempting to influence legislation,
or participating in, or intervening in (including the publishing or distributing of statements), any
political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations which (1) is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, (2) has corporate purposes that are consistent with the general purposes set forth in this Certificate of Incorporation, and (3) would be operated by the Sisters of Charity of St. Vincent de Paul of New York, or if not possible, would be operated by another organization under the auspices or recognition of the Roman Catholic Church.

(c) The Corporation 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) or by any organization contributions to which are deductible under Section 170(c)(2).

FOURTH: The duration of the Corporation shall be perpetual.

FIFTH: The office of the Corporation is to be located in the County of Westchester, State of New York.

SIXTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation is 300 Corporate Boulevard South, Yonkers, New York 10701.

SEVENTH: The Corporation shall be governed by a Board of Directors who shall be natural persons over the age of eighteen (18) years and citizens of the United States. They shall be elected or appointed by the Membership of the Corporation as provided by the By-laws and the laws of the State of New York. The names and residences of the initial Directors of the Corporation, each of whom is of full age and a citizen of the United States, until the first annual meeting of the Corporation are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
William J. Flynn	Mutual of America 666 Fifth Avenue New York, New York 10019
Fioravante G. Perrotta	Rogers & Wells 200 Park Avenue New York, New York 10166
H. Clay Johnson	McCarthy, Fingar, Donovan, Glatthaar 175 Main Street White Plains, New York 10601

Robert H. McCooley Henderson Brothers, Inc.
61 Broadway - 9th Floor
New York, New York 10004

Martin Shea Morgan Guaranty Trust Company
9 West 57th Street
New York, New York 10019

EIGHTH: The number of directors shall not be less than three, nor more than thirty-five.

NINTH: The Corporation shall have Members who at all times shall consist of three to eleven persons who are members of the religious community known as the Sisters of Charity of St. Vincent de Paul of New York or who are members of any successor Roman Catholic organization or order that is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. There are no holders of any certificates evidencing capital contributions or subventions.

TENTH: So long as the Secretary of the Department of Housing and Urban Development ("Secretary" or "HUD") or the Secretary's successors or assigns is the insurer or holder of the mortgage, note secured by the mortgage on the Corporation's Development Project in the City of Yonkers, the County of Westchester, and the State of New York (the "Project"):

I. No amendment to the Certificate of Incorporation that results in any of the following will have any force or effect without the prior written consent of the Secretary, nor shall the Corporation or any of its officers or directors be permitted to do any of the following:

- (a) Any amendment that modifies the term of the Corporation;
- (b) Any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional officer, director or member;
- (c) Any amendment that in any way affects the note, mortgage or security agreement on the Project or the Regulatory Agreement between HUD and the Corporation (the "Regulatory Agreement");
- (d) Any amendment that would authorize any officer other than the President or another pre-approved officer to bind the Corporation for all matters concerning the Project which require HUD's consent or approval;
- (e) Any change in a guarantor of any obligation to the Secretary; or
- (f) Voluntary dissolution of the Corporation or conversion to another form of entity.

II. No provision required by HUD to be inserted into the Certificate of Incorporation of the Corporation may be amended without prior HUD approval.

III. Any party acquiring the position of Director, Officer or Member of the Corporation must meet the applicable requirements for HUD previous participation clearance.

IV. The Corporation is authorized to execute or assume a note, mortgage or security agreement in order to secure a loan to be insured by the Secretary and to execute the

Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

V. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

VI. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, if any of the provisions of the Certificate of Incorporation or By-laws of the Corporation conflict with the terms of the note, mortgage, security agreement or Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents will control.

VII. The Corporation may not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

VIII. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, any cash distributions may only be made in accordance with the terms of the Regulatory Agreement.

IX. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, any costs incurred by the Corporation as a result of indemnification provided to its Directors and Officers, or any other person or entity, will only be paid from surplus cash and from residual receipts, if applicable, to the extent available, as that term is defined by the Regulatory Agreement.

X. The Officers, Directors and Members of the Corporation, agree to be liable in their individual capacity to HUD for:

(a) Funds or property of the Project coming into their possession, which by the provisions of the Regulatory Agreement they are not entitled to retain;

(b) Their own acts and deeds, or acts and deeds of others which they have authorized, in violation of the provisions of the Regulatory Agreement;

(c) The acts and deeds of affiliates, as defined in the Regulatory Agreement, which they have authorized in violation of the provisions of the Regulatory Agreement; and

(d) As otherwise provided by law.

XI. Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation, the provisions contained in this Article TENTH shall be deemed to take precedent and have priority over any of the other provisions contained in the Certificate of Incorporation. In the event that any of the provisions of this Article TENTH conflict with any other provision of the Certificate of Incorporation or the By-laws of the Corporation, the provisions contained in this Article TENTH shall be deemed to apply and take precedence over the other conflicting provisions.

XII. The Corporation has designated Patricia Tursi as its official representative for all matters concerning the project which require HUD consent or approval. The signature of this person will bind the Corporation in all such matters. The Corporation may from time to time

appoint a new representative to perform this function, but within 3 business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority of management of the project, the Corporation will promptly provide HUD with the name of that person and the nature of that person's management authority.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be executed on its behalf by and attested by its Secretary of Members of Corporation, thereunto duly authorized this 25th day of June 2012.

By: Eileen McGrory, SC
Eileen McGrory, SC
Secretary of Members of Corporation
New York Foundling Hospital Center for
Pediatric, Medical and Rehabilitative Care, Inc.

121026000413

RESTATED CERTIFICATE OF INCORPORATION
OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

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

My

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 26 2012

TAX \$ _____ =

BY: _____ *DWL*

*CID. NY
New York*

FILER:

Bleakley Platt & Schmidt, LLP
One North Lexington Avenue
White Plains, New York 10601

RECEIVED

2012 OCT 26 AM 9:13

FILED

2012 OCT 26 AM 10:45

DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.
Customer Reference: 121883

121026000458

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **July 6, 2005**



A handwritten signature in black ink, appearing to read "R. M. A. S.", is written over the printed title.

Secretary of State

CERTIFICATE OF INCORPORATION

OF

NEW YORK FOUNDLING HOSPITAL CENTER FOR

PEDIATRIC, MEDICAL AND REHABILITATIVE CARE, INC.

UNDER

SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, a natural person over the age of eighteen (18) years, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify as follows:

FIRST: The name of the Corporation is

NEW YORK FOUNDLING HOSPITAL CENTER FOR
PEDIATRIC, MEDICAL AND REHABILITATIVE CARE,
INC.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law. It shall be a type B corporation under Section 201 of said law.

THIRD: The purposes for which the Corporation is formed are:

I. (a) To provide care, services and accommodations for ill, infirm, disabled, handicapped and convalescent children.

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(b) To provide residential health related facility care, services and accommodations for children with supportive services.

(c) To provide day care, supportive services, recreational facilities, therapeutic services, counselling and such other services and facilities as may be useful in supporting and meeting the needs of medically ill children.

II. To establish, organize, plan, construct, sponsor, erect, build, acquire, own, lease, alter, reconstruct, rehabilitate, repair, maintain, supervise, manage, conduct and operate residential health care and other facilities subject to obtaining the approval of the Public Health Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the foregoing.

III. To solicit contributions for the attainment and accomplishment of all of the foregoing purposes.

IV. The Corporation shall have and may exercise all powers necessary or convenient to effect, or which are conducive to the attainment of, any or all of the foregoing purposes, subject to such limitations as are provided by law.

V. With respect to the foregoing purposes, however, the Corporation shall be subject to the following limitations and restrictions:

(a) The Corporation shall not be operated for pecuniary profit or financial gain and no part of the net earnings of the Corporation shall enure to the benefit of any director, member or individual having a personal and private interest in the activities of the Corporation, nor shall any of such net earnings be used otherwise than for charitable, religious, educational, humanitarian or scientific purposes, nor shall any part of the activities of the Corporation consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, no director, member or individual shall be entitled to any distribution or division of its remaining property or the proceeds of the same, and the balance of all money and other property received by the Corporation from any source, including its operations, after the payment of all debts and obligations of the Corporation of whatever kind and nature, shall be distributed, except as otherwise provided by law and subject to the approval of a Justice of the Supreme Court of the State of New York, to an organization or organizations (1) which would then qualify under Section 501(c)(3) (all Section references herein are to the Internal Revenue Code of 1954, as amended, and to corresponding provisions of any subsequent Federal tax laws) and (2) the general purposes set forth in this Certificate.

(c) The Corporation 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) or by any organization contributions to which are deductible under Section 170(c)(2).

FOURTH: The duration of the Corporation shall be perpetual.

FIFTH: The principal office of the Corporation is to be located in the County of New York, State of New York.

SIXTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 1175 Third Avenue, New York, New York.

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SEVENTH: The Corporation shall be governed by a Board of Directors who shall be natural persons over the age of eighteen (18) years and citizens of the United States. They shall be elected or appointed by the membership of the corporation as provided by the by-laws and the laws of the State of New York. The names and residences of the initial Directors of the Corporation, each of whom is of full age and a citizen of the United States, until the first annual meeting of the Corporation are as follows:

<u>NAMES</u>	<u>ADDRESS</u>
William J. Flynn	Mutual of America 666 Fifth Avenue New York, New York 10019
Fioravante G Perrotta	Rogers & Wells 200 Park Avenue New York, New York 10166
H. Clay Johnson	McCarthy, Fingar, Donovan Glatthaar 175 Main Street White Plains, New York 10601
Robert H. McCooey	Henderson-Brothers, Inc. 61 Broadway - 9th Floor New York, New York 10004
Martin Shea	Morgan Guaranty Trust Company 9 West 57th Street New York, New York 10019

EIGHTH: The number of directors shall not be less than three nor more than thirty-five.

NINTH: The Corporation shall have members which at all times shall consist of eleven persons who are members of the religious community known as the Sisters of Charity of St. Vincent de Paul. There are no holders of any certificates evidencing capital contributions or subventions.

TENTH: - Each of the subscribers is of the age of
nineteen years or over.

IN WITNESS WHEREOF, the undersigned Incorporator has
made, submitted and acknowledged this certificate has been
signed by the subscriber this 6th day of February, 1987.

Gerald E. Bodell
GERALD E. BODELL
INCORPORATOR

Office and Post Office Address:

100 Park Avenue
New York, New York 10017
(212) 972-0909

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

On this 6th day of February, 1987 before me
personally came Gerald E. Bodell, to me known and known to me
to be the person described in and who executed the foregoing
Certificate of Incorporation and he duly acknowledged to me
that he executed the same.

Dorothy M. Cooper
NOTARY PUBLIC

DOROTHY M. COOPER
Notary Public, State of New York
No. 31-476563S
Qualified in New York County
Commission Expires March 30, 1988

October 31,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

NEW YORK FOUNDLING HOSPITAL CENTER
FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

APPLICATION FOR
APPROVAL OF CERTI-
FICATE OF INCORPO-
RATION

For an Order approving a Certificate
of Incorporation and authorizing
filing of the Certificate of Incorpora-
tion pursuant to Section 402 of the
Not-for-Profit Corporation Law.

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

GERALD E. BODELL, being duly sworn, says:

I am an attorney of the State of New York, having
my offices at 100 Park Avenue, New York, New York, and am
the attorney for the above-named New York Foundling Hospital
Center for Pediatric, Medical and Rehabilitative Care,
Inc.

I make this affidavit in support of an order for
the approval for filing with the Secretary of State, a
Certificate of Incorporation for the Corporation to be known
as:

New York Foundling Hospital Center for Pediatric,
Medical and Rehabilitative Care, Inc.

The purposes for which this Corporation is formed
are as follows:

A. To provide care, services and accommodations

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for ill, infirm, disabled, handicapped and convalescent children.

B. To provide residential health related facility care, services and accommodations for children with supportive services.

C. To provide day care, ~~supportive services~~, recreational facilities, therapeutic services, counselling and such other services and facilities as may be useful in supporting and meeting the needs of medically ill children.

D. To establish, organize, plan, construct, sponsor, erect, build, acquire, own, lease, alter, reconstruct, rehabilitate, repair, maintain, supervise, manage, conduct and operate residential health care and other facilities subject to obtaining the approval of the Public Health Council and/or the Commissioner of Health, as appropriate, pursuant to law providing for the foregoing.

This proposed corporation has applied to and received approval from the Public Health Council of the New York State Department of Health to file the attached Certificate of Incorporation and to fulfill its purposes. A true copy of said approval Certification dated January 16, 1987 is attached hereto.

The Corporation upon filing with the Secretary of State will be exempt from all Federal and State Taxes under Section 501(c)(3) of the Internal Revenue Code by virtue of a Group Ruling granting recognition to those Corporations recommended by the United States Catholic Conference of Bishops and listed in the Kenady Directory.

The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

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Notice of this application has been made to the Attorney General of the State of New York.

No previous or other application has been made for the approval of the proposed Certificate of Incorporation to any Supreme Court Justice.

WHEREFORE, deponent prays for an order:

(a) Approving the annexed Certificate of Incorporation, and

(b) Authorizing the filing of the Certificate of Incorporation with the Secretary of State in the form annexed hereto.

Gerald E. Bodell
GERALD E. BODELL

Sworn to before me this
6th day of *February*, 1987
Dorothy M. Cooper
Notary Public

DOROTHY M. COOPER
Notary Public, State of New York
No. 31-478533
Qualified in New York County
Commission Expires March 28, 1988

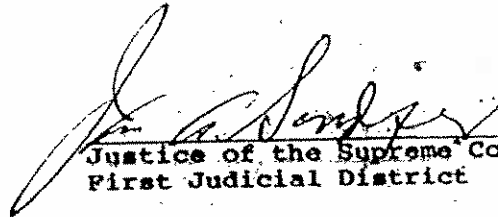
Oct 31,

9
0000 1830

I, the undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, hereby approve the foregoing Certificate of Incorporation of New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. and consent that the same be filed with the Secretary of State.

Dated: NEW YORK, N. Y.

FEB 18 1987


Justice of the Supreme Court
First Judicial District

JAWN A. SANDIFER

February 17, 1987
THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HEREON AND WAIVES
STATUTORY NOTICE.

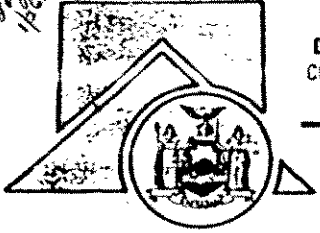
ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
HOWARD HOLT
Associate Attorney

10

0000 1831

Rec'd
1/20/87



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

January 16, 1987

REC'D
JAN 20 1987

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of New York Foundling Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. (No. 841053) is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of June 27, 1986. The Certificate of Incorporation, dated July 17, 1986, is also approved.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Karen S. Westervelt
Karen S. Westervelt
Acting Executive Secretary

Sister Cecilia Schnieder
Executive Director
New York Foundling Hospital Center for
Pediatric Medicine & Rehabilitative
Care, Inc.
39 Valley Green Drive
North Woodmere, NY 11581

Copy sent to:

Mr. Jerald E. Bodel
Bodel & Gross
100 Park Avenue
24th Floor
New York, NY 10017

11

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

Dated,

BODELL & GROSS

YOUTH, INC.

Attorney for

Office and Post Office Address
100 Park Avenue
NEW YORK, NY 10017

To

Attorney(s) for

NOTICE OF SETTLEMENT

Star-Please take notice that an order

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

one of the Judges of the within named Court, at

19

M.

Dated,

YOUTH, INC.

BODELL & GROSS

Attorney for

Office and Post Office Address
100 Park Avenue
NEW YORK, NY 10017

To

Attorney(s) for

Index No. ^{Year 1987} 96647
SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF NEW YORK

In the Matter of the Application of

NEW YORK FOUNDLING HOSPITAL CENTER
FOR PEDIATRIC, MEDICAL AND
REHABILITATIVE CARE, INC.

For an Order approving a Certificate of Incorporation and authorizing filing of the Certificate of Incorporation pursuant to Section 402 of the Not-for-Profit Corporation Law.

NOTICE OF SETTLEMENT/ORDER/
APPLICATION FOR APPROVAL OF
CERTIFICATE OF INCORPORATION

BODELL & GROSS

Attorney for Petitioner

Office and Post Office Address: Telephone

100 Park Avenue
NEW YORK, NY 10017

(212) 972-0909

To

Attorney(s) for

806208

Service of a copy of the within

Dated,

Is hereby returned

REFUND \$ 10
SPEC HANDLE \$ 10

Attorney(s) for

[Handwritten signatures and initials]

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB 19 1987

AMT. OF CHECK \$ 6.00
FILING FEE \$ 1.00
TAX \$ 0.00
COURT FEE \$ 0.00
COPY \$ 0.00
REFUND \$ 10.00
SPEC HANDLE \$ 10.00

FEB 19 3 1987

FILED

FEB 19 3 47 PM '87

FILED

5581 1853



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

November 16, 2004

Patricia Tursi
Executive Director
The Pediatric Center of the New York Foundling
590 Avenue of Americas
New York, New York 10011

RE: D/B/A Approval for New York Foundling
Hospital Center for Pediatric, Medical and
Rehabilitative Care, Inc.

Dear Ms. Tursi:

The request to use an assumed name for **New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.** has been reviewed by the Bureau of Licensure and Certification. In accordance with the regulations set forth in NYCRR 401.3(b), the Department hereby approves the **New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc.** to conduct business under the assumed name **Elizabeth Seton Pediatric Center.**

A revised operating certificate displaying the assumed name will be issued upon notification that the assumed name has been filed with the Secretary of State. A copy of the filing receipt faxed to Janet Fox, Health Facilities Certificate Coordinator at (518) 402-0931 will serve as notification.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Diane M. Smith', written in black ink.

Diane M. Smith
Acting Director
Information and Technology Services Group

cc: Mr. D. Reilly
MARO - M. Lewis
HFCU

2

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of October, 2014, approves the filing of the Certificate of Amendment of Certificate of Incorporation of New York Foundling Hospital Center for Pediatrics, Medical and Rehabilitative Care, Inc., dated January 13, 2014.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*

DATE: August 18, 2014

SUBJECT: Proposed Certificate of Merger of Arnot Health Foundation, Inc. ("the Foundation")

The attached proposed Certificate of Merger of Arnot Health Foundation, dated December 20, 2013, is being submitted for Public Health and Health Planning Council approval. The Foundation's Certificate includes in its purposes the solicitation and receipt of funds or funds of property, both real and personal, and to use and apply the income therefrom exclusively for the benefit of Arnot Ogden Medical Center and St. Joseph's Hospital, licensed pursuant to Article 28 of the Public Health Law. Public Health and Health Planning Council approval is therefore required by Public Health Law § 2801-a(1) and (6); Not-For-Profit Corporation Law § 404(o); and 10 NYCRR § 610.2.

The following documents and information are attached in support of the Foundation's request for approval.

1. A letter dated February 7, 2014, from Aaron T. Alsheimer, requesting the creation of the Foundation through the merger of St. Joseph's Hospital Foundation – Elmira, N.Y. Inc. and Arnot Ogden Medical Center Foundation, Inc.;
2. A letter dated July 22, 2014, from Aaron T. Alsheimer, responding to a request for additional information;
3. The proposed Certificate of Merger of the Foundation;
4. The proposed bylaws for the Foundation;
5. A letter from the intended beneficiary, Arnot Ogden Medical Center, acknowledging and approving of the Foundation's proposed fund-raising activities on its behalf;

6. A letter from the intended beneficiary, St. Joseph's Hospital, acknowledging and approving of the Foundation's proposed fund-raising activities on its behalf;
7. A generalized description of the fundraising activities to be undertaken by the Foundation;
8. Profiles of the initial Board of Directors of the Foundation;
9. A description of the organizational relationship between Arnot Health Foundation, Inc. and its Article 28 beneficiaries; and
10. A description of the manner in which the Foundation is able to influence the operations of Arnot Health Foundation, Inc.

The proposed Certificate of Merger is in legally acceptable form.

Attachments

JD/DY

SAYLES & EVANS
ATTORNEYS AT LAW
ONE WEST CHURCH STREET
ELMIRA, NEW YORK 14901

(607) 734-2271
FAX (607) 734-1754

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CONRAD R. WOLAN
ANTHONY F. PAGANO
SETH T. HILAND
AARON T. ALSHEIMER

DARCY L. WOOD
L. CRAIG MYERS, III
EMILY A. CRABTREE

ALAN PARSONS
LEWIS W. MORSE, JR.
J. PHILIP HUNTER
CYNTHIA S. HUTCHINSON
JAMES E. YOUNG
OF COUNSEL

February 7, 2014

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

Re: Request for Public Health and Health Planning Council Approval
of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.

Dear Ms. Frost:

I write on behalf of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. ("St. Joseph's Foundation") and Arnot Ogden Medical Center Foundation, Inc. ("Arnot Ogden Foundation" and, together with the St. Joseph's Foundation, the "Foundations") to request Public Health and Health Planning Council ("Council") approval of the merger of the St. Joseph's Foundation and the Arnot Ogden Foundation into Arnot Health Foundation, Inc.

The St. Joseph's Foundation exists to raise funds in support of St. Joseph's Hospital, located in Elmira, New York. Similarly, the Arnot Ogden Foundation exists to raise funds in support of Arnot Ogden Medical Center, also located in Elmira. St. Joseph's Hospital and Arnot Ogden Medical Center are now affiliated entities having a common corporate parent, Arnot Health, Inc. In light of this affiliation, the directors of the Foundations have determined that it is appropriate to merge their organizations into a single entity operated for the benefit of both St. Joseph's Hospital and Arnot Ogden Medical Center.

The plan of merger adopted by the respective Foundations calls for the St. Joseph's Foundation to be merged into the Arnot Ogden Foundation, which will be the surviving entity and will change its name to Arnot Health Foundation, Inc. upon completion of the merger. The certificate of incorporation of the surviving entity also will be amended upon closing to reflect its

revised purpose, which shall be to solicit and maintain funds to be used in support of both St. Joseph's Hospital and Arnot Ogden Medical Center.

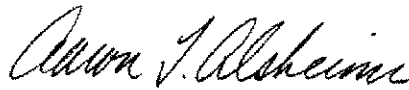
Enclosed herewith please find the following items which are submitted for the Council's consideration:

- (1) Plan of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc.;
- (2) Certificate of Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc.;
- (3) Resolutions of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc., Arnot Ogden Medical Center Foundation, Inc., and St. Joseph's Hospital (the sole member of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.); and
- (4) Proposed petition for judicial approval of the merger of the Foundations.

Should the Council require additional documentation or have any questions concerning this request, please do not hesitate to contact me at the address or telephone number set forth above. You also may reach me via email at aalsheimer@saylesevans.com. Once the Council completes its review and consents to the proposed merger, please provide evidence of such consent suitable for filing with the Supreme Court of the State of New York.

Thank you very much for your assistance.

Very truly yours,



Aaron T. Alsheimer

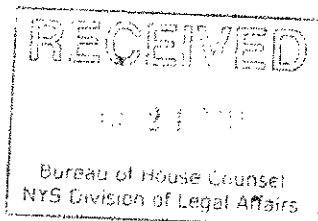
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ALAN PARSONS
LEWIS W. MORSE, JR.
J. PHILIP HUNTER
CYNTHIA S. HUTCHINSON
JAMES F. YOUNG
OF COUNSEL



July 22, 2014

Diana Yang, Senior Attorney
Division of Legal Affairs
New York State Department of Health
Corning Tower, Room 2482
Empire State Plaza
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

Dear Ms. Yang:

Please find enclosed the following items, which are submitted in response to your request for additional information concerning the above referenced merger:

- (1) Copy of Certificate of Merger, paragraph 4(b) of which has been revised to include all required limitations on the activities of the merged entity (please note that the constituent organizations have indicated they have no objection to the insertion of pages 2 and 3, as revised, into the Certificate of Merger previously submitted to your office);
- (2) Copy of the proposed Bylaws of Arnot Health Foundation, Inc.;
- (3) Letter from Arnot Ogden Medical Center acknowledging that it will accept funds raised by Arnot Health Foundation, Inc.;
- (4) Letter from St. Joseph's Hospital acknowledging that it will accept funds raised by Arnot Health Foundation, Inc.;
- (5) General description of fundraising activities to be undertaken by Arnot Health Foundation, Inc.;

- (6) Profiles of the initial directors of Arnot Health Foundation, Inc. (as indicated in the Plan of Merger, all individuals serving as directors of the constituent foundations will, upon completion of the merger, be directors of Arnot Health Foundation, Inc.):
- (7) Description of the organizational relationship between Arnot Health Foundation, Inc. and its Article 28 beneficiaries, Arnot Ogden Medical Center and St. Joseph's Hospital; and
- (8) Description of manner in which Arnot Health, Inc. is able to influence the operations of Arnot Health Foundation, Inc. (please note that this description is provided in lieu of your request for a list of entities which control or are controlled by Arnot Health Foundation, Inc.; as noted in the enclosed description, Arnot Health, Inc. exerts influence over, but does not control, the Foundation).

Should you have any questions regarding the enclosed items or require further documentation in connection with the review of the proposed merger, please do not hesitate to contact me.

Thank you very much for your assistance with this matter.

Very truly yours,



Aaron T. Alsheimer

Enclosures

PLAN OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Pursuant to Section 902 of the Not-for-Profit Corporation Law

The following plan of merger has been adopted by the board of directors of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and the board of directors of Arnot Ogden Medical Center Foundation, Inc.

I. Constituent Corporations; Surviving Corporation.

(a) The corporations to be merged pursuant to this plan of merger are St. Joseph's Hospital Foundation-Elmira, N. Y. Inc., a New York not-for-profit corporation, and Arnot Ogden Medical Center Foundation, Inc., a New York not-for-profit corporation formed under the name Arnot Ogden Memorial Hospital Foundation, Inc.

(b) Arnot Ogden Medical Center Foundation, Inc. shall be the surviving corporation, and upon the effective date of the merger the name of the surviving corporation shall be changed to Arnot Health Foundation, Inc.

II. Membership in Constituent Corporations.

(a) The sole corporate member of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. is St. Joseph's Hospital, a New York not-for-profit corporation. There is no certificate evidencing capital contributions of such member.

(b) Arnot Ogden Medical Center Foundation, Inc. has no members.

III. Terms and Conditions of Merger.

The terms and conditions of the proposed merger are as follows:

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

The undersigned, being respectively the chairman of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and the chairman of Arnot Ogden Medical Center Foundation, Inc., hereby certify:

1. The names of the constituent corporations are St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. The name under which Arnot Ogden Medical Center Foundation, Inc. was formed is Arnot Ogden Memorial Hospital Foundation, Inc.

2. Arnot Ogden Medical Center Foundation, Inc. shall be the surviving corporation, and on the effective date of the merger the name of the surviving corporation shall be changed to Arnot Health Foundation, Inc.

3. Membership in the constituent corporations is as follows:

(a) The sole member of St. Joseph's Hospital Foundation-Elmira, N.Y. Inc. is St. Joseph's Hospital, a New York not-for-profit corporation, which holds all rights and

powers of membership granted under New York law. There is no certificate evidencing capital contributions of such member.

(b) Arnot Ogden Medical Center Foundation, Inc. has no members.

4. The amendments to the certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc., the surviving corporation, which are to be effected by the merger are as follows:

(a) Article 1, relating to the name of the surviving corporation, shall be amended to read in its entirety as follows:

“1. The name of the Corporation is Arnot Health Foundation, Inc.”

(b) Article 2, relating to the purposes of the surviving corporation, shall be amended so that the following statement of purposes is substituted for the existing statement purposes set forth at the beginning of said Article:

“To solicit, receive and maintain a fund or funds of property, both real and personal, and to use and apply the income therefrom and the principal thereof exclusively for the benefit of Arnot Ogden Medical Center and St. Joseph’s Hospital, each of which is a New York not-for-profit corporation established to operate and maintain a hospital in the City of Elmira, New York. Notwithstanding the foregoing, nothing herein shall authorize Arnot Health Foundation, Inc. to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law, to provide hospital service or health related service, to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.”

(c) Article 2, relating to the purposes of the surviving corporation, shall be further amended so that the final paragraph of said Article 2 is amended to read as follows:

“In the event of the liquidation, dissolution, or winding up of the corporation, the Directors of the corporation shall dispose of the total assets of the corporation by transfer to Arnot Ogden Medical Center and St. Joseph’s Hospital, or to the sole member of said entities, Arnot Health, Inc., a New York not-for-profit corporation;

provided, however, that if each of the aforementioned entities is dissolved or is no longer qualified under Section 501(c)(3) of the Internal Revenue Code (as the same may from time to time be amended), disposition of the assets shall be to such organizations exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code (as the same may from time to time be amended) as the Directors of the corporation by majority vote determine.”

5. The certificate of incorporation of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc. was filed by the Department of State on April 12, 1985. The certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc. was filed by the Department of State on July 3, 1978, and a certificate of amendment of the certificate of incorporation of Arnot Ogden Medical Center Foundation, Inc. was filed by the Department of State on August 12, 1993.

6. The merger of the constituent corporations was authorized as follows:

(a) The plan of merger of the constituent corporations was adopted by vote of a majority of the directors present at a meeting of the board of directors of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc., duly called and held on November 12, 2013, a quorum being present at the time of the vote. Said plan of merger was thereafter approved by vote of a majority of the directors present at a meeting of the board of directors of St. Joseph’s Hospital, the sole member of St. Joseph’s Hospital Foundation-Elmira, N. Y. Inc., duly called and held on December 9, 2013, a quorum being present at the time of the vote.

(b) The plan of merger of the constituent corporations was adopted by vote of a majority of the directors present at a meeting of the board of directors of Arnot Ogden Medical Center Foundation, Inc., duly called and held on November 22, 2013, a quorum being present at the time of the vote. There being no members of Arnot Ogden Medical Center Foundation, Inc., the adoption by the board of directors resulted in approval of the plan of merger.

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, execute this Certificate of Merger and hereby affirm it as true under the penalties of perjury this 20 day of December, 2013.



CHRISTOPHER P. BAKER, Chairman
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.



PETER C. WALLIN, Chairman
Arnot Ogden Medical Center Foundation, Inc.

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

Filer: Aaron T. Alsheimer
Sayles & Evans; Attorneys at Law
One West Church Street
Elmira, New York 14901

CERTIFICATE OF MERGER

- of -

ST. JOSEPH'S HOSPITAL FOUNDATION-ELMIRA, N. Y. INC.

- and -

ARNOT OGDEN MEDICAL CENTER FOUNDATION, INC.

- into -

ARNOT HEALTH FOUNDATION, INC.

Under Section 904 of the Not-for-Profit Corporation Law

Filer: Aaron T. Alsheimer
Sayles & Evans, Attorneys at Law
One West Church Street
Elmira, New York 14901

ARNOT HEALTH FOUNDATION, INC.

BYLAWS

ARTICLE I

MEMBERSHIP

Section 1. **Members.** There shall be no members of the corporation.

ARTICLE II

GIFTS TO THE CORPORATION

Section 1. **Solicitation.** The corporation shall conduct a bona fide continuous program of solicitation for new and additional grants, gifts, devises, bequests and legacies from a wide range of governmental, other foundations and corporate and individual donors. The solicitation shall be conducted in such fashion as to call attention to the corporation as a potential recipient of grants and the like for the benefit of the objectives of the corporation.

Section 2. **Form.** All amounts and properties so given, devised or bequeathed and the income therefrom shall be funds, assets and income of the corporation as such terms are used herein or in the Certificate of Incorporation, whether given, devised or bequeathed directly to the corporation or to a bank or trust company for the corporation.

Section 3. **Refusal of Gifts.** The corporation shall refuse or renounce all grants, gifts, devises, bequests and legacies, the acceptance of which would cause it to be treated as other than a charitable organization duly qualified under Section 509(a)(3) of the Internal Revenue Code of 1986 or any similar section in any subsequent Federal tax law.

Section 4. **Reservation of Powers by Corporation.** All grants, gifts, devises, bequests and legacies to the corporation are made and accepted subject to all the terms, restrictions, requirements and powers contained in these Bylaws and the Certificate of Incorporation, as such documents may be amended, whether before or after the making of such grant or the like, and the donor or testator by making such grant or the like, and in consideration of the acceptance thereof by the corporation, accepts and agrees to such terms, restrictions, requirements and powers.

Section 5. **Grantor's Directions.** A grantor may with respect to a grant or the like to the corporation give directions:

(a) as to the field of charitable purposes or objects for which the gift is to be held and used;

(b) as to whether such gift shall be a permanent fund or whether both principal and income may be utilized by the corporation.

The corporation will use its best efforts to follow the directions of the grantor and to carry out the grantor's intent and purposes but all gifts to the corporation are made and accepted subject to the provisions of Section 4 of this Article II of these Bylaws and the power and duty of the Directors to modify any such directions, restrictions or conditions, in accordance with applicable law, if the distribution of funds

for the specified charitable purposes becomes, in the sole judgment of the Directors, unnecessary or incapable of fulfillment.

ARTICLE III
BOARD OF DIRECTORS

Section 1. **Number.** The number of Directors of the corporation shall be not less than three (3) nor more than thirty (30) and, upon the effective date of the merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc., shall be twenty-seven (27). All Directors shall be at least eighteen (18) years of age.

Section 2. **Meetings.** The Board of Directors shall hold its annual meeting in April, on a date and at a time and place determined by the Board.

Regular meetings of the Board may be held without formal notice at such times and such places as the Board shall determine.

Special meetings of the Board shall be held upon the written request of the President or any two (2) Directors at the time and place stated in the notice thereof and at such meetings any business of the corporation may be transacted.

Meetings of the Board of Directors may be held in New York at such place as may be determined from time to time by the Board of Directors.

Section 3. **Notice of Special Meeting.** Notice of each special meeting of the Board of Directors shall be served personally or by mail, telephone or e-mail upon each Director at least one (1) day before the date of the meeting, and shall state the time when and the place where the meeting is to be held.

Section 4. **Waiver of Notice of Meetings.** Notice of any meeting of the Board of Directors may be waived in writing by any Director either before or after the meeting.

Section 5. **Powers.** The Board of Directors shall have and may exercise full power in the management and control of the business and affairs of the corporation.

Section 6. **Consent of Directors Without Meeting.** Any action required or permitted to be taken by the Board of Directors or a committee thereof may be taken without a meeting if all members of the Board or 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 7. **Appointment and Term.**

(a) At all times three (3) Directors shall be Directors by virtue of their positions as directors of Arnot Health, Inc. The board of directors of Arnot Health, Inc. shall select from amongst its members three (3) directors to serve as Directors of Arnot Health Foundation, Inc., one in each class described in the following paragraph (b). Thereafter, the board of directors of Arnot Health, Inc. shall select one (1) director each year to fill the Director's post in the class of Arnot Health Foundation, Inc. Directors which expires in that year.

(b) Once the Board is constituted at twenty-seven (27) Directors, the Board by lot shall select out of those Directors not acting pursuant to paragraph (a) above eight (8) Directors to serve for a term to expire at the next annual meeting of the Board,

eight (8) Directors to serve for a term to expire at the second succeeding annual meeting and eight (8) Directors to serve for a term to expire at the third succeeding annual meeting. Thereafter the term of all Directors shall be three (3) years following the annual meeting at which he/she takes office. No Director shall serve for more than two (2) consecutive three (3) year terms. A member may be elected to an additional three (3) year term or terms if serving as an officer of the Board of Directors.

(c) Prior to each meeting at which the election of Directors is in order a Nominating Committee appointed by the Chairperson of the Board shall convene to consider candidates for openings to be filled exclusive, however, of those Directors appointed pursuant to paragraph (a) above. The consent to serve of the candidates shall be obtained by the Nominating Committee before the election. A proposed slate shall be presented to the Board at the meeting. The Directors whose terms are to expire upon the election and qualification of their successors shall have no vote in such election. The Directors whose terms are to expire shall be entitled to vote on all other matters until their elected successors are qualified.

Section 8. **Vacancies, Resignation and Removal.** Any Director can resign at any time and any such resignation shall be effective upon delivery thereof in writing to the corporation without necessity for acceptance by the Board. Any Director may be removed at any time, with or without cause, by the Board. Vacancies occurring in the Board shall be filled as soon as practical. The newly appointed Director shall serve the term of his predecessor. Thereafter, the individual is eligible to serve two (2) three (3) year terms in his or her own right.

If the Bylaws are amended to increase or decrease the number of Directors, such changes shall be apportioned among the Directors in order to keep the number of Directors whose terms of office expire in any year as nearly equal in number as possible.

Section 9. **Quorum.** A majority of the Board of Directors shall constitute a quorum at any meeting of the Board, but fewer than a quorum shall have power to adjourn any meeting, from time to time, without notice other than announcement at the meeting, until a quorum is present. The act of a majority of the Directors present at any duly assembled meeting of the Board at which a quorum is present shall be an act of the Board except as may be otherwise specifically provided by law or herein.

Section 10. **Annual Report.** The Board of Directors shall present at each annual meeting of the Board a report, verified by the President and Treasurer or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both restricted and unrestricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

The annual report of the Directors shall be filed with the minutes of the annual meeting of the Board.

Section 11. **Indemnification.** The corporation, to the fullest extent permitted by the New York Not-for-Profit Corporation Law or other applicable law as the same may be amended from time to time, shall indemnify each person, or if deceased, such person's personal representatives, against the reasonable expenses, attorney's fees, judgments, fines, and amounts paid in settlement in any action or proceeding, civil or criminal, if such person is made or threatened to be made a party by reason of the fact such person or his or her testator or testatrix or intestate is or was (1) an officer, director or employee of the corporation, or (2) an officer, director or employee of or served in any capacity in any other corporation, partnership, joint venture, trust or other enterprise, at the request of this corporation, provided that in the case of a person serving in any capacity in any other corporation, partnership, joint venture, trust or other enterprise, that such person was at the time he or she was so designated to serve by this corporation, an employee of this corporation, or (3) the occupant of a position or a member of a committee or board or a person having responsibilities under federal or state law, who was appointed to such position or to such committee or board by the Board of Directors of this corporation or by an officer of this corporation or who served in such position or on such committee or board at the request or direction of the Board of Directors of this corporation or of an officer of this corporation or who assumed such responsibilities at

the request or direction of the Board of Directors of this corporation or of any officer of this corporation.

The corporation's obligation under this section shall be reduced by the amount of any insurance which is available to any such person whether such insurance is purchased by the corporation or otherwise. The corporation shall purchase insurance for indemnification of directors and officers in such amounts and upon such terms as may from time to time be determined by the Board of Directors. The right of indemnity created herein shall be personal to the officer, director, employee or other person and their respective legal representatives and in no case shall any insurance carrier be entitled to be surrogated to any rights created herein.

ARTICLE IV COMMITTEES

Section 1. **Executive Committee.** The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, consisting of three (3) or more members. The Executive Committee shall have all the authority of the Board, except it shall have no authority as to the following matters:

- (a) The filling of vacancies in the Board or in any Committee;
- (b) The fixing of compensation of the Directors for serving on the Board or on any Committee;
- (c) The amendment or repeal of the Bylaws, or the adoption of new Bylaws;

(d) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable.

Any reference in these Bylaws to the Board of Directors shall include the Executive Committee unless the context or express provision otherwise provides.

Section 2. **Finance Committee.** The Board of Directors shall appoint a Finance Committee consisting of five (5) Directors, three (3) of whom shall be the Directors who hold their positions as Directors by virtue of their positions as members of the board of directors of Arnot Health, Inc.

(a) The Finance Committee shall recommend to the Board the projects, programs, equipment and grant needs of Arnot Ogden Medical Center and St. Joseph's Hospital which it deems most worthy of support by Arnot Health Foundation, Inc.

(b) The Finance Committee shall, recognizing the projects, programs, equipment and grant needs of Arnot Ogden Medical Center and St. Joseph's Hospital, recommend to the Board from time to time a policy and program for the investment of the assets and funds of Arnot Health Foundation, Inc. and the means of implementing the same.

Section 4. **Committees.** The Board of Directors may designate from among its members additional committees, each of which shall consist of three (3) or more Directors and shall have such authority as provided in the resolutions designating the committee, except such authority shall not exceed the authority conferred on the Executive Committee by Section 1 above.

Section 5. **Meetings.** Meetings of the committees shall be held at such time and place as shall be fixed by the President, the Chairperson of the Committee or by vote of a majority of all of the members of the Committee.

Section 6. **Quorum and Manner of Acting.** Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of the committee shall be the act of the committee. Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the Committee. The procedures and manner of acting of the Executive Committee and of the other committees shall be subject at all times to the directions of the Board of Directors.

ARTICLE V
OFFICERS

Section 1. **Officers.** The Board of Directors shall elect a President, a Vice President, a Secretary, and a Treasurer. The President shall be the Chairperson of the Board. The Board may also appoint such other officers as the Board or a duly authorized committee of the Board may in its discretion elect. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. **Powers of Officers.** The President shall be the chief executive officer of the corporation and shall be charged with the supervision of its business and affairs, subject to the direction of the Board of Directors. No employee of the corporation shall serve as the President.

The Vice President shall, in the absence of the President, perform the functions and have the powers and duties of the President. The Vice President shall have such other powers and perform such other duties as may from time to time be prescribed by the Board.

The Secretary shall keep the minutes of all meetings of the Board and of the members of the corporation, and shall have the custody of the seal of the corporation and shall affix the same to documents when authorized so to do. He/she shall perform all other duties usual to that office.

The Treasurer shall be the custodian of the funds and securities of the corporation and shall perform all the duties customary to that office. The Board of Directors may require that he/she having custody of funds of the corporation shall give bond for the faithful performance of their duties.

Section 3. **Compensation of Directors and Officers.** No Director or officer of the corporation shall receive directly or indirectly any compensation or other payment from the corporation unless authorized by the concurring vote of two-thirds of all the Directors then in office and in no event shall any compensation or payment be paid or made except reasonable compensation for services actually rendered or reimbursement for disbursements actually incurred. No director or other officer of the corporation shall be interested, directly or indirectly, in any contract relating to the operations conducted by the corporation nor in any contract for furnishing supplies thereto unless authorized in accordance with the New York Not-for-Profit Corporation Law and the conflict of interest policy of the corporation.

Section 4. **Election of Officers.** The elected officers of the corporation shall be elected, and the appointed officers shall be appointed, by the Board of Directors at the annual meeting of the Board, except for vacancies which may be filled at any regular or special meeting. The Directors whose terms are due to expire at the annual meeting shall be entitled to vote in the election of officers at such meeting. All officers, whether elected or appointed, shall hold office until the next annual meeting of the Board and until their successors shall have been elected and shall have qualified, unless removed from office prior thereto by action of the Board which power of removal hereby is granted to the Board. Vacancies resulting from such action by the Board, or from the death or resignation of an officer, shall be promptly filled by the Board.

Section 5. **Nominating Committee.** The Nominating Committee shall be appointed by the Board of Directors. The Nominating Committee shall recommend at the annual meeting of Directors a slate of officers. The consent to serve of each proposed nominee shall be obtained by the Committee before nominations are made.

ARTICLE VI

EXECUTIVE DIRECTOR

Section 1. **Appointment.** The Board of Directors may appoint an Executive Director who shall serve at the pleasure of the Board.

Section 2. **Duties.** The Executive Director shall manage the day-to-day affairs of the corporation subject to the supervision of the President and the Board of Directors. The Executive Director shall consult regularly with the Chief Executive Officer of Arnot Health, Inc. and work with him to coordinate the efforts of Arnot Health

Foundation, Inc. with the needs of Arnot Ogden Medical Center and St. Joseph's Hospital. The Executive Director shall also perform such other duties as may be assigned to him from time to time by the Board.

Section 3. **Compensation.** The compensation of the Executive Director shall be determined by the Board of Directors.

ARTICLE VII
CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

Section 1. **Execution of Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, in the name of and on behalf of the corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. **Loans.** No loans shall be contracted on behalf of the corporation unless specifically authorized by the Board of Directors.

Section 3. **Checks, Drafts, etc.** All checks, drafts and other orders for the payment of money out of the funds of the corporation, and all notes or other evidences of indebtedness of the corporation, shall be signed on behalf of the corporation in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. **Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VIII
OFFICE, BOOKS AND SEAL

Section 1. **Office.** The office of the corporation shall be in Elmira, New York.

Section 2. **Books and Records.** There shall be kept at the office of the corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the Board of Directors and the Executive Committee, (3) a current list of the Directors and officers of the corporation and their residence addresses and (4) a copy of these Bylaws.

Section 3. **Seal.** The seal of the corporation shall be circular in form and shall contain the name of the corporation, the year of incorporation and the state of its incorporation.

ARTICLE IX
FISCAL YEAR

Section 1. **Fiscal Year.** The fiscal year of the corporation shall be the calendar year.

ARTICLE X
AMENDMENTS

The Certificate of Incorporation and these Bylaws may be added to, amended or repealed in whole or in part by the affirmative vote of a majority of the entire Board of Directors at any regular or special meeting of Directors provided ten (10) days written notice of such meeting shall have been given each director specifying the amendments to be considered.

ArnotHealth

Arnot Ogden Medical Center

600 Roe Avenue
Elmira, NY 14905

PH: (607) 737-4100

arnothealth.org

July 18, 2014

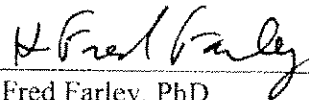
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

To Whom It May Concern:

By this letter, Arnot Ogden Medical Center ("Medical Center") acknowledges that Arnot Health Foundation, Inc. ("Foundation") intends to solicit contributions on the Medical Center's behalf and confirms that the Medical Center will accept funds raised for its benefit by the Foundation.

Sincerely,



H. Fred Farley, PhD

President, Arnot Ogden Medical Center

Arnot*Health*

St. Joseph's Hospital

555 St. Joseph's Boulevard
Elmira, NY 14901

PH: (607) 733-6541

stjosephs.org

July 18, 2014

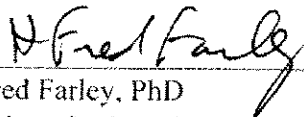
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Albany, New York 12237

**Re: Merger of St. Joseph's Hospital Foundation-Elmira, N. Y. Inc.
and Arnot Ogden Medical Center Foundation, Inc. into Arnot
Health Foundation, Inc.**

To Whom It May Concern:

By this letter, St. Joseph's Hospital ("Hospital") acknowledges that Arnot Health Foundation, Inc. ("Foundation") intends to solicit contributions on the Hospital's behalf and confirms that the Hospital will accept funds raised for its benefit by the Foundation.

Sincerely,



H. Fred Farley, PhD

President, St. Joseph's Hospital

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

General Description of Fundraising Activities of Foundation

Arnot Health Foundation, Inc. ("Foundation") is to be established through the merger of Arnot Ogden Medical Center Foundation, Inc. (which presently exists to raise funds in support of Arnot Ogden Medical Center, located at 600 Roe Avenue, Elmira, New York) and St. Joseph's Hospital Foundation-Elmira, N.Y. Inc. (which presently exists to raise funds in support of St. Joseph's Hospital, located 555 St. Joseph's Boulevard, Elmira, New York). Upon completion of said merger, the Foundation will be engaged in the solicitation of grants, gifts, devises, and bequests from a broad range of donors, including individuals, other foundations, corporations, and governmental agencies. All such solicitations shall occur on behalf and for the benefit of Arnot Ogden Medical Center and/or St. Joseph's Hospital, the Foundation's Article 28 beneficiaries.

The Foundation's executive director will be primarily responsible for organizing and carrying out the fundraising activities of the Foundation. The executive director may be assisted in such activities by other Foundation employees and, from time to time, professional fundraisers.

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

Profiles of Individuals Serving as Foundation Directors upon Completion of Merger

Carol Balmer

Address: 1657 Pennsylvania Avenue, Pine City, NY 14871

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Rose Byland, M.D.

Address: 600 Roe Avenue, Elmira, NY 14905

Occupation: Radiation Oncologist

Employer Name and Address: Associated Radiologists of the Finger Lakes, P.C.; 100 East 14th Street, Elmira Heights, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

JulieAnn Delgrosso

Address: 361 Maple Avenue, Elmira, NY 14904

Occupation: Owner/Proprietor

Employer Name and Address: The Christmas House; 361 Maple Avenue, Elmira, NY 14904

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Merry Devlin

Address: 87 Decker Parkway West, Elmira, NY 14905

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Ernest Hartman

Address: 601 County Road 64, Elmira, NY 14903

Occupation: Business Manager

Employer Name and Address: IBEW No. 139, 415 West Second Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kenneth Herzl-Betz, M.D.

Address: 659 Euclid Avenue, Elmira, NY 14901

Occupation: Physician

Employer Name and Address: Partner – Ivy OB-GYN Associates, 500 Ivy Street, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Hosey

Address: 333 East Water Street, Elmira, NY 14901

Occupation: Chief Executive Officer

Employer Name and Address: Elmira Savings Bank; 333 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Lori Kain

Address: 711 Sullivan Street, Elmira, NY 14901

Occupation: Director

Employer Name and Address: Southern Tier Industries (Chemung ARC); 711 Sullivan Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Robert Lambert, M.D.

Address: 909 W. Water Street, Elmira, NY 14905

Occupation: President & Chief Executive Officer

Employer Name and Address: Arnot Health, Inc., 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Nick LaPuma

Address: 351 Stillwater Drive, Horseheads, NY 14845

Occupation: Supervisor, Wealth Strategies and Personal Services

Employer Name and Address: Corning Federal Credit Union; 1 Credit Union Plaza, Corning, NY 14830

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Lares

Address: 350 Riverside Avenue, Elmira, NY 14904

Occupation: Vice President, Portfolio Manager

Employer Name and Address: Chemung Canal Trust Company; 1 Chemung Canal Plaza, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Julie McInerney

Address: 1004 Hoffman Street, Elmira, NY 14905

Occupation: Manager of Member Services

Employer Name and Address: Chemung County Chamber of Commerce; 400 East Church Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Jane Metzger

Address: 8 Kingsley Road, Pine Valley, NY 14872

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Murray

Address: 102 Grandview Avenue, Elmira, NY 14905

Occupation:

Employer Name and Address: New York Financial Solutions, 244 Oakwood Avenue, Elmira, NY 14903

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Joshua Palmer

Address: 90 Morningside Drive, Elmira, NY 14905

Occupation: Vice President of Sales

Employer Name and Address: Swan & Sons-Morss Company, Inc.; 309 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Kim Panosian, M.D.

Address: 600 Roe Avenue, Elmira, NY 14905

Occupation: Medical Director

Employer Name and Address: Arnot Medical Services, PLLC.; 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Susan Rigo, M.A., FAHP

Address: 15 Kahler Road South, Elmira, NY 14903

Occupation: Vice President, Chief Development Officer

Employer Name and Address: Arnot Health, Inc., 600 Roe Avenue, Elmira, NY 14905

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Larry Rudawsky, Esq.

Address: 15 Ridgehaven Drive, Horseheads, NY 14845

Occupation: Retirement Services Sales Officer

Employer Name and Address: Citizens & Northern Bank, 1827 Elmira Street, Sayre, PA 18840

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Michael Ryan

Address: 14 Kent Road, Pine City, NY 14871

Occupation: Vice President

Employer Name and Address: John G. Ryan, Inc.; 14 Kent Road, Pine City, NY 14871

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Jason Sanford

Address: 333 East Water Street, Elmira, NY 14901

Occupation: Chief Financial Officer

Employer Name and Address: Elmira Savings Bank; 333 East Water Street, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kathleen Schweizer

Address: 1640 Mt. Zoar Road, Pine City, NY 14871

Occupation: Vice President

Employer Name and Address: Swift Glass Co., Inc.; 131 22nd Street, Elmira Heights, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Marc Stemerman

Address: 1055 Chatham Lane, Elmira, NY 14905

Occupation: President

Employer Name and Address: Chemung Supply Corporation; 2420 Corning Road, Elmira, NY 14903

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Margaret Streeter

Address: 1650 West Church Street, Elmira, NY 14905

Occupation: Not Applicable (Philanthropist/Community Volunteer)

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

Kevin Sullivan

Address: 367 East Franklin Street, Horseheads, NY 14845

Occupation: Owner/Funeral Director

Employer Name and Address: Sullivan's Funeral Home; 365 East Franklin Street, Horseheads, NY 14845

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Helen Tenny

Address: 317 Marshall Street, Horseheads, NY 14845

Occupation: Not Applicable

Employer Name and Address: Not Applicable

Past Charitable/Non-Profit Affiliations: Director, St. Joseph's Hospital Foundation-Elmira, N.Y. Inc.

Peter Wallin

Address: 1364 College Avenue, Elmira, NY 14901

Occupation: Owner/Insurance Agent

Employer Name and Address: Wallin Insurance Agency; 1364 College Avenue, Elmira, NY 14901

Past Charitable/Non-Profit Affiliations: Director, Arnot Ogden Medical Center Foundation, Inc.

**Request for Approval of Merger of
St. Joseph's Hospital Foundation-Elmira, N. Y. Inc. and
Arnot Ogden Medical Center Foundation, Inc. into
Arnot Health Foundation, Inc.**

Organizational Relationship between Foundation and Article 28 Beneficiaries

Arnot Health, Inc. has influence over the operation of the Foundation, insofar as Arnot Health, Inc. is entitled to appoint three (3) of its directors to serve on the Board of Directors of the Foundation. Arnot Health, Inc. also is the sole member/active parent of both Arnot Ogden Medical Center and St. Joseph's Hospital, the Foundation's Article 28 beneficiaries.

List of Controlling and Controlled Entities

No entity will control the Foundation. However, Arnot Health, Inc., a New York not-for-profit corporation and the sole member of both Arnot Ogden Medical Center and St. Joseph's Hospital, will be able to influence the Foundation's operations, insofar as Arnot Health, Inc. will be entitled to appoint three (3) of its directors to serve on the Foundation's Board of Directors.

No entity will be controlled by the Foundation.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council on this 2nd, day of October, 2014, approves the filing of the Certificate of Merger of St. Joseph's Hospital Foundation-Elmira, N.Y. Inc. and Arnot Ogden Medical Center Foundation, Inc. into Arnot Health Foundation, Inc., dated December 20, 2013.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: James E. Dering, General Counsel *JED*
DATE: September 5, 2014
SUBJECT: The St. Joseph Hospital Foundation

The St. Joseph Hospital Foundation ("the Foundation") requests that the Public Health and Health Planning Council ("PHHPC") approve the attached proposed Certificate of Incorporation. Public Health Law § 2801-a(6) and Not-for-Profit Corporation Law §§ 404(o) require that the Certificate of Incorporation 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 WSNCHS North, Inc. d/b/a St. Joseph Hospital, an Article 28 facility. 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;
- 2) A copy of the Foundation's proposed bylaws;
- 3) A letter, dated August 5, 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 August 7, 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

CERTIFICATE OF INCORPORATION

OF

THE ST. JOSEPH HOSPITAL FOUNDATION

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

The undersigned, for the purpose of forming a corporation under the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

- FIRST:** The name of the corporation is The St. Joseph Hospital Foundation (the "Corporation").
- SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.
- THIRD:** The Corporation is formed, organized and shall be operated exclusively for the charitable purpose of supporting and assisting WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital"), a New York not-for-profit corporation exempt from Federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"). Without limiting the generality of the foregoing, the Corporation's purposes include assisting St. Joseph Hospital to develop, expand, and fund its services by: (i) soliciting contributions for St. Joseph Hospital; (ii) mobilizing and coordinating the efforts of community leaders; (iii) providing a focal point and recipient for philanthropic support; (iv) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof; (v) granting or loaning funds to St. Joseph Hospital and (vi) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events.
- FOURTH:** In furtherance of its corporate purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants, bequests, and contributions for the corporate purposes.
- FIFTH:** The names and addresses of the initial Directors of the Corporation are as follows:
- | | |
|---------------------|---|
| David DeCerbo, Esq. | c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570 |
|---------------------|---|

Alan Guerci, M.D.

c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570

Dennis Verzi

c/o Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570

- SIXTH:** The Corporation shall be operated in conformity with the Ethical and Religious Directives of the Catholic Church as published the United States Conference of Catholic Bishops and as interpreted and applied by the Bishop of the Diocese of Rockville Centre,
- SEVENTH:** The Corporation has not been formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its Directors or officers, except to the extent permitted under the Not-for-Profit Corporation Law.
- EIGHTH:** Notwithstanding any other provisions of this certificate, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Sections 501(c)(3) of the Code, or corresponding provisions of any subsequent Federal tax law. No part of the net earnings of the Corporation shall inure to the benefit of its Directors, officers, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation). No part of the activities of the Corporation shall be propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.
- NINTH:** In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses and liabilities thereof have been paid, be distributed to St. Joseph Hospital or if it shall not then exist or qualify to Catholic Health System of Long Island, Inc., provided it then qualifies under Sections 501(c)(3) and 170(c)(2) of the Code, or corresponding provisions of any subsequent Federal tax law to receive charitable contributions, subject to an order of a Justice of the Supreme Court of the State of New York and/or the approval of the Attorney General, and no Trustee or officer of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets on dissolution.
- TENTH:** The office of the Corporation is to be located in the County of Nassau.
- ELEVENTH:** The sole member of this Corporation shall be St. Joseph Hospital (the "Member").
- TWELFTH:** The Corporation shall not take any action requiring the consent or approval of the Member until the Member shall have exercised the following reserved powers. Such exercise of reserved powers shall not be effective until the Corporation shall

have received written notice of the appropriate action having been taken by the Member. The following powers are reserved specifically and exclusively to the Member and no attempted exercise of any such power by anyone other than the Member shall be valid or of any force or effect whatsoever:

- a. To approve the philosophy and mission statement adopted by the Board of Directors according to which the Corporation will operate only in conformity with these purposes and the By-Laws.
- b. To require the Corporation to operate in conformity with its philosophy and mission statement.
- c. To adopt, approve, amend, repeal the By-Laws and Certificate of Incorporation of the Corporation.
- d. To fix the number of and elect, appoint, fill vacancies in and remove, with or without cause, the Directors; and elect and remove, with or without cause, the Chairperson and Vice Chairpersons of the Board of Directors of the Corporation.
- e. To approve any sale, mortgage, lease, loan, gift, or pledge of any of the Corporation's real property irrespective of amount, or of any other assets (other than real property) in excess of an amount to be fixed from time to time by the Member; to approve any acquisition of real property for the Corporation, including the acquisition of any leasehold interests irrespective of amount; to approve any acquisition by the Corporation of other assets (other than real property) whose value exceeds an amount to be fixed from time to time by the Member.
- f. To approve any merger, consolidation, or dissolution of the Corporation and to approve the disposition of the assets of the Corporation at the time of dissolution.
- g. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships, or other entities.
- h. To elect and remove, with or without cause, the Chief Executive Officer of the Corporation.
- i. To approve the criteria for and the process of evaluating the performance of the Chief Executive Officer of the Corporation.
- j. In exercise of the Member's stewardship, to appoint a certified public accountant to prepare certified audits for and on behalf of the Member, in addition to the annual certified audit prepared for and on behalf of the Board of Directors.

- k. To approve settlement of any litigation to which the Corporation is a party, except when the consideration for settlement is solely monetary and the amount of such settlement is below an amount to be fixed from time to time by the Member.
- l. To review statements of the Corporate finances submitted annually by the Directors.
- m. To approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation.
- n. To approve the debt of the Corporation which is in excess of such limits as are established by the Member.

THIRTEENTH: The Secretary of State is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served, and the following is designated as the address to which the Secretary of State shall mail a copy of any process received against the Corporation:

Catholic Health Services of Long Island
992 North Village Avenue
Rockville Centre, New York 11570
Attention: Senior Vice President and General Counsel

FOURTEENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law Section 404(a-n), (p-s) and (u-v).

FIFTEENTH: Nothing herein shall authorize the Corporation within the State of New York, to (a) provide hospital services or health related services, as such terms are defined in the New State Public Health Law ("PHL"); (b) establish, operate, or maintain a hospital, home care services agency, a hospice, a managed care organization as provided for in Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (c) establish and operate an independent practice association; (d) establish, operate, construct, lease, or maintain an adult home, enriched housing program, residence for adults, or an assisted living program, as provided for in Article 7 of the New York State Social Services Law; or (e) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL.

SIXTHTEENTH: Nothing herein shall authorize the Corporation within the State of New York to (a) hold itself as providing, or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

IN WITNESS WHEREOF, this Certificate has been subscribed this 07 day of August 2014, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.



Karen E. Sosler, Esq.
Incorporator

CERTIFICATE OF INCORPORATION

OF

THE ST. JOSEPH HOSPITAL FOUNDATION

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

File by:

**Karen E. Sosler, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203
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By-Laws
of
The St. Joseph Hospital Foundation
A Charitable Corporation Under §201 of the Not-for-Profit Corporation Law

ARTICLE 1

Name of the Corporation, Organization, Goals and Objectives

Section 1.01 – Name of Corporation

The name of this Corporation shall be The St. Joseph Hospital Foundation (hereinafter referred to as the "Corporation").

Section 1.02 – Goals and Objectives of the Corporation and Adherence to Catholic Doctrine

In order to carry out the purposes, as set forth in the Corporation's Certificate of Incorporation, the objective of the Corporation shall be to assist WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital"), to develop, expand, and fund its services by: (i) soliciting contributions for St. Joseph Hospital; (ii) mobilizing and coordinating the efforts of community leaders; (iii) providing a focal point and recipient for philanthropic support; (iv) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof; (v) granting or loaning funds to St. Joseph Hospital and (vi) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events. The foregoing shall be carried out in a manner at all times consistent with the *Ethical and Religious Directives for Catholic Health Services*, as published by the United States Conference of Catholic Bishops and as interpreted and applied by the Bishop of the Diocese of Rockville Centre.

ARTICLE 2
Membership

Section 2.01 – Sole Member

The St. Joseph Hospital Foundation shall have a single member, which shall be St. Joseph Hospital. All references in these By-Laws to either the Member or the Members of the Corporation shall be deemed references to the sole member, St. Joseph Hospital.

ARTICLE 3
Powers and Duties of the Member

Section 3.01 – Power to Elect Directors

The Member, at the Annual Meeting of the Member, shall elect qualified persons to the Board of Directors to fill all existing vacancies and any newly created Directorships and shall elect the Chairperson and Vice-Chairpersons of the Board of Directors.

Section 3.02 – Annual Report

At the Annual Meeting of the Member, the Member shall consider the Annual Report of the Corporation presented by the Board of Directors and verified by the President and Treasurer or by a majority of the Directors.

Section 3.03 – Reserved Powers of the Member

Subject to any further reserved powers of the Corporate Members of Catholic Health System of Long Island, Inc., the following powers are reserved specifically and exclusively to the Member and any attempted exercise of such powers by anyone other than the Member shall be void of any force or effect whatsoever. Should compliance with any of the restrictions in these provisions require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, such restriction shall be null and void.

Section 3.03.01 – Philosophy and Mission

To approve the philosophy and mission statement adopted by the Board of Directors according to which the Corporation will operate only in conformity with these purposes and By-Laws.

Section 3.03.02 – Conformity to Philosophy and Mission

To require the Corporation to operate in conformity with its philosophy and mission statement.

Section 3.03.03 – Corporate Documents

To adopt, approve, amend, repeal the By-Laws and Certificate of Incorporation of the Corporation.

Section 3.03.04 – Appointment and Removal of Directors and Board Chair

To fix the number of and elect, appoint, fill vacancies in and remove, with or without cause, the Directors; and elect and remove, with or without cause, the Chairperson and Vice Chairpersons of the Board of Directors of the Corporation.

Section 3.03.05 – Sale or Acquisition of Assets

To approve any sale, mortgage, lease, loan, gift, or pledge of any of the Corporation's real property irrespective of amount, or of any other assets (other than real property) in excess of an amount to be fixed from time to time by the Member; to approve any acquisition of real property for the Corporation, including the acquisition of any leasehold interests irrespective of amount; to approve any acquisition by the Corporation of other assets (other than real property) whose value exceeds an amount to be fixed from time to time by the Member.

Section 3.03.06 – Merger, Consolidation, Dissolution

To approve any merger, consolidation, or dissolution of the Corporation and to approve the disposition of the assets of the Corporation at the time of dissolution.

Section 3.03.07 – Reorganization and Formation of New Entities

To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships, or other entities.

Section 3.03.08 – Election and Removal of Chief Executive Officer

To elect and remove, with or without cause, the Chief Executive Officer of the Corporation.

Section 3.03.09 – Evaluation of Chief Executive Officer

To approve the criteria for and the process of evaluating the performance of the Chief Executive Officer of the Corporation.

Section 3.03.10 – Appointment of Auditor

In exercise of the Member's stewardship, to appoint a certified public accountant to prepare certified audits for and on behalf of the Member, in addition to the annual certified audit prepared for and on behalf of the Board of Directors.

Section 3.03.11 – Settlement of Litigation

To approve settlement of any litigation to which the Corporation is a party, except when the consideration for settlement is solely monetary and the amount of such settlement is below an amount to be fixed from time to time by the Member.

Section 3.03.12 – Financial Statements

To review statements of the Corporate finances submitted annually by the Directors.

Section 3.03.13 – Approval of Budgets

To approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation.

Section 3.03.14 – Approval of Debt

To approve the debt of the Corporation which is in excess of such limits as are established by the Member.

Section 3.04 – Power to Amend Specifically Reserved to Members of Catholic Health System of Long Island, Inc.

The power to give necessary approval to any amendment to the Certificate of Incorporation and to give necessary approval to any amendment, adoption or repeal of By-Laws is specifically reserved to the Corporate Members of Catholic Health System of Long Island, Inc. The authority to address all other aspects of legal changes for the Corporation vests in the Board of Directors of St. Joseph Hospital, as sole Member of the Corporation.

ARTICLE 4 Meetings of the Membership

Section 4.01 – Annual Meeting of the Member

The Annual Meeting of the Member shall be held within thirty (30) days of the Annual Meeting of the Corporate Members of Catholic Health System of Long Island, Inc.

Section 4.02 – Special Meetings

Special meetings of the Member shall be held only at the discretion and call of the Member. Special meetings shall be held at such hour on such day and at such place within or without the State of New York as may be determined by the Member.

Section 4.03 – Notice of Meetings

Whenever the Member is required or permitted to take any action at a meeting, written notice shall be given by the Secretary stating the place, date, and hour of the meeting and, unless it is the Annual Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a Special Meeting (including any such meeting to be held in conjunction with an Annual Meeting) shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given personally, by first class mail, by facsimile telecommunication or by electronic mail, to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the

Member at such Member's address as it appears on the Record of Members or, if such Member shall have filed with the Secretary of the Corporation a written request that notices be mailed to some other address then directed to such Member at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the Member's fax number or electronic mail address as it appears on the record of Members, or to such fax number or other electronic mail address as filed with the Secretary of the Corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given electronically (1) if the Corporation is unable to deliver two consecutive notices to the Member by facsimile telecommunication or electronic mail; or (2) the Corporation otherwise becomes aware that notice cannot be delivered to the Member by facsimile telecommunication or electronic mail. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. However, if, after the adjournment, the Board of Directors fixes a new record date for the adjourned meeting, on such new record date a notice of the adjourned meeting shall be given to each Member of record who shall be entitled to notice under this Section.

Section 4.04 – Waivers of Notice

Notice of any meeting of the Member need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the Member by signing such waiver or causing the Member's signature to be affixed to such waiver by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such Member.

Section 4.05 – Quorum at Meetings

The Member or Members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of the Member for the transaction of any business. In absence of a quorum, the Member or Members present may adjourn any meeting to another time or place.

Section 4.06 – Written Consent of Member Without Meeting

Whenever under any provision of law or these By-Laws the Member is required or permitted to take any action by vote, such action may be taken without a meeting on written consent of the members of the Board of Trustees of the Member, setting forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the Member by signing such consent or causing the Member's signature to be affixed to such consent by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The resolution and the written consents thereto by the Member shall be filed with the minutes of the proceedings of the Board.

ARTICLE 5 Officers, Agents and Employees

Section 5.01 – General Provisions

The officers of the Corporation shall be a Chairperson of the Board of Directors, a Vice Chairperson of the Board of Directors, a President, a Secretary, a Treasurer, and such other Officers as the Board

of Directors may determine are necessary from time to time. All Officers shall be elected by the Member at the Annual Meeting of the Member. Any two or more offices may be held by the same person, except the offices of Chairperson, President and Secretary. The President may be a member of management of the Corporation; all other officers shall be members of the Board of Directors.

Section 5.02 – Term of Office, Vacancy and Removal

Except as otherwise provided in this Article 5, Officers shall serve for a term of one (1) year until successors are elected, such term commencing at the close of the meeting at which they are elected. Officers may be elected for successive terms. Any Officer may be removed at any time with or without cause by the Member. Any vacancy occurring in any office during the term of an Officer may be filled for the remainder of the term thereof, by the Member at any annual meeting of the Member or at any Regular Meeting of the Member, or at any Special Meeting of the Member called for that purpose. The removal of an Officer without cause shall be without prejudice to his or her contract rights, if any. The election of an Officer shall not in itself create contract rights.

Section 5.03 – Powers and Duties of the Chairperson of the Board

The Chairperson of the Board shall preside at all meetings of the Board of Directors. In the absence of the Chairperson of the Board, the Vice-Chairperson shall preside. The Chairperson of the Board shall perform such other duties as may be provided for by these By-Laws or by Resolution of the Board. No employee of the Corporation shall serve as Chairperson of the Board or hold any other title with similar responsibilities.

Section 5.04 – Powers and Duties of the Vice-Chairperson of the Board

The Vice-Chairperson of the Board, in the absence of the Chairperson of the Board, shall preside at all meetings of the Board of Directors. The Vice-Chairperson of the Board shall have such other duties and responsibilities as may be assigned to him or her by the Board of Directors.

Section 5.05 – Powers and Duties of the President

The President shall be the Chief Executive Officer of the Corporation. The President shall be an *ex officio* member of the Board of Directors and of all committees of the Board and of the Corporation. The President shall have general charge of the business and affairs of the Corporation and may employ and discharge employees and agents of the Corporation, except such as shall be appointed by the Board of Directors, and may delegate these powers. The President may vote the shares or other securities of any domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any shareholders' or other consents in respect thereof, and may delegate such powers by executing proxies, or otherwise, on behalf of the Corporation.

Section 5.06 – Powers and Duties of the Secretary

The Secretary shall prepare an agenda and issue notices, as required by law or by these By-Laws, of all meetings of the Member of the Corporation and the Board of Directors. The Secretary shall have charge of the minutes of all proceedings of the Member and of the Board of Directors. The Secretary shall have charge of the seal of the Corporation and shall attest the same whenever required. The Secretary shall have charge of such books and papers as the Board may direct and shall have all such powers and duties as generally are incident to the position of Secretary or as may be assigned by the Board of Directors.

Section 5.07 – Powers and Duties of the Treasurer

The Treasurer shall have the duty to receive and care for all monies and property belonging to the Corporation and to dispose of the same under the direction of the Board of Directors. The Treasurer shall receive and give receipts for all amounts due to the Corporation, shall endorse all funds and securities for deposit or collection when necessary, and shall deposit the same to the credit of the

Corporation in such banks or depositories as the Board of Directors may authorize. The Treasurer may endorse all commercial documents requiring endorsement for or on behalf of the Corporation. The Treasurer also shall have all such powers and duties as generally are incident to the position of Treasurer of a not-for-profit corporation or as may be assigned by the Board of Directors to him or her.

Section 5.08 – Agents and Employees

The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board. The Board may remove any agent or employee at any time with or without cause. The removal of an agent or employee without cause shall be without prejudice to his or her contract rights, if any. The appointment of an agent or employee shall not itself create contract rights. The Corporation may pay compensation to agents and employees for services rendered to the Corporation in such reasonable amounts as may be fixed from time to time by the vote of a majority of the entire Board of Directors, but this power may be delegated to any officer, agent or employee as to persons under his or her direction or control. The Board may require any agent or employee to give security for the faithful performance of his or her duties.

ARTICLE 6
Board of Directors

Section 6.01 – Number of Directors

The number of members of the Board of Directors shall be fixed by Resolution of the Member of the Corporation and said number may be either increased or decreased by Resolution of the Member of the Corporation within the limits of not fewer than eight (8) nor more than forty (40) voting members. The number of Directors may be increased or decreased at any time and from time to time at any Annual or Special Meeting of the Member by vote of the Membership, provided, however, that no decrease shall shorten the term of any incumbent Director.

Section 6.02 – Election and Term of Office

Directors shall be elected for a three (3) year or a shorter initial term. The Directors shall be divided into three classes for the purpose of staggering their terms of office. At each Annual Meeting of the Member, the class of Directors to be elected shall be elected by the Member. Each Director shall hold office from the time of election and qualification until the Annual Meeting of the Member next succeeding such election at which is scheduled to occur the election of Directors of the class to which such Director has been assigned and until his or her successor has been elected and qualified. Directors may be elected to consecutive three (3) year terms at the discretion of the Member.

Section 6.03 – Vacancies

Vacancies occurring on the Board of Directors in the period between Annual Meetings may be filled by the Member of the Corporation. The term of office of a Director elected to fill such a vacancy shall continue until the next Annual Meeting of the Member.

Section 6.04 – Associate Directors

One or more Associate Directors may be elected from time to time by the Member at any Annual or Special Meeting of the Member, to hold office at the discretion of the Member. This Associate Directorship shall be in acknowledgement of extraordinary service and dedication to the Corporation as manifested by active participation in corporate affairs, as determined by the Member. An Associate Director shall not be entitled to vote at any Annual, Regular or Special Meeting of the Board of Directors. An Associate Director, however, may attend Annual, Regular or Special Meetings of the Board of Directors at the invitation of the Chairperson of the Board of Directors.

Section 6.05 – Ex Officio and Honorary Members of the Board

- (a) The following shall be *ex officio* members of the Board of Directors for the period of their holding their respective offices:
- (1) The President and Chief Executive Officer of the Corporation and the Executive Vice President and Chief Administrator Officer of St. Joseph Hospital; *and*
 - (2) The President of the Medical Staff of St. Joseph Hospital and the Medical Director of St. Joseph Hospital.
- (b) The Members of the Corporation shall appoint such Honorary Directors as they may, from time to time, deem appropriate. An Honorary Director shall not be entitled to vote at any Annual, Regular or Special Meeting of the Board of Directors. An Honorary Director, however, may attend Annual, Regular or Special Meetings of the Board of Directors at the invitation of the Chairperson of the Board of Directors.

Section 6.06 – Resignations

Any Director may resign from office at any time by delivering a written resignation to the Secretary of the Corporation. The acceptance of the resignation shall not be necessary to make the resignation effective.

Section 6.07 – Removal of Directors

Any Director may be removed for cause or without cause by vote of the Member. Any Director may be removed for cause by action of the Board of Directors, provided there is a quorum of not less than a majority present at the meeting of Directors at which such action is taken.

Section 6.08 – Meetings of the Board

The Annual Meeting of the Board of Directors shall be held within ten (10) days of the Annual Meeting of the Corporate Members of Catholic Health System of Long Island, Inc.

Section 6.09 – Notice of Meetings of the Board

No notice of Annual or Regular Meetings of the Board of Directors need be given to the Directors. Special Meetings of the Board shall be held upon notice to the Directors of the place, date, hour, and purpose of the meeting. Notice of each Special Meeting of the Board shall be given by the Secretary or by the person calling the meeting, by First Class or electronic mail, by facsimile telecommunication or telephone not later than ten (10) days before the meeting or, if in person, not later than ten (10) days before the meeting. Notices shall be deemed to have been given by First Class mail when deposited in the United States mail, by electronic mail, at the time of sending, and by messenger at the time of delivery by the messenger.

Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. A waiver of notice of any meeting shall specify the purpose of such special meeting of the Board of Directors, and only the business stated in the Notice shall be transacted at the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the Director signing such waiver or causing the Director's signature to be affixed to such waiver by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

Section 6.10 – Quorum

Unless a greater proportion is required by law, by the Certificate of Incorporation, or by a By-Law adopted by the Member, one-third (1/3) of the entire number of Directors on the Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business. Notwithstanding the foregoing, a quorum shall not consist of fewer than two Directors.

Section 6.11 – Action by the Board

Except as otherwise provided by law or by these By-Laws, the vote of a majority of the Directors present at a meeting at the time of the vote shall be the act of the Board of Directors, provided, however, that a quorum is present at such time.

Any 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 or by electronic video screen communication allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 6.12 – Written Consent in Lieu of Meeting

Unless otherwise restricted by these By-Laws, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a Resolution authorizing the action. The Resolution and the written consents thereto by the members of the Board of Directors or committee shall be filed with the Minutes of the proceedings of the Board or committee. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing the Director's signature to be affixed to such consent by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the written consents thereto by the Directors or the members of the committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 6.13 – Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation.

**ARTICLE 7
Committees**

Section 7.01 – Types of Committees

Committees shall be committees of the Board or committees of the Corporation.

Section 7.02 – Size of Committees; Quorum

Whenever these By-Laws establish the number of persons to be on a committee, the *ex officio* members, if any, shall not be counted in that number. The presence of at least one director and twenty-five percent (25%) of the remaining committee members at a committee meeting shall constitute a quorum.

Section 7.03 – Appointment

The Chairperson of the Board of Directors shall appoint the Chair and members of the committees of the Board and of the committees of the Corporation.

Section 7.04 – Committees of the Board

The committees of the Board of Directors shall include an Executive Committee. The committees of the Board shall also include such committees, including *ad hoc* committees as the Board may determine by resolution. The committees of the Board shall be comprised of Directors only and shall have the full authority of the Board.

Section 7.05 – Committees of the Corporation

Committees, other than committees of the Board, whether created by the Board or by the Members, may be committees of the Corporation. The committees of the Corporation shall include the Development Committee and the Community Health Needs Assessment and Community Benefit Committee. The committees of the Corporation shall also include such committees, including *ad hoc* committees as the Board may determine by resolution. The committees of the Corporation shall be comprised of Directors and non-Directors, but no such committee shall have the authority to bind the Board. Such committees of the Corporation shall be elected or appointed as provided in Section 7.03 of these By-Laws.

Section 7.06 – Advisors

The Board of Directors may appoint from time to time at any Annual, Regular or Special Meeting of the Board one or more Committee Advisors to serve at the pleasure of the Board in an advisory capacity on any such committee. A Committee Advisor shall not be entitled to vote at any meeting of the committee to which he or she is appointed Advisor.

Section 7.07 – Committee Membership

The Chief Executive Officer of the Corporation and the Secretary of the Corporation shall be *ex officio* members of the Executive Committee. All other members of the Executive Committee, the Community Health Needs Assessment and Community Benefit Committee, and any other committees of the Board shall be members of the Board of Directors.

Section 7.08 – Ex Officio Members of Committees

The President and Chief Executive Officer shall be an *ex officio* member of all committees of the Board and of the Corporation. All other members of any other committees of the Board shall be members of the Board of Directors.

ARTICLE 8 Powers and Duties of Committees

Section 8.01 – Executive Committee

This Committee shall consist of the Chairperson of the Board of Directors, who shall serve as the chairperson of the Committee, the President and Chief Executive Officer of the Corporation, the Vice-Chairperson of the Board of Directors, the Secretary of the Corporation, and such other Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. It shall have the full power of the Board of Directors in any emergency situation arising between meetings of the Board of Directors. Any such action shall be reported to the Board at its next Regular Meeting.

Section 8.02 – Development Committee

This Committee shall consist of at least three (3) Directors, including the Chairperson of the Board of Directors, the President and Chief Executive Officer of the Corporation and such other Directors and/or non-Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. The Committee shall be responsible for supporting the mission, vision and overall strategic plan of St. Joseph Hospital, including its Community Health Needs Assessment and

Community Benefit Program, through committee activities designed to promote and acquire financial support. The Committee shall be responsible for the development of a comprehensive, long-range fund-raising strategy designed to meet the resource needs of the Corporation and of St. Joseph Hospital, and to establish and oversee any policy issues related to resource development for the Corporation. The Committee shall (i) establish fund-raising goals, plans and benchmarking activities, (ii) develop plans to engage other Directors in fund-raising activities, (iii) assist development staff in the identification, cultivation and solicitation of supporters, as appropriate and (iv) assist the staff in increasing the recognition and visibility of the Corporation. The Committee shall meet at least four (4) times a year.

Section 8.03 – Community Health Needs Assessment and Community Benefit Committee

This Committee shall consist of at least three (3) Directors and may include other Directors and non-Directors as are designated annually by resolution adopted by a majority of the entire Board of Directors. The Committee shall:

- (a) Assess community health care needs, including opportunity for active and continuing involvement of all community constituencies in conducting such assessment.
- (b) Evaluate the effectiveness of St. Joseph Hospital in serving the community and living out its mission and values.
- (c) Evaluate the manner in which the St. Joseph Hospital strategic plan and budget priorities respond to specific community needs.
- (d) Provide an active and continuing forum and means of communication to St. Joseph Hospital for all members of the community.
- (e) Actively solicit comments from the community concerning unmet health care needs.
- (f) Evaluate, identify and quantify St. Joseph Hospital's care for the poor and underserved.
- (g) Identify any barriers to access to care, especially for the underserved, and recommend means to improve access to care.
- (h) Prepare and recommend to St. Joseph Hospital the triennial Community Service Assessment required by Public Health Law § 2803-1 and the required annual assessment reports to the Commissioner of Health.
- (i) Prepare and recommend to St. Joseph Hospital the information pertaining to community and charitable service required on Schedule H of IRS Form 990 pursuant to IRC § 501(r).

ARTICLE 9

Powers and Duties of the Board of Directors

Section 9.01 – Power of Board and Qualification of Directors

Subject to the powers reserved to the Members in Article 3 of these By-Laws, to the Code of Canon Law, to Diocesan legislation, policies and procedures, to the New York Not-for-Profit Corporation Law, to other laws and regulations of the State of New York pertaining thereto, and to these By-Laws, the Corporation shall be managed by its Board of Directors. Each Director shall be at least eighteen (18) years of age.

Section 9.02 – Annual Report of Directors

The Board of Directors shall present at the Annual Meeting of the Member a report, verified by the President and Treasurer or by a majority of the Directors, showing in appropriate detail the following: (1) the assets and liabilities, including the trust funds, of the Corporation as of the end of the preceding fiscal year; (2) the principal changes in assets and liabilities including trust funds, during said fiscal year; (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal year; and (4) the expenses and disbursements of the Corporation, for both general and restricted purposes during said fiscal year. The annual report of the Directors shall be filed with the records of the Corporation and either a copy or an abstract thereof entered in the minutes of the proceedings at the Annual Meeting of the Member.

Section 9.03 – Purchase, Sale, Mortgage and Lease of Real Property

No purchase of real property shall be made by the Corporation and the Corporation shall not sell, mortgage or lease its real property unless authorized by the Member and by the vote of two-thirds (2/3) of the entire Board of Directors, provided, however, that if there are twenty-one (21) or more Directors, the vote of a majority of the entire Board of Directors shall be sufficient.

Section 9.04 – Power of Board to Make Grants and Contributions

The making of grants and contributions to St. Joseph Hospital for the purposes expressed in the Corporation's Certificate of Incorporation shall be within the exclusive power of the Board of Directors.

Section 9.05 – Mortgage or Pledge of or the Creation of a Security Interest in, Personal Property

No mortgage or pledge of; or the creation of a security interest in, all or any part of the Corporation's personal property or any interest therein, shall be made by the Corporation unless authorized by the vote of the majority of the entire Board of Directors and approved by the Member of the Corporation.

Section 9.06 – Duties of the Directors

The Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The Board of Directors, through the Chairperson of the Board, (1) shall ensure compliance with all applicable federal, state and local statutes, laws and regulations, (2) shall establish and maintain personnel policies and practices and (3) shall develop a program for the orientation of newly elected Directors and for the continuing education of all Directors serving on the Board.

Section 9.07 – Attendance

Fifty percent (50%) attendance at Regular Meetings shall be considered active participation as a member of the Board of Directors. Less than fifty percent (50%) attendance, unless excused, shall result in the automatic termination of a Director's membership on the Board; provided, however, that this provision does not apply to *ex officio* members of the Board.

ARTICLE 10 Order of Business

Section 10.01 – Regular Meeting

The suggested order of business for Regular Meetings of the Member and Board of Directors shall be as follows:

- a. Opening of meeting and prayer
- b. Roll Call
- c. Previous Minutes
- d. Report of the Chairperson of the Board of Directors
- e. Report of the Treasurer
- f. Reports of Committees
- g. Unfinished business
- h. New business
- i. Adjournment to time, date and place.

Section 10.02 – Parliamentary Procedure

Parliamentary procedures shall be followed when not in conflict with any of these By-Laws. The rules of parliamentary procedure shall be *Robert's Rules of Order*.

ARTICLE 11 Liability and Indemnification of Directors, Officers and Employees

Section 11.01 – Liability

Except as otherwise provided by law, no Director or Officer of the Corporation serving without compensation shall be liable to any person other than the Corporation based solely on such Director's or Officer's conduct in the execution of such office unless such conduct constituted gross negligence or was intended to cause the resulting harm.

Section 11.02 – Indemnification

Except as provided in Section 8.03, the Corporation shall indemnify any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate, is or was a Director or Officer of the Corporation, or an employee of the Corporation designated by the President as entitled to indemnification hereunder (the Board of Directors to be thereafter notified of such designation) who serves or served the Corporation or, at the request of the Corporation, serves or served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity. In addition, the Corporation shall advance such person's related and reasonable expenses, including attorneys', experts' and consultants' fees, upon receipt of an undertaking by or on behalf of such person to repay such advancement if he or she is ultimately found not to be entitled to indemnification hereunder.

Section 11.03 – Exclusion

The Corporation shall not indemnify any person described in Section 11.02 if an adjudication adverse to such person establishes that the acts of such person or such person's testator or intestate were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that such person's testator or intestate personally gained a financial profit or other advantage to which he or she was not legally entitled.

Section 11.04 – Insurance

The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such insurance is permitted by law.

ARTICLE 12
Loans to Directors or Officers

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offering, or through ordinary deposit of funds in a bank shall be made by the Corporation to its Directors or Officers or to any other corporation, firm, association, or other entity in which one or more of its Directors or Officers are Directors or Officers or hold a substantial financial interest, provided, however, that the Corporation may make a loan to any corporation which is a Type B or charitable corporation under the Not-for-Profit Corporation Law of the State of New York.

ARTICLE 13
Corporate Seal

The seal of the Corporation shall be circular in form, shall have the name of the Corporation inscribed thereon, and shall contain the words “Corporate Seal” and “New York” and the year the Corporation was formed in the center, or shall be in such form as may be approved from time to time by the Board of Directors. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

ARTICLE 14
Contracts, Checks, Bank Accounts, and Investments

Section 14.01 – Checks, Notes, and Contracts

Catholic Health Services of Long Island is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation’s behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts, documents, and other orders or obligations for the payment of money.

Section 14.02 – Investments

The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal, or otherwise, including stocks, bonds, or other securities, as the Investment Committee of Catholic Health Services of Long Island may deem desirable.

ARTICLE 15
Amendments

These By-Laws may be amended or repealed by a two-thirds (2/3) vote of the Board of Directors, subject to the approval of the Members of Catholic Health Services of Long Island as described in Article 3, Section 3.04, at any Annual Meeting of the Board of Directors of the Corporation or at any special meeting of the Board of Directors called for that purpose.

ARTICLE 16
Fiscal Year

The fiscal year of the Corporation shall begin on the first day of January and terminate on the last day of December in each calendar year.

ARTICLE 17
Records and Books to be Kept

The Corporation shall keep at its principal office in the State of New York correct and complete books and records of account, including a Minute Book, which shall contain: (a) a copy of the Certificate of Incorporation, (b) a copy of these By-Laws, (c) all Minutes of meetings of the Board of Directors, any Committee of the Board and any committee of the Corporation, and (d) a current list of the Directors and Officers of the Corporation and their residence addresses. Any of the books, Minutes, and records of the Corporation may be in written form or any other form capable of being converted into written form within a reasonable time.

Amendment History:

- *Adopted* _____, 2014

TABLE OF CONTENTS

ARTICLE 1 Name of the Corporation, Organization, Goals and Objectives 1
 Section 1.01 – Name of Corporation 1
ARTICLE 2 Membership 1
 Section 2.01 – Sole Member..... 1
ARTICLE 3 Powers and Duties of the Member 1
 Section 3.01 – Power to Elect Directors 1
 Section 3.02 – Annual Report..... 2
 Section 3.03 – Reserved Powers of the Member 2
 Section 3.03.01 – Philosophy and Mission..... 2
 Section 3.03.02 – Conformity to Philosophy and Mission 2
 Section 3.03.03 – Corporate Documents 2
 Section 3.03.04 – Appointment and Removal of Directors and Board Chair..... 2
 Section 3.03.05 – Sale or Acquisition of Assets..... 2
 Section 3.03.06 – Merger, Consolidation, Dissolution..... 2
 Section 3.03.07 – Reorganization and Formation of New Entities..... 2
 Section 3.03.08 – Election and Removal of Chief Executive Officer 2
 Section 3.03.09 – Evaluation of Chief Executive Officer 2
 Section 3.03.10 – Appointment of Auditor..... 3
 Section 3.03.11 – Settlement of Litigation 3
 Section 3.03.12 – Financial Statements 3
 Section 3.03.13 – Approval of Budgets..... 3
 Section 3.03.14 – Approval of Debt 3
 Section 3.04 – Power to Amend Specifically Reserved to Members of Catholic
 Health System of Long Island, Inc. 3
ARTICLE 4 Meetings of the Membership 3
 Section 4.01 – Annual Meeting of the Member..... 3
 Section 4.02 – Special Meetings..... 3
 Section 4.03 – Notice of Meetings..... 3
 Section 4.04 – Waivers of Notice 4
 Section 4.05 – Quorum at Meetings 4
 Section 4.06 – Written Consent of Member Without Meeting..... 4
ARTICLE 5 Officers, Agents and Employees..... 4

Section 5.01 – General Provisions	4
Section 5.02 – Term of Office, Vacancy and Removal	5
Section 5.03 – Powers and Duties of the Chairperson of the Board.....	5
Section 5.04 – Powers and Duties of the Vice-Chairperson of the Board.....	5
Section 5.05 – Powers and Duties of the President	5
Section 5.06 – Powers and Duties of the Secretary	5
Section 5.07 – Powers and Duties of the Treasurer	5
Section 5.08 – Agents and Employees.....	6
ARTICLE 6 Board of Directors.....	6
Section 6.01 – Number of Directors	6
Section 6.02 – Election and Term of Office	6
Section 6.03 –Vacancies	6
Section 6.04 – Associate Directors	6
Section 6.05 – Ex Officio and Honorary Members of the Board	7
Section 6.06 – Resignations.....	7
Section 6.07 – Removal of Directors.....	7
Section 6.08 – Meetings of the Board.....	7
Section 6.09 – Notice of Meetings of the Board.....	7
Section 6.10 – Quorum	8
Section 6.11 – Action by the Board	8
Section 6.12 – Written Consent in Lieu of Meeting.....	8
Section 6.13 – Compensation of Directors	8
ARTICLE 7 Committees	8
Section 7.01 – Types of Committees	8
Section 7.02 – Size of Committees; Quorum.....	8
Section 7.03 – Appointment	8
Section 7.04 – Committees of the Board	9
Section 7.05 – Committees of the Corporation.....	9
Section 7.06 – Advisors	9
Section 7.07 – Committee Membership.....	9
Section 7.08 – Ex Officio Members of Committees.....	9
ARTICLE 8 Powers and Duties of Committees	9
Section 8.01 – Executive Committee.....	9
Section 8.02 – Development Committee	9

Section 8.03 – Community Health Needs Assessment and Community Benefit Committee ..	10
ARTICLE 9 Powers and Duties of the Board of Directors	10
Section 9.01 – Power of Board and Qualification of Directors	10
Section 9.02 – Annual Report of Directors.....	11
Section 9.03 – Purchase, Sale, Mortgage and Lease of Real Property	11
Section 9.04 – Power of Board to Make Grants and Contributions.....	11
Section 9.05 – Mortgage or Pledge of or the Creation of a Security Interest in, Personal Property	11
Section 9.06 – Duties of the Directors	11
Section 9.07 – Attendance	11
ARTICLE 10 Order of Business.....	12
Section 10.01 – Regular Meeting.....	12
Section 10.02 – Parliamentary Procedure	12
ARTICLE 11 Liability and Indemnification of Directors, Officers and Employees.....	12
Section 11.01 – Liability.....	12
Section 11.02 – Indemnification.....	12
Section 11.03 – Exclusion.....	12
Section 11.04 – Insurance	13
ARTICLE 12 Loans to Directors or Officers	13
ARTICLE 13 Corporate Seal.....	13
ARTICLE 14 Contracts, Checks, Bank Accounts, and Investments.....	13
Section 14.01 – Checks, Notes, and Contracts	13
Section 14.02 – Investments	13
ARTICLE 15 Amendments	13
ARTICLE 16 Fiscal Year	14
ARTICLE 17 Records and Books to be Kept.....	14



St. Joseph Hospital

Catholic Health Services

At the heart of health

August 5, 2014

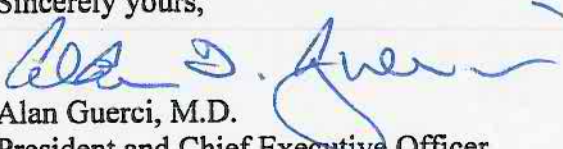
Mary T. Callahan, Esq.
Director, Bureau of House Counsel
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NYS Department of Health
Corning Tower, Rm 2484
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Albany, New York 12237

Re: Approval of The St. Joseph Hospital Foundation

Dear Ms. Callahan:

I am a duly authorized representative of WSNCHS North, Inc., doing business as St. Joseph Hospital, which is licensed under Article 28 of the New York State Public Health Law (Op. Cert. #2952006H) (the "Hospital"). The St. Joseph Hospital Foundation is being created to support the Hospital, and the Hospital will accept funds raised by The St. Joseph Hospital Foundation.

Sincerely yours,


Alan Guerci, M.D.
President and Chief Executive Officer

4295 Hempstead Turnpike, Bethpage NY 11714
516-579-6000 ~ www.StJosephHospitalNY.org

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August 7, 2014

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VIA FEDERAL EXPRESS & EMAIL

Mary Callahan, Esq.
Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237



Re: **Consent to File Certificate of Incorporation
The St. Joseph Hospital Foundation**

Dear Ms. Callahan:

Our client, St. Joseph Hospital Foundation (the "Foundation"), respectfully requests a letter of consent from the Public Health and Health Planning Council to permit the filing of the enclosed Certificate of Incorporation for the Foundation with the Secretary of State. The purpose of the Foundation is to support and assist its sole member, WSNCHS North, Inc., doing business as St. Joseph Hospital ("St. Joseph Hospital").

We submit the following information for review:

1. Certificate of Incorporation and Bylaws. Enclosed are an executed copy of the Foundation's Certificate of Incorporation and a copy of the proposed Bylaws.
2. Acknowledgement Letter from St. Joseph Hospital. We enclose an original signed letter from the President and Chief Executive Officer of St. Joseph Hospital, acknowledging the Hospital will accept funds raised by the Foundation.
3. Description of Fundraising Activities. It is anticipated that financial support for the Foundation will be received primarily from gifts, grants, and contributions from the local community as well as contributions by friends, family and acquaintances of the Foundation's

Board of Directors. The Foundation intends to support St. Joseph Hospital by conducting the following activities:

- (a) soliciting contributions for St. Joseph Hospital;
- (b) mobilizing and coordinating the efforts of community leaders;
- (c) providing a focal point and recipient for philanthropic support;
- (d) stimulating such sources of support as gifts, bequests, and devises, charitable lead and remainder trusts, pooled income funds, and providing for the effective management thereof;
- (e) granting or loaning funds to St. Joseph Hospital; and
- (f) promoting the work and charitable mission of St. Joseph Hospital through activities including publications, addresses, public relations efforts, and special events.

4. Initial Board of Directors. The following individuals will serve initially on the Foundation's Board of Directors:

Name: David DeCerbo, Esq.
Address: 426 Park Avenue, Manhasset, NY 11030
Occupation: Executive Vice President and General Counsel
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: Cabrini Mission Foundation (2004 – present)
Cabrini Medical Center (2004 – 2008)
Cabrini Center For Nursing and Rehabilitation (2004 – present)
St. Ignatius Retreat House (2006 – 2013)

Name: Alan D. Guerci, M.D.
Address: 290 Littleworth Lane, Sea Cliff, NY 11579
Occupation: President and Chief Executive Officer
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: See attached listing

Name: Dennis Verzi
Address: 144 Wilson Avenue, Long Beach, NY 11561-3836
Occupation: Executive Vice President and Chief Operating Officer
Employer: Catholic Health Services of Long Island
992 North Village Avenue, Rockville Centre, NY 11570
Affiliations: Executive Vice President, Chief Operating Officer, Catholic Health Services of Long Island (7/2013-present)
Executive Vice President and Chief Administrative Officer for St. Catherine of Siena Medical Center (8/2011-6/2013)

Mary Callahan, Esq.
Page 3
August 7, 2014

Interim Executive Vice President & Chief Executive Officer for the Eastern Division Acute Care/Executive Vice President for Continuing Care Division (1/2010-6/2010)
Executive Vice President for Continuing Care (2007-2011)
President and Chief Executive Officer for Our Lady of Consolation Nursing and Rehabilitative Care Center (2002-2007)
Auxiliary Police Officer for the City of Long Beach and Chief Recruitment Officer (2004)
Promotion to the Rank of Commissioner for the Long Beach Police Auxiliary (2013)
Member of the Board of Directors and the Certification Review Committee for the Developmental Disabilities Institute (2013)

5. Organizational Relationship. St. Joseph Hospital is the Foundation's sole member. St. Joseph Hospital is a New York not-for-profit corporation that is licensed as a hospital under Article 28 of the Public Health Law (Op. Cert. #2952006H). It is a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.

6. Controlling Entities. The Foundation controls no entities. The Foundation's sole member is St. Joseph Hospital, to which it has reserved certain powers as specified in the Foundation's Certificate of Incorporation and Bylaws. St. Joseph Hospital's sole member is Catholic Health Services of Long Island, which has been established as the Hospital's active parent.

If you have any questions, please call me at (518) 462-3000.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP



Karen E. Sosler

Enc.

cc: Colleen Frost, PHHPC
Robert H. Iseman, Esq.

Mary Callahan, Esq.
Page 4
August 7, 2014

bcc: Alan Guerci, Esq.
David DeCerbo, Esq.

Alan D. Guerci, MD.
President and Chief Executive Officer
Catholic Health Services of Long Island

Hospital Appointments: Attending Physician, Johns Hopkins Hospital (1983-1992)
Director, Coronary Care Unit, Johns Hopkins Hospital (1984-1992)
Director of Research, St. Francis Hospital, Roslyn, New York (1992-1999)
Executive Vice President for Medical Affairs, St. Francis Hospital, Roslyn, New York (1992-1999)
Member, Board of Directors, Catholic Health Services of Long Island (1998-1999)
Chairman, Quality Improvement Committee, Catholic Health Services of Long Island (1998-1999)
Acting Medical Director, Long Island Health Network (1998-1999)
Chairman, Clinical Integration Subcommittee, Long Island Health Network (1998-1999)
President and CEO, St. Francis Hospital, Roslyn, NY (1999-Present)
President and CEO, Mercy Medical Center, Rockville Center, NY (2005-Present)
President and CEO, St. Joseph Hospital, Bethpage, NY (2011-Present)
President and CEO, Catholic Health Services of Long Island, Rockville Centre, NY (2013-Present)
President and CEO, St. Charles Hospital, Port Jefferson, NY (2013-Present)
President and CEO, Good Samaritan Medical Center, West Islip, NY (2013-Present)
President and CEO, St. Catherine of Siena Medical Center, Smithtown, NY (2013-Present)

Societies: Member, Council on Emergency Cardiac Care American College of Cardiology (1991-1997)
Member, Council for Clinical Cardiology American Heart Association (1989-Present)
Member, ACLS National Faculty American Heart Association (1990-1992)
Member, Emergency Cardiac Care Committee, Maryland Affiliate, American Heart Association (1990-1992)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of October, 2014, approves the filing of the Certificate of Incorporation of The St. Joseph Hospital Foundation, dated August 7, 2014.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Apex Licensed Home Care Agency, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2148-L

Description of Project:

Apex Licensed Home Care Agency, 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 Apex Licensed Home Care Agency, LLC is:

Joseph Steinfeld, 100%
Administrator, Amazing Home Care

A search of the individual 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 687 Broadway, 2nd Floor, Suite 1, Brooklyn, New York 11206:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

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: August 15, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Arvut Home Care, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit
Application Number: 2000-L

Description of Project:

Arvut Home Care, Inc., a for-profit 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:

Yaagu Dadashev – 100 shares Karina Mogilevskiy – 100 shares

The Board of Directors of Arvut Home Care, Inc., comprises the following individuals:

Yaagu Dadashev – President Karina Mogilevskiy, PCA – Vice President
President, YY Technical Service, Inc. Communication Director, SP Orthotic Surgical and Medical Supply

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 698 Barclay Avenue, Staten Island, New York 10312:

Bronx Kings New York Richmond
Queens Nassau

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Physical Therapy
Nutrition Homemaker

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: August 13, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Attentive Licensed Home Care Agency, LLC
Address: Jamaica
County: Queens
Structure: Limited Liability Company
Application Number: 2147-L

Description of Project:

Attentive Licensed Home Care Agency, 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 Attentive Licensed Home Care Agency, LLC is:

Moshe Bloom, 100%
COO, Amazing Home Care

A search of the individual 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 146-19 Archer Avenue, 2nd Floor, Suite 201, Jamaica, New York 11435:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

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: August 15, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Beautiful Day Home Care, Inc.
Address: Auburn
County: Cayuga
Structure: For-Profit Corporation
Application Number: 2136-L

Description of Project:

Beautiful Day 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: Kelley A. Baratta owns 90 shares and Anne M. Currier owns 10 shares. The remaining one hundred shares are unissued.

The Board of Directors of Beautiful Day Home Care, Inc. comprises the following individuals:

Kelley A. Baratta, Pres., VP, Sec., Tr.
Self-employed consultant

Anne M. Currier, L.P.N., Board Member
Staff Nurse, ElderChoice, Inc.

Michael T. Baratta, Board Member
Manager, Takeda Pharmaceuticals, Inc.

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 license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office to be located in Cayuga County:

Cayuga
Tompkins

Onondaga
Cortland

Oswego
Seneca

The applicant proposes to provide the following health care services:

Nursing
Homemaker

Home Health Aide
Housekeeper

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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Best Professional Home Care Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2134-L

Description of Project:

Best Professional Home Care Agency, 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: Shahnoza Yuldasheva owns 80 shares, Gulchehra Yuldasheva owns 60 shares and Habib Muhammed owns 60 shares.

The Board of Directors of Best Professional Home Care Agency, Inc. is comprised of:

Shahnoza Yuldasheva, HHA, Chairwoman Head Teacher, Group Family Day Care Center	Gulchehra Yuldasheva, HHA, PCA Secretary and Treasurer Home Health Aide, Association for Services for the Aged
Habib Muhammed, HHA, PCA Vice Chairman Social Worker, Group Family Day Care Center	

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

The applicant proposes to serve the residents of the following counties from an office located at:
1002 Ditmas Avenue, Apt. 2J, Brooklyn, New York 11218

Bronx Kings Queens New York Richmond

The applicant proposes to provide the following health care services:

Nursing Personal Care 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: August 20, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740
Address: Camden
County: Oneida
Structure: Limited Liability Company
Application Number: 2371L

Description of Project:

CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

CNY Helpers, LLC has proposed to operate as a Franchisee of H. H. Franchising Systems, Inc. The managing member of CNY Helpers, LLC will be Ronald Scales.

The members of CNY Helpers, LLC d/b/a Home Helpers & Direct Link #58740 comprise of the following individuals:

Ronald D. Scales - President - 90% Retired Formerly a NYS EMS Paramedic President-Operator/New England Style Market Owner-Operator/Camden Country Clean	Karen M. Scales - Vice-President - 10% Account Manager/Keurig Green Mountain Sales Consultant/NRM Territory Manager/Keurig Green Mountain
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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 in the following counties from an office located at 9721 Mill Street, Camden, NY.

Oneida	Madison	Onondaga	Oswego
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The applicant proposes to provide the following health care services:

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

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: August 5, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: EOM Services, Inc. d/b/a BrightStar of South Brooklyn
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 2123-L

Description of Project:

EOM Services, Inc. d/b/a BrightStar of South Brooklyn, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. EOM Services, Inc. d/b/a BrightStar of South Brooklyn is an existing companion care agency operating under a franchise agreement with BrightStar Franchising, LLC.

The applicant has authorized 200 shares of stock which are owned as follows: Abe Esses owns 10 shares and Raymond Esses owns 10 shares. 180 shares remain unissued.

The members of the Board of Directors of EOM Services, Inc. d/b/a BrightStar of South Brooklyn comprise the following individuals:

Abe Esses, Chairperson, Treasurer
President, BrightStar of South Brooklyn

Raymond Esses, Vice Chairperson, Secretary
Vice President, BrightStar of South Brooklyn

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 813 Quentin Road, Suite 105, Brooklyn, New York 11223:

Kings	Queens	New York
Bronx	Richmond	

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	Homemaker	Housekeeper
Medical Social Services		

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: August 6, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Clear Waters Home Care Services, LLC
Address: New Hampton
County: Orange
Structure: Limited Liability Company
Application Number: 1980-L

Description of Project:

Clear Waters Home Care Services, 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 members of the Clear Waters Home Care Services, LLC comprises the following individuals:

Charles Andoh – 50% - CEO Quality Assurance Manager, Pfizer Pharmaceuticals	Folake Latinwo, HHA – 50% - President and COO Home Health Aide, Private Patient
--	--

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

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 144 Gardnerville Road, New Hampton, New York 10958:

Bronx Orange Westchester

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker

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: August 11, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Gentle Hands Agency, Inc.
Address: Bronx
County: Bronx
Structure: For-Profit Corporation
Application Number: 2038L

Description of Project:

Gentle Hands Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Gentle Hands Agency, Inc. has authorized 2000 shares of stock. The shareholders comprise the following individuals:

Catherine Williams, HHA, 1000 shares	Justin Williams, 996 shares
Akosua U. Sarpong, RN, 4 shares	

The Board of Directors of Gentle Hands Agency, Inc. is comprised of the following individuals:

Catherine Williams, HHA, Director Retired	Justin Williams, Co-Director Driver, Gotham Yellow, LLC
Jacqueline U. Suh, Secretary Academic Supervisor, Catholic Guild for the Blind	Martha Wilson, Treasurer Retired

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 license of the medical professional associated with this application.

A search of the New York State Home Care Registry revealed that Catherine Williams is certified as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1740 Grand Avenue, Suite 314, Bronx, New York 10453

Bronx New York Queens Kings Richmond

The applicant proposes to provide the following health care services:

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

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

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: August 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Joyful NY, LLC d/b/a Joyful Home Care Services
Address: Centereach
County: Suffolk
Structure: Limited Liability Company
Application Number: 2104-L

Description of Project:

Joyful NY, LLC d/b/a Joyful Home Care Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Joyful NY, LLC d/b/a Joyful Home Care Services are as follows:

Joy Mekkatte, 40% President/Property Manager, CRB Construction of NY Corp.	Jancy Joy, R.T., 30% Respiratory Therapist, Stonybrook University Medical Center
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Christina Joy, 30%
Full time graduate student

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 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 1344 Middle Country Road, Centereach, New York 11720:

Suffolk	Nassau	Queens
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The applicant proposes to provide the following health care services:

Nursing	Personal Care
Homemaker	Housekeeper

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

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: July 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Reliance Home Care, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2066-L

Description of Project:

Reliance 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:

Mei Xing Su, 140 shares Managing Director, Amy HC Consulting, Inc.	Wei Pang Koek, 30 shares Marketing Coordinator, Metropolitan Jewish Health Systems
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Carline Joseph, R.N., A.N.P., 30 shares
Clinical Director, Valucare, Inc.

The Board of Directors of Reliance Home Care, Inc. comprises the following individuals:

Mei Xing Su, President (disclosed above)	Wei Pang Koek, Vice President (disclosed above)
Carline Joseph, R.N., A.N.P., Secretary (disclosed above)	Soon Keat Nyu, Treasurer Staff Accountant, Valucare, Inc.

Abosede Akingbade, R.N., Compliance
Officer
Director of Patient Services,
American Business Institute Corp.

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 98 Mott Street, Suite 503, New York, New York 10013:

Kings Bronx	Queens Richmond	New York Nassau
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The applicant proposes to open a second office site in Nassau County in order to serve Nassau and Suffolk counties.

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	Medical Social Services	Nutrition
Homemaker	Housekeeper	

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

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: July 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Taconic Innovations, Inc.
Address: Mount Vernon
County: Westchester
Structure: Not-For-Profit Corporation
Application Number: 1614-L

Description of Project:

Taconic Innovations, 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.

The Board of Directors of Taconic Innovations, Inc. comprises the following individuals:

John Ampah, PhD – Director
Therapeutic Counselor, Four Winds Hospital

David Haruna – Director
Life Skills Coach, Deverux Foundation, Inc.

Albert A. Adekanmi, RN – Director
Registered Nurse, Taconic Innovations, Inc.

Ali N. Sharifoon – Director
Teacher's Assistant, Mamaroneck Board of
Education

Mathias Oni-Eseleh – Director
Executive Director, Taconic Innovations, Inc.

The Office of the Professions of the State Education Department indicates 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.

Taconic Innovations operates three Individual residential Alternative Residences and Two Group Habilitation Programs for adults. These certified sites are certified by the Office for People With Developmental Disabilities (OPWDD).

The information provided by the Office for People With Developmental Disabilities has indicated that the applicant has provided sufficient supervision in the past three years to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 25-35 Beechwood Avenue, Mount Vernon, New York 10550:

Westchester Dutchess

The applicant proposes to provide the following health care services:

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

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: August 25, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Terrace at Park Place, Inc. d/b/a The Terrace at Park Place
 Address: Lansing
 County: Tompkins
 Structure: For-Profit Corporation
 Application Number: 1787L

Description of Project:

The Terrace at Park Place, Inc. d/b/a The Terrace at Park Place, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be operated by The Terrace at Park Place, Inc.

The Terrace at Park Place, Inc. has authorized 100 shares of stock. The shareholders comprise the following individuals:

Chris J. Vitale, President – 25 shares	James Vitale, Vice-President – 25 shares
Paul Vitale – Secretary – 25 shares-	Jonathan Vitale, MD, Treasurer – 25 shares

The Board of Directors of The Terrace at Park Place, Inc. is comprised of the following individuals:

<p>Chris J. Vitale, President</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland</p>	<p>James Vitale, Vice-President</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland Camillus Ridge Terrace</p>
<p>Paul Vitale – Secretary</p> <p>Affiliations: Seneca Lake Terrace Assisted Living Center Park Terrace at Radisson The Terrace at Newark The Terrace at Woodland</p>	<p>Jonathan Vitale, MD, Treasurer Family Physician, University of Illinois at Chicago/Advocate Illinois Masonic Medical Center Consultant, The Terrace at Newark</p> <p>Affiliation: The Terrace at Newark</p>

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 Assisted Living Program that will be located in Tompkins County.

The applicant proposes to provide the following health care services:

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

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professional 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 seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Seneca Lake Terrace Assisted Living Center
Park Terrace at Radisson
The Terrace at Newark (2009-present)
The Terrace at Woodland (2009-present)
Camillus Ridge Terrace

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agencies have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

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: August 18, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Alliance Nursing Staffing of New York, Inc.
Address: Orangeburg
County: Rockland
Structure: For-Profit
Application Number: 2223L

Description of Project:

Alliance Nursing Staffing of New York, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Alliance Nursing Staffing of New York, Inc. was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently licensed as 1570L001.

At that time, the applicant had authorized 300 shares of stock, which were owned as follows: Gregory Solometo – 100 Shares, Diane Sirakovsky – 100 Shares and Michele Teter – 100 shares.

Through two separate Stock Purchase Agreements, both Diane Sirakovsky and Michele Teter will sell back 85 of their 100 shares of stock to the company.

Through a Subscription Agreement, Justin Kohn will purchase ninety-one point five shares (91.5) of the issued and outstanding common stock of the company in a two-step process. 21.5 shares 120 days after the filing of the “Notification of Change in Stockholder Interest” and an additional 70 shares upon the Public Health and Health Planning contingent approval of this proposal.

Through a Subscription Agreement, Gregory Solometo will purchase and additional seventy-eight point five shares (78.5) of the issued and outstanding common stock of the company.

The applicant has proposed to increase the number of authorized shares of common stock from 300 shares to 1,000 shares through a Certificate of Amendment of the Certificate of Incorporation of Alliance Nursing Staffing of New York, Inc. The shareholders will comprise:

Gregory Solometo – 178.5 shares Justin M. Kohn – 91.5 shares

Diane Sirakovsky – 15 Shares Michele Teter – 15 Shares

700 shares of common stock remain unissued.

The Board of Directors of Alliance Nursing Staffing of New York, Inc. comprises the following individuals:

Gregory Solometo, CEO – President Justin M. Kohn, COO, CFO – Director
Office Manager, Head of Operations, Alliance Nursing Staffing of New York, Inc.

Diane Sirakovsky, Director of Marketing - Director Michele Teter, Director of Patient Services - Director

Gregory Solometo, Diane Sirakovsky, and Michele Teter are exempt from character and competence review due to the fact that he was previously approved by the Public Health Council for this operator.

A search of Justin M. Kohn revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review of the operations of Alliance Nursing Staffing of New York, Inc. was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 55 Northern Blvd., Suite 112, Greenvale, New York 11548:

Nassau	New York	Westchester	Sullivan
Putnam	Rockland	Suffolk	Orange
Dutchess			

The applicant proposes to provide the following health care service:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Nutrition			

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: August 19, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Astra Home Care, Inc. d/b/a True Care
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2294L

Description of Project:

Astra Home Care, Inc. d/b/a True Care, a proprietary corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Astra Home Care, Inc. was previously approved as a home care services agency by the Public Health Council at its November 18, 2005 meeting and subsequently licensed as 1388L001. At that time, Tibor Klein was the sole shareholder.

Subsequently, the Astra Home Care, Inc. submitted a notice of change in stockownership in which 9.9 shares were transferred from Tibor Klein to Marvin Rubin. The Department of Health approved this transfer of stockownership in July 2011.

Astra Home Care, Inc. d/b/a True Care has authorized 100 shares of stock. The proposed shareholders comprise the following individuals:

Tibor Klein- 10 shares

Marvin Rubin – 90 shares

The Board of Directors of Astra Home Care, Inc. is comprised of the following individuals:

Tibor Klein, President/Secretary/Treasurer
Marvin Rubin, Chief Executive Officer Management, Hamilton Park Nursing and Rehabilitation Center
Affiliations: Astra Home Care, Inc. d/b/a True Care Crown Heights Center for Nursing and Rehabilitation (RHCF) Hamilton Park Nursing and Rehabilitation Center (RHCF) Hopkins Center for Rehabilitation (RHCF) Linden Center for Nursing and Rehabilitation (RHCF)

Tibor Klein is exempt from a character and competence review for this application as an individual previously approved by the Public Health Council for this operator.

The applicant proposes to continue to serve the residents of the following counties from an office located at 117 Church Avenue, Brooklyn, New York 11218

New York
Bronx

Kings
Richmond

Queens
Westchester

The applicant proposes to continue to provide the following health care services:

Nursing
Physical Therapy
Medical Social Services
Housekeeper

Home Health Aide
Speech Language Pathology
Nutrition

Personal Care
Occupational Therapy
Homemaker

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

A review of the operations of the following facilities/ agencies for the time periods indicated was performed as part of this review.

Astra Home Care, Inc. d/b/a True Care (LHCSA)
Crown Heights Center for Nursing and Rehabilitation (RHCF) (April 2013 – present)
Hamilton Park Nursing and Rehabilitation Center (RHCF) (December 2012 – present)
Hopkins Center for Rehabilitation (RHCF) (March 2012 – present)
Linden Center for Nursing and Rehabilitation (RHCF) (May 2013 – present)

The information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of patients 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: August 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2267-L

Description of Project:

Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA, a limited liability company, requests approval for a change in membership of a licensed home care services agency under Article 36 of the Public Health Law. .

This LHCSA is associated with Fordham Arms Home for Adults Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home.

Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 17, 2011 meeting and subsequently licensed as 1686L001. At that time it was solely owned by Charles Scharf.

The purpose of this application is for Mr. Scharf will transfer 50% of his membership interest to Willy Beer through a Membership Interest Sale and Assignment Agreement.

The members of the Bridgewood, LLC d/b/a New Fordham Arms Assisted Living comprise the following:

Charles Scharf, Co-Managing Member – 50%

Willy Beer, Co-Managing Member – 50%
Managing Member, The Battery Group, LLC
Managing Member, Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Charles Scharf is exempt from Character and Competence as an individual previously approved by the Public Health and Health Planning Council for this operator.

A search of the name Willy Beer revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Anna Erika Assisted Living (2006 – May 2009)
- Fordham Arms Home for Adults Assisted Living Program
- Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA

The information provided by the Division of Assisted Living 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 applicant proposes to continue to serve the residents of the following counties from an office located at 2915 Williamsbridge Road, Bronx, New York 10467.

Queens	Kings	New York	Bronx	Richmond
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	Homemaker	Housekeeper

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

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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Baywood, LLC d/b/a Plan and Partner Home Healthcare
Address: Staten Island
County: Richmond
Structure: Limited Liability Company
Application Number: 2303-A

Description of Project:

Baywood, LLC d/b/a Plan and Partner Home Healthcare, a limited liability company, requests approval for a change in membership of a limited licensed home care services agency under Article 36 of the Public Health Law. .

This Limited LHCSA is associated with Harbor Terrace Adult Home and Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home and Change of Ownership Application for the Licensed Home Care Services Agency.

Baywood, LLC d/b/a Plan and Partner Home Healthcare was previously approved as a home care services agency by the Public Health Council at its March 13, 2009 meeting and subsequently licensed as 1604A001. At that time it was solely owned by Daniel Stern.

The purpose of this application is for Mr. Stern will transfer 95% of his membership interest to HT ACF Management, LLC through a Membership Interest Sale and Assignment Agreement.

The members of the Baywood, LLC d/b/a Plan and Partner Home Healthcare comprise the following:

HT ACF Management, LLC – 95% Daniel Stern, Managing Member – 5%

Daniel Stern is exempt from Character and Competence as an individual previously approved by the Public Health Council for this operator.

The members of the HT ACF Management, LLC comprise the following individuals:

Willy Beer, Managing Member – 50%	Charles Scharf, Member – 25%
Managing Member, The Battery Group, LLC	Executive Director, Bronxwood Management, LLC
Managing Member, Bronxwood Management, LLC	Executive Director, Bronxwood Home for the Aged, Inc.
	CEO, Restorative Management Corp.

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- New Fordham Arms Assisted Living Adult Home and Assisted Living Program

David Scharf, NHA, Member – 25%
CFO, Restorative Management Corp.

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

The Bureau of Professional Credentialing has indicated that David Scharf NHA license #01345 holds a NHA license in good standing and the Board of Examiners of Nursing Home

Administrators has never taken disciplinary action against this individual or his license. At this time Mr. Scharf has placed his license on inactive status.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Anna Erika Assisted Living (2006 – May 2009)
- Fordham Arms Home for Adults Assisted Living Program
- Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
- Harbor Terrace Adult Home and Assisted Living Program
- Baywood, LLC d/b/a Plan and Partner Home Healthcare

The information provided by the Division of Assisted Living 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 applicant proposes to continue to serve the residents of Richmond County from an office located at 110 Henderson Avenue, Staten Island, New York 10301.

The applicant proposes to continue to provide the following health care services:

Nursing 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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Baywood, LLC d/b/a Plan and Partner Home Healthcare
Address: Staten Island
County: Richmond
Structure: Limited Liability Company
Application Number: 2303-L

Description of Project:

Baywood, LLC d/b/a Plan and Partner Home Healthcare, a limited liability company, requests approval for a change in membership of a licensed home care services agency under Article 36 of the Public Health Law. .

This LHCSA is associated with Harbor Terrace Adult Home and Assisted Living Program. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home and Change of Ownership Application for the Limited Licensed Home Care Services Agency.

Baywood, LLC d/b/a Plan and Partner Home Healthcare was previously approved as a home care services agency by the Public Health Council at its March 13, 2009 meeting and subsequently licensed as 1604L001. At that time it was solely owned by Daniel Stern.

The purpose of this application is for Mr. Stern will transfer 95% of his membership interest to HT ACF Management, LLC through a Membership Interest Sale and Assignment Agreement.

The members of the Baywood, LLC d/b/a Plan and Partner Home Healthcare comprise the following:

HT ACF Management, LLC – 95% Daniel Stern, Managing Member – 5%

Daniel Stern is exempt from Character and Competence as an individual previously approved by the Public Health Council for this operator.

The members of the HT ACF Management, LLC comprise the following individuals:

Willy Beer, Managing Member – 50%
Managing Member, The Battery Group, LLC
Managing Member, Bronxwood Management, LLC

Charles Scharf, Member – 25%
Executive Director, Bronxwood Management, LLC
Executive Director, Bronxwood Home for the Aged, Inc.
CEO, Restorative Management Corp.

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- Bronxwood Management, LLC

Affiliations:

- Anna Erika Assisted Living (7/03-05/09)
- New Fordham Arms Assisted Living Adult Home and Assisted Living Program

David Scharf, NHA, Member – 25%
CFO, Restorative Management Corp.

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

The Bureau of Professional Credentialing has indicated that David Scharf NHA license #01345 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. At this time Mr. Scharf has placed his license on inactive status.

A 7 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Anna Erika Assisted Living (2006 – May 2009)
- Harbor Terrace Adult Home and Assisted Living Program
- Baywood, LLC d/b/a Plan and Partner Home Healthcare
- Fordham Arms Home for Adults Assisted Living Program
- Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA

The information provided by the Division of Assisted Living 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 applicant proposes to continue to serve the residents of the following counties from an office located at 110 Henderson Avenue, Staten Island, New York 10301.

Queens Kings New York Richmond

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Speech-Language Pathology
Respiratory Therapy	Medical Supplies Equipment and 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: July 23, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Healthy and Long Life Care, Inc.
Address: Maspeth
County: Queens
Structure: For Profit Corporation
Application Number: 2105-L
Description of Project:

Healthy and Long Life Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Healthy and Long Life Care, Inc. has authorized 200 shares of stock which are owned solely by Chun Kam Chun.

The members of the Board of Directors of Healthy and Long Life Care, Inc. comprise the following individual:

Chun Kam Chun, HHA, PCA, President
Coordinator/Marketer, Hopeton Care, Inc.

A search of the individual 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 60-72 60th Avenue, Maspeth, New York 11378:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

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

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

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: August 28, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Supreme Homecare Agency of NY, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1935-L

Description of Project:

Supreme Homecare Agency of NY, 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 solely by Robert Izsak.

The Board of Directors of Supreme Homecare Agency of NY, Inc. comprises the following individual:

Robert Izsak, President
Owner, Rizarro Real Estate Management

Affiliations:

Hollis Park Manor Nursing Home (11/01/12 – present)
Affinity Skilled Living & Rehabilitation Center (01/01/08 – present)

A search of the individual 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 3030 Ocean Avenue, Brooklyn, New York 11235:

New York	Kings	Queens
Bronx	Richmond	Westchester

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 facilities was conducted as part of this review for the time periods indicated:

Hollis Park Manor Nursing Home (11/01/12 – present)
Affinity Skilled Living & Rehabilitation Center (01/01/08 – present)

The information provided by the Bureau of Nursing Homes Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: September 4, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus
Address: Ridgewood
County: Queens
Structure: Limited Liability Company
Application Number: 2212-L

Description of Project:

Ameritech Homecare Solutions, 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.

PC Aides Plus, Inc., a business corporation, was previously approved as a home care services agency by the Public Health Council at its March 2, 2007 meeting and subsequently licensed as 1495L001. PC Aides Plus, Inc. submitted a 90 day transfer which was approved in April, 2011 for a change in shareholder interest. At this time, Soundaram Som is the sole shareholder of PC Aides Plus, Inc.

Ameritech Homecare Solutions, LLC purposes to purchase PC Aides Plus, Inc. through a Stock Purchase Agreement.

The members of Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus comprise the following individuals:

Pooja Thaker – Member – 50%	Payal Thaker – Member – 25%
Pharmacist, One Source Homecare Supplies	Unemployed

Jayant K. Thaker, Pharmacist – Member – 25%
Director of Pharmacy & Home Medical
Equipment, One Source Homecare Supplies

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 license of the medical professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 62-26 Myrtle Avenue, Suite 102, Ridgewood, New York 11385.

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide	Homemaker	Housekeeper
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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: August 13, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: A & T Healthcare, LLC
Address: New City
County: Rockland
Structure: Limited Liability Company
Application Number: 2496-L

Description of Project:

A & T Healthcare, 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.

A & T Healthcare, LLC was previously approved as a home care services agency by the Public Health Council at its October 22, 1999 meeting and subsequently licensed as 0935001-0935L005. At that time, Toni Babington was the sole member of the LLC.

In accordance with the Last Will and Testament of Toni Babington, A & T Healthcare, LLC is submitted an application to change the ownership of A & T Healthcare, LLC to the Marital Trust of Toni Babington.

The Board of Directors of A & T Healthcare, LLC comprises the following individuals:

Margaret A. Onody – President Vice President, A & T Healthcare, LLC Vice President, A & T Healthcare of N.J., Inc. Vice President, A & T Certified Home Care, LLC	Tom T. Babington – Vice President VP Sales and Marketing, A & T Healthcare, LLC VP Sales and Marketing, A & T Healthcare of N.J., Inc. VP Sales and Marketing, A & T Certified Home Care, LLC
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Carol E. Ianiro – Secretary
Vice President of Scheduling, A & T Healthcare, LLC
Vice President of Scheduling, A & T Healthcare of N.J., Inc.
Vice President of Scheduling, A & T Certified Home Care, LLC

The Trustees of The Marital Trust of Toni Babington are following individuals:

Margaret A. Onody - Trustee (Previously Disclosed)	Lowell T. Babington – Trustee 401K Coordinator, A & T Healthcare, LLC
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review was conducted for the following healthcare facilities:

- A & T Healthcare, LLC
- A & T Healthcare of N.J., Inc.
- A & T Certified Home Care, LLC

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 State of New Jersey has indicated that the A & T Healthcare of N. J., Inc. is up-to-date with their registration, they have had no complaints against this agency and that no enforcement actions have been taken against this agency.

The applicant proposes to continue to serve the residents of the following counties from an office located at 339 North Main Street, New City, New York 10956:

Dutchess	Nassau	Orange	Putnam
Rockland	Suffolk	Westchester	Bronx

The applicant proposes to continue to serve the residents of the following counties from an office located at 20 Route 17K, Newburgh, New York 12550:

Dutchess Sullivan Orange Putnam Ulster

The applicant proposes to continue to serve the residents of the following counties from an office located at 274 Madison Avenue, Room 1301, New York, New York 10016:

Bronx Kings New York Richmond Queens

The applicant proposes to continue to serve the residents of the following counties from an office located at 344 E. Main Street, Suite 202, Mount Kisco, New York 10549:

Dutchess Orange Putnam Westchester Bronx

The applicant proposes to continue to serve the residents of the following counties from an office located at 79 North Front Street, Kingston, New York 12401:

Dutchess Greene Sullivan Ulster

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Speech Language Pathology
Nutritional	Occupational Therapy	Respiratory Therapy
Housekeeping	Homemaker	

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: September 5, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Heathwood Assisted Living at Williamsville, Inc.
Address: Williamsville
County: Erie
Structure: For-Profit Corporation
Application Number: 2219-L

Description of Project:

Heathwood Assisted Living at Williamsville, Inc., a business corporation, requests approval for a change in ownership of a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law. This LHCSA is associated with Heathwood Health Care Center, Inc. d/b/a ElderWood Assisted Living at Heathwood and their Assisted Living Program (ALP).

Heathwood Health Care Center, Inc. d/b/a ElderWood Assisted Living at Heathwood was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and subsequently licensed as 1910L001. At that time the sole shareholder was Robert Chur.

The purpose of this proposal is to purchase the existing Licensed Home Care Services Agency and continue to serve the patients of the Assisted Living Program. A corresponding application for a change of ownership of the Assisted Living Program has been submitted to the Division of Assisted Living.

The applicant has authorized 200 shares of stock which are owned as follows:

Carla C. Suero – 10 shares

190 shares of stock remain unissued.

The Board of Directors of Heathwood Assisted Living at Williamsville, Inc. comprises the following individual:

Carla C. Suero, President
Director of Assisted Living Operations, Elderwood Senior Care

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

The Bureau of Professional Credentialing has indicated that Carla Suero NHA license #04423 placed her license on inactive status. While her NHA license was active it was in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license.

The applicant proposes to continue to serve the residents of Erie County from an office located at 815 Hopkins Road, Williamsville, New York 14221.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Speech-Language Pathology
Occupational Therapy	Medical Social Services	Nutrition	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.

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: August 26, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Intergen Health, LLC
 Address: Bronx
 County: Bronx
 Structure: Limited Liability Company
 Application Number: 2231-L

Intergen Health, LLC, a limited liability company, requests approval to transfer membership interests of a licensed home care services agency (LHCSA) under Article 36 of the Public Health Law.

Intergen Health, LLC, was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 14, 2011 meeting and was subsequently licensed as 1763L001. At that time, ownership of the LLC consisted of Jason Newman with 25% and Esther Kazanovsky with 75% of membership interest. There were two notifications of membership transfers approved by the Department which resulted in the membership of Intergen Health, LLC consisting of Jason Newman with 91%, Abraham Grossman with 4.5% and Meyer Greisman with 4.5% membership interest.

Intergen Health, LLC, is requesting approval to transfer additional membership interests from Jason Newman to Abraham Grossman and Meyer Greisman.

Jason Newman will transfer 33% of his membership interest to Abraham Grossman and 33% membership interest to Meyer Greisman. Upon completion of this transfer, Meyer Greisman and Abraham Grossman will each own 37.5% and Jason Newman will own 25%.

The membership of Intergen Health, LLC comprises the following individuals:

Abraham Grossman – Member - 37.5% Retired Affiliations: Amazing Home Care Services	Meyer Greisman, NHA – Member - 37.5% Owner/Towne Nursing Staff Inc. Affiliations: Amazing Home Care Services
Jason Newman – Member - 25%	

Jason Newman is exempt from a character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

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

The Bureau of Professional Credentialing has indicated that Meyer Greisman, held a NHA license in good standing and that the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. Mr. Greisman received his NHA license in 1976 and it is voluntarily inactive.

The applicant proposes to serve the residents of the following counties from an office located at 1601 Bronxdale Avenue, Bronx, NY 10462.

Bronx
Queens

Kings
Nassau

New York
Richmond

The applicant proposes to provide the following health care services:

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

A 7 year review of the operations of the Amazing Home Care Services, LLC (a LHCSA) was performed as part of this review:

The Information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients 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: August 21, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Two K Management Corp. d/b/a Family Aides Home Care
Address: Hicksville
County: Nassau
Structure: For-Profit-Corporation
Application Number: 2309-L

Description of Project:

Two K Management Corp. d/b/a Family Aides Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Family Aides, Inc. was previously approved as a home care services agency by the Public Health Council at its November 14, 2008 meeting and subsequently licensed as 1662L001-1662L005. Family Aides, Inc. subsequently surrendered 1662L0002 and 1662L005 to the Department of Health.

Two K Management Corp. d/b/a Family Aides Home Care proposes to purchase Family Aides, Inc. through an Asset Purchase Agreement.

Two K Management Corp. d/b/a Family Aides Home Care has authorized 200 shares of stock, which are owned as follows:

Kathleen M. Crimi – 100 Shares

Kristine H. Mais – 100 Shares

The proposed Board of Directors of Two K Management Corp. d/b/a Family Aides Home comprises the following individuals:

Kathleen M. Crimi – Director, CEO, President & Secretary
President, Family Aides, Inc.

Kristine H. Mais – Director, Vice President- Finance & Treasurer
Vice President – Finance, Family Aides, Inc.

Affiliation:

- Director, Family Aides, Inc.
(2012-Present)

Affiliation:

- Director, Family Aides, Inc.
(2012-Present)

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

A review of Family Aides, Inc. was conducted from January 2012 through the present. 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 applicant proposes to continue to serve the residents of the following counties from an office located at 120 West John Street, STE B, Hicksville, New York 11801.

Nassau

Suffolk

Queens

Westchester

The applicant proposes to continue to serve the residents of the following counties from an office located at 91-31 Queens Avenue, STE H, Elmhurst, New York 11373.

Bronx

Kings

New York

Queens

Richmond

The applicant proposes to continue to serve the residents of the following county from an office located at 1 S Ocean Avenue, Patchogue, New York 11772.

Suffolk

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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

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: August 13, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Senior Care Connection, Inc. d/b/a
Eddy SeniorCare
Address: Schenectady
County: Schenectady
Structure: Not-For-Profit Corporation
Application Number: 2423-L

Description of Project:

Senior Care Connection, Inc. d/b/a Eddy SeniorCare, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Senior Care Connection, Inc. d/b/a Eddy SeniorCare was previously approved as a home care services agency by the Public Health Council at its September 19, 2003 meeting and subsequently licensed as 1220L001.

Senior Care Connection, Inc. d/b/a Eddy SeniorCare is also approved as a program of all-inclusive care for the elderly (PACE) service to individuals residing in Schenectady and Western Albany County.

The current proposal seeks approval for a change in controlling person as described below. There will be no changes to the geographic service area, or the scope of services provided by Senior Care Connection, Inc. d/b/a Eddy SeniorCare as a result of this transaction.

This change in controlling person also affects the following Article 36-licensed agencies that are affiliated with St. Peter's Health Partners, and separate applications are simultaneously being submitted under separate cover:

- Eddy Licensed Home Care Agency (2424-L)
- Home Aide Services of Eastern New York, Inc. DBA Eddy Visiting Nurse Association (141082-E)

The purpose of this application is to seek approval of a "change in controlling person" that will result when Catholic Health East, Inc. ("CHE"), its great-great-grandparent organization, and CHE Trinity, Inc., CHE's sole member, merge into Trinity Health Corporation ("Trinity Health"). The surviving corporation will be called CHE Trinity, Inc. ("CHE Trinity").

CHE, a Pennsylvania nonprofit corporation, and Trinity Health, an Indiana nonprofit, are two national Catholic health care systems with operating entities in twenty states. CHE and Trinity Health have determined it is in the best interests of both to merge together through a two-step process. Step one involved the creation CHE Trinity, Inc., an Indiana nonprofit, which became the sole member of CHE and Trinity Health in June 2013. Step two is the merger CHE and CHE Trinity into Trinity Health, with the surviving corporation to be called CHE Trinity, Inc.

CHE, Trinity Health, and CHE Trinity, Inc., currently have mirror boards. Of the 19 individuals on these boards, two are current or former board members of St. Peter's Health Partners (SPHP) and St. Peter's Health Care Services and the others have served on the CHE board.

CHE is the sole member of SPHP, which is the sole member of Northeast Health, Inc., which is the sole member of LTC (Eddy), Inc., which is the sole member of each of the Article 36 Entities.

The proposed Board Members of CHE Trinity, Inc. comprises the following individuals:

Kevin Barnett – Director
Senior Investigator, Public Health Institute

Suzanne T. Brennan, CSC – Director
President and Executive Director, Holy Cross
Ministries

James D. Bentley, Ph.D. – Director
Retired

Affiliations:

- Board Member, Catholic Health East (5/13 – Present)
- Board Member, Holy Cross Hospital (2003 – 2008)
- Board Member, Trinity Health (2010 – Present)

George M. Philip, Esq. – Director
Retired

Affiliations:

- Board Member, St. Peter's Hospital (1992 – 2013)
- Board Member, Catholic Health East (2003 – 2013)

Larry Warren – Director
Retired

Affiliation:

- Board Member, Trinity Health (2011 – 2013)

Sister Kathleen Marie Popko, RN – Director
President, Sisters of Providence

Affiliations:

- Board Member, Catholic Health East (2009 – 2013)
- Board Member, Sisters of Providence Health System (2009 – 2013)
- Board Member, St. Joseph of the Pines Health System, Inc. (2009 – Present)
- Board Member, Mary's Meadow at Providence Place (2009 – Present)

David Southwell – Director
Retired

Affiliation:

- Director/Chair, ChildServe (2002 – 2008)

Barbara K. Wheeley, RSM (Clinical Psychologist, MD) – Director
Retired

Affiliations:

- Board Member, Mercy Medical, Inc. (1989 – 2013)
- Board Member, Catholic Health East (2010 – 2013)
- Board Member, Trinity Health (2013 – Present)

Joseph Betancourt, MD – Director
Physician, Massachusetts General Hospital

Affiliations:

- Board Member, Trinity Health (2012 – Present)
- Board Member, Neighborhood Health Plan (2013 – Present)

Melanie C. Dreher, Ph.D., RN – Director
Dean, College of Nursing, Rush University Medical Center

Affiliations:

- Board Member, Wewmark (3/08 – Present)
- Board Member, Trinity Health (2012 – 2013)

Richard J. Gilfillan, MD – Director
President/CEO, CHE Trinity Health, Inc.

Mary Catherine Karl, CPA – Director
Retired

Affiliations:

- Board Member, BayCare Health System
- Board Member, St. Anthony's Hospital (2000 – 2010)
- Board Member, BayCare Health System Insurance (2006 – 2010)
- Board Member, Catholic Health East
- Board Member, Surgical Safety Institute (2004 – Present)

Stanley Urban – Director
Retired

Affiliation:

- Board Member, Adirondack Health (2007 – Present)

Linda J. Werthman, RSM (Master's social work, Michigan) – Director
Adjunct Associate Professor of Social Work, University of Detroit Mercy

Affiliation:

- Board Member, Trinity Health (2009 – 2013)

Roberta Waite, RN – Director
Associate Professor of Nursing & Assistant Dean of
Faculty Integration and Evaluation of Community
Programs, Drexel University

The proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and The Eddy
comprise the following individuals:

Robert J. Bylancik – Director
Retired

Affiliations:

- Board Member, Living Resources, Inc.
(2007 – 2012)

Anne G. DiSarro – Director
Retired

John D. Filippone, MD – Director
Cardiologist, SPHP Medical Associates

Ronald L. Guzior, CPA – Director
Partner, Sax BST Advisory Network/Bollam, Sheedy
Torani & Co.

Sr. Phyllis Herbert, RN – Director
Program Director – Honor Court, 820 River St.
(Alcoholism/Drug Treatment)

Beverly M. Karpiak – Director
Supervisor of student teachers, College of St. Rose

John M. Lang – Director
Retired

Sr. Kathleen M. Natwin – Director
Retired
Volunteer – Board Member, Community Outreach,
Daughters of Charity, St. Louise Provence

Affiliations:

- Board Member, Seton Manor (2012 –
Present)
- Board Member/Sponsor, Catholic Health
System (2002 – Present)
- Board Member, Mt. St. Mary's Hospital
(2002 – Present)

Barbara D. Cottrell, Esq. – Director
Chief Clerk, Rensselaer County Family Court, NYS
Office of Court Administration

Affiliations:

- Member, Board of Trustees, St. Peter's
Hospital
- St. Peter's Addiction Recovery Center
(2003 – 12/07)

Rev. Kenneth J. Doyle – Director
Pastor of Parish, Diocesan Chancellor for Public
Information, Roman Catholic Diocese of Albany

Affiliation:

- Board Member, St. Peter's Hospital
(2004 – 12/07)

Harold D. Gordon, Esq. – Director
Attorney, Couch White, LLP

George Hearst III – Director
Publisher/CEO, Times Union

Robert W. Johnson, III, Esq. – Director
Partner, Martin, Shudt, Wallace, DiLorenzo &
Johnson

Michael T. Keegan – Director
Regional President, Albany & Hudson Valley
Division, M & T Bank

Norman I. Massry – Director
Principal, Massry Realty Partners

Affiliation:

- Board Member, St. Peter's Hospital
(2007 – 12/09)

Curtis N. Powell – Director
Vice President, Human Resources, Rensselaer
Polytechnic Institute

James K. Reed, MD – Director
President, St. Peter's Health Partners, Catholic
Health East

Affiliation:

- Director, Rubin Dialysis Centers
(1997 – 2011)

James A. Slavin, MD – Director
President/Owner, Practitioner, Burdett Orthopedics,
PC

Affiliations:

- Board Member, Unity House of Troy
(2009 – Present)
- President/Owner, Burdett Orthopedics
(1998 – Present)

Lisa M. Thorn, MD – Director
Family Physician Member, Averill Park site Medical
Director, Capital Care Medical Group

Affiliation:

- Physician Member, Capital Care Medical
Group, Averil Park (2006 – Present)

Alan M. Sanders, MD – Director
Senior Partner/Physician, Upstate Infectious
Disease Association, LLP
Chief of Department of Medicine, St. Peter's
Hospital

Anthony P. Tartaglia, MD – Director
Retired

Sr. Kathleen M. Turley – Director
Leadership Team Member, Sisters of Mercy

All of the above proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and The Eddy comprises the following individuals are affiliated with the following entities:

- St. Peter's Hospital of the City of Albany
- Our Lady of Mercy Life Center
- Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
- Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
- Eddy Licensed Home Care Agency, Inc.
- Glen Eddy, Inc. (Terrace at Glen Eddy)
- Hawthorne Ridge, Inc.
- Heritage House Nursing center, Inc.
- Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association
- Memorial Hospital
- Samaritan Hospital of Troy
- Senior Care Connection, Inc. d/b/a Eddy SeniorCare
- Sunnyview Hospital and Rehabilitation Center
- The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
- The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
- The Marjorie Doyle Rockwell Center, Inc.
- Seton Health System, Inc. d/b/a St. Mary's Hospital
- Seton Health at Schulyer Ridge Residential Healthcare

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 State of Michigan's Department of Licensing and Regulatory Affairs, Bureau of Health Care Services indicated no issue with the licensure of Linda Werthman's Masters Social Worker License. The Bureau of Health Care Services has never taken disciplinary action against this individual or license.

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 all attorneys.

The Bureau of Professional Credentialing has indicated that Sister Mary Anne Weldon NHA license 04039, issued January 1, 1991. Her license is currently in voluntary inactive status. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license

A seven year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Alabama
Mercy Medical – Mobile County Home Care
Mercy Medical – Baldwin County Home Care
Mercy Medical – Mercy LIFE of Alabama (PACE)
California
Saint Agnes Medical Center
Saint Agnes Home Health & Hospice
Connecticut
Saint Mary Home, Inc. – Chronic Convalescent Nursing Home
Saint Mary Home, Inc. – Frances Ward Towers Residential Care Home
The McAuley Center, Inc. – Assisted Living Service Agency
Delaware
St. Francis Hospital, Inc. d/b/a/ Saint Francis Healthcare
Florida
Holy Cross Hospital, Inc.
Holy Cross Hospital Home Health Agency
Physician Outpatient Surgery Center, LLC
Mercy Hospital, Inc.
BayCare Health System (10 hospitals) (2003-2013)
St. Anthony's Hospital (2000 – 2010)
Georgia
St. Joseph Hospital of Atlanta
St. Joseph's Foundation
Mercy Senior Care
St. Joseph's Mercy Care Services, Inc.
Good Samaritan Hospital, Inc.
St. Mary's Hospital
St. Mary's Health Care System, Inc. – Home Health
St. Mary's Health Care System, Inc. – Home Hospice
St. Mary's Health Care System, Inc. – Hospice House
St. Mary's Health Care System, Inc. – Assisted Living License

Idaho
Saint Alphonsus Regional Medical Center – Boise
Saint Alphonsus Regional Medical Center – Nampa
Saint Alphonsus Regional Medical Center – Baker City Nursing Facility
Saint Alphonsus Regional Medical Center – Baker City Hospital

Illinois
Loyola Center for Home Care and Hospice
Loyola University Medical Center – Hospice Agency
Loyola University Medical – Ambulatory Surgical Treatment Center
Gottlieb Home Health Services
Gottlieb Memorial Hospital Hospice
Gottlieb Memorial Hospital Pharmacy
Gottlieb Memorial Hospital Pharmacy Controlled Substances
Gottlieb Memorial Hospital Mammography Facility

Indiana
Saint Joseph’s Regional Medical Center – South Bend Campus (1/12– Present)
Saint Joseph’s Regional Medical Center (1/12– Present)
Saint Joseph VNA Home Care (1/12– Present)
Sanctuary at St. Pauls (1/12– Present)
Sanctuary at Holy Cross (1/12– Present)

Iowa
Mercy Medical Center – Clinton
Mercy Living Center North
Mercy Medical Center – Dubuque
Mercy Medical Center – North Iowa/Mason City
Mercy Medical Center – Sioux City
The Alverno Health Care Facility
ChildServe (2002 – 2008)

Maryland
Holy Cross Hospital of Silver Spring
Holy Cross Hospital of Silver Spring
Sanctuary at Holy Cross
Holy Cross Hospital (2003 – 2008)

Massachusetts
The Mercy Hospital (8/12– Present)
Sisters of Providence Health System (2009 – 2013)
Mary’s Meadow at Providence Place (2009 – Present)

Michigan
Saint Mary’s Health Care
St. Joseph Mercy – Ann Arbor Psychiatric
St. Joseph Mercy – Saline
St. Joseph Mercy – Livingston
St. Joseph Mercy – Oakland
St. Joseph Mercy – Oakland Psychiatric
St. Joseph Mercy – Port Huron
St. Joseph Mercy – Port Huron Helistop

Mercy Health Partners – Mercy Campus
Mercy Health Partners – Hackley Campus
Mercy Health Partners – Hackley Campus Psychiatric
Mercy Health Partners – Lakeshore Campus
St. Mary Mercy Hospital
St. Mary Mercy Hospital – Psychiatric
Chelsea Community Hospital
Mercy Hospice
Mercy Hospice Grayling
Mercy Hospice – Cadillac
Mercy VNS and Hospice Services
Sanctuary at Mcauley
Sanctuary at the Abbey
Sanctuary at Bellbrook
Sanctuary at St. Mary's
Sanctuary at the Park
Sanctuary at Fraser Villa
Sanctuary at St. Joseph's Village #1 (3/2005-Present)
Sanctuary at St. Joseph's Village #2 (3/2005-Present)
Marycrest Manor
Sanctuary at White Lake
Sanctuary at the Oaks #2 (4/2005-Present)
Sanctuary at the Oaks #1 (4/2005-Present)
Sanctuary at the Shore
Mercy Bellbrook/Frances Warde (2/2010-Present)
Mercy Bellbrook/McAuley (2/2010-Present)
Sanctuary at Bellbrook
Sanctuary at Woodland #1 (4/2005-Present)
Sanctuary at Woodland #2 (4/2005-Present)
Sanctuary at Fraser Villa
Sanctuary at Mercy Village #2 (4/2005-Present)
Sanctuary at Mercy Village #1 (4/2005-Present)

Nebraska
Mercy Home Care

New Jersey
Our Lady of Lourdes Medical Center
Lourdes Medical Center of Burlington County
Saint Michael's Medical Center, Inc. – 12 Months
St. Francis Medical Center

New York
Northeast Health, Inc.
St. Peter's Addiction Recovery Center (2003 – 12/07)
Seton Manor (2012 – Present)
Catholic Health System (2002 – Present)
Mt. St. Mary's Hospital (2002 – Present)
St. Peter's Hospital of the City of Albany
Our Lady of Mercy Life Center
Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
Eddy Licensed Home Care Agency, Inc.
Glen Eddy, Inc. (Terrace at Glen Eddy)
Hawthorne Ridge, Inc.
Heritage House Nursing center, Inc. d/b/a Eddy Heritage House Nursing and Rehabilitation Center

Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (CHHA)
Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (LTHHCP)
Memorial Hospital
Samaritan Hospital of Troy
Senior Care Connection, Inc. d/b/a Eddy SeniorCare
Sunnyview Hospital and Rehabilitation Center
The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
The Marjorie Doyle Rockwell Center, Inc.
Father Baker Manor (Nursing Home)
Mercy Hospital Skilled Nursing Facility
St. Francis Home of Williamsville (Nursing Home)
Mercy Living Center (Nursing Home)
Uihlein Living Center (Nursing Home)
Seton Health System, Inc. d/b/a St. Mary's Hospital
Seton Health at Schulyer Ridge Residential Healthcare
St. Peter's Health Partners d/b/a Eddy Village Green at Beverwyck
St. James Mercy Hospital
Adirondack Medical Center (Hospital)
Adirondack Medical Center/Lake Placid (Hospital)
Sisters of Charity Hospital of Buffalo, NY
Kenmore Mercy Hospital
Mercy Hospital of Buffalo
Niagara Homemakers Services, Inc. d/b/a Mercy Home Care of Western New York
St. Vincent's Home for the Aged
St. Elizabeth's Home of Lancaster, New York
McAuley-Seton Home Care Corporation (LHCSA)
Mercy Uihlein Health Corporation
Mercy Health-Care Center, Inc.
The Uihlein Health Corporation, Inc.
Mcauley Manor at Mercycare (Nursing Home)
Adult Day services, Mercycare Break
Hospice associated with St. James Mercy Hospital
Catholic Health System Program of All-Inclusive Care for the Elderly, Inc.

North Carolina
St. Joseph of the Pines, Inc. Family Care Home Zeno Villa at St. Joseph of the Pines (3/18/11-8/26/13)
St. Joseph of the Pines, Inc. Family Care Home Constance Cottage (11/28/11-2014)
St. Joseph of the Pines, Inc. Family Care Home Mary Manor (2004-2014)
St. Joseph of the Pines, Inc. Adult Care Home The Coventry
St. Joseph of the Pines, Inc. Nursing Facility St. Joseph of the Pines Health Center
St. Joseph of the Pines Belle Meade and Pine Knoll at St. Joseph of the Pines
St. Joseph of the Pines, Inc. St. Joseph of the Pines Home Care
LIFE St. Joseph of the Pines, Inc. Adult Day Health Home
St. Joseph of the Pines Health System, Inc. (2002 – Present)

Ohio
Mount Carmel East – Columbus (2004-2014)
Mount Carmel West (2004-2014)
Mount Carmel St. Anne's (2004-2014)
Oregon
St. Alphonsus Regional Medical Center – Ontario
Pennsylvania
Mercy Suburban Hospital
Nazareth Hospital
Mercy Catholic Medical Center of Southeastern Pennsylvania d/b/a Mercy Fitzgerald Hospital and Mercy Hospital of Philadelphia
St. Agnes Continuing Care Center Living Independently for Elders
Mercy Home Health
St. Agnes Continuing Care Center d/b/a/ Mercy Life Broad Street
St. Agnes Continuing Care Center d/b/a Mercy Life/North Hancock Street
Mercy Family Support Home Care Agency Facility
Mercy Home Health, Health Care Facility
St. Mary Medical Center
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Life Center Corporation Outlook Manor
Mercy Behavior Health Munhall Manor
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Behavioral Health Mercy Behavioral Health - LTSR(2)
Mercy Life Center Corporation Garden View Manor
Mercy Life Center Corporation Monarch Springs LTSR
Mercy Life Center Corporation Extended Acute Care Unit - LTSR
Mercy Life Center Corporation Mercy Behavior Health
Mercy Life Center Corporation Mercy Behavioral Health Psychiatric Rehabilitation Clubhouse
Mercy Life Center Corporation d/b/a Mercy Behavior health Psychiatric Rehab
Mercy Life Center Corporation Mercy Behavioral Health Partial Hospitalization
Mercy Life Center Corporation Mercy Behavioral Health Outpatient
Mercy Behavioral Health
Mercy Life Center Corporation d/b/a/ Mercy Behavioral Health Mercy Behavioral Health Ross Adult Training Facility-Seniors

Mercy Life Center Corporation Mercy Behavioral Health
Mercy Life Center Corporation Mercy Behavioral Health Wexford Employ. Svcs.
Mercy Life Center Corporation Mercy Behavioral Health - Brookline Employment Services
Mercy Life Center Corporation Mercy Behavioral Health - Beachview ATF
Mercy Life Center Corporation Mercy Behavioral Health LTSR I - The Journey Home
Mercy Life Center Corporation Mercy Behavioral Health Family Living Home
Mercy Life Center Corporation Mercy Behavioral Health Reedsdale Center
Mercy Life Center Corporation Mercy Behavioral Health - Baldwin ATF
Mercy Life Center Corporation Mercy Behavioral Health Ross Adult Training Facility - SENI

CALIFORNIA

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CCR Title 22 70739(a) – Infection Control for findings on June 2, 2008.

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CA Health and Safety Code Death during or within 24 hours of surgery for findings on September 9, 2008.

Saint Agnes Home Health and Hospice, was fined fifty thousand dollars (\$50,000.00) pursuant Health and Safety Code 1279.1(c) and CCR Title 22 70223(6)(2) for findings on October 11, 2010.

Saint Agnes Home Health and Hospice, was fined three thousand dollars (\$3,000.00) pursuant Health and Safety Code 1279.1(ab)(4)(F) – Pressure Ulcer State 3 or 4.

Saint Agnes Home Health and Hospice, was fined one thousand dollars (\$1,000.00) pursuant Health and Safety Code 1279.1(ab)(1)(O) – Retention of Foreign Object.

Saint Agnes Home Health and Hospice, was fined eight hundred dollars (\$800.00) pursuant Health and Safety Code - State 3 or 4 Pressure Ulcer.

CONNECTICUT

St. Mary's Home, West Hartford, CT Based on an inspection of the facility conducted October 29, 2007 St. Mary's Home was cited for violations of Connecticut State Agencies (Public Health Code). The facility was fined seven hundred and forty-five dollars (\$745.00) for the Class A violation of Section 19-13-D8t(j)(2)(L) - Chronic and convalescent nursing homes and rest homes with nursing supervision: Director of nurses.

FLORIDA

BayCare-Home Care Sarasota, Sarasota, Florida was fined three thousand dollars (\$3,000.00) pursuant to a Survey Deficiency – Failed to Ensure Physicians Plan of Care for repeat of Class III deficiency 2004, 2005, 2006 and 2007 for Violations of 59A-8.0215(2) – Plan of Care and 59A-8.0095(3), - Personnel

Saint Anthony's Hospital, St. Petersburg, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of December 12, 2007 for Aspen State Regulation H0022 ((2) Coordination of Care. Each hospital shall develop and implement policies and procedures on discharge planning which address: (a) Identification of patients requiring discharge planning; (b) Initiation of discharge planning on a timely basis; (c) The role of the physician, other health care givers, the patient,

and the patient's family in the discharge planning process; and (d) Documentation of the discharge plan in the patient's medical record including an assessment of the availability of appropriate services to meet identified needs following hospitalization.)

Holy Cross Hospital, Fort Lauderdale, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of June 1, 2009 for Aspen State Regulation H0031 ((2) Transfer Procedures. Each hospital providing emergency services and care shall establish policies and procedures which incorporate the requirements of Chapter 395, F.S., relating to emergency services. The policies and procedures shall incorporate at a minimum: (a) Decision protocols identifying the emergency services personnel within the hospital responsible for the arrangement of outgoing and incoming transfers; and H0037 (Each hospital shall maintain records of all patients who request emergency care and services, or persons on whose behalf emergency care and services are requested, for a period of 5 years.)

MARYLAND

St. Catherine's Nursing Center was fined fifteen thousand dollars (\$15,000) pursuant to Survey Deficiencies for inspection findings of July 9, 14 and 15, 2009 for violations of COMAR 10.07.09.08 C (5) (c) (Resident's Rights and Services. C. A resident has the right to: (5) Be free from: (c) Sexual abuse), 10.07.09.15 D (1) (Abuse of Residents, D. Investigations. A nursing facility shall: (1) thoroughly investigate all allegations of abuse) and 10.07.09.15. D (2) (Abuse of Residents, D. Investigations. A nursing facility shall: (2) Take appropriate action to prevent further incidents of abuse while the investigation is in progress, and after that.)

NEW YORK

ADULT CARE FACILITIES

Hawthorne Ridge, Inc. d/b/a Hawthorn Ridge was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated March 28, 2012 for inspection findings of September 14, 2010 for violations 18 NYCRR Part 486.5(a)(4)(iii) – Endangerment.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

LICENSED HOME HEALTH CARE AGENCIES, CERTIFIED HOME HEALTH AGENCIES, LONG TERM HOME HEALTH CARE AGENCIES, HOSPICE

Eddy Visiting Nurse Association/Wesley VNA was fined three thousand five hundred dollars (\$3,500.00) pursuant to a stipulation and order dated August 19, 2010 for inspection findings of July 22, 2008 and October 1, 2008 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(a) – Patient Assessment and Plan of Care; 763.6(b) – Patient Assessment and Plan of Care and 763.11(b) – Governing Authority.

McCaughey-Seton Home Care Corporation was fined six thousand five hundred dollars (\$6,500.00) pursuant to a stipulation and order dated July 11, 2011 19, 2010 for inspection findings of December 17, 2009 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; 763.6(e) – Patient Assessment and Plan of Care; 763.11(a) – Governing Authority; and 763.11(b) – Governing Authority.

McCaughey-Seton Home Care Corporation was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated June 10, 2013 for inspection findings of September 15, 2011 for violations of 10 NYCRR Sections 763.11(b) – Governing Authority; 763.5(a) – Patient Referral, Admission and Discharge; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; and 763.7(a) – Clinical Records.

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.

RESIDENTIAL HEALTH CARE FACILITIES

Our Lady of Mercy Life Center was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated August 16, 2010 for inspection findings of June 1, 2009 for violations 10 NYCRR Section 415.12 – Quality of Care.

St. Francis Home of Williamsville was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated January 18, 2012 for inspection findings of October 28, 2010 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

St. Francis Home of Williamsville was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 10, 2012 for inspection findings of January 24, 2011 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

Adirondack Medical Center – Mercy was fined \$2,000 pursuant to a stipulation and order signed by the facility on September 1, 2014 for inspection findings of August 13, 2008, August 20, 2009 and October 1, 2009 for violations of 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision, 415.12(l)(1) Quality of Care: Nutritional Status, 415.12(h)(l)(2), 415.26 Administration, 415.27(a-c) Quality Assessment and Assurance.

Adirondack Medical Center – Uihlein was fined twenty thousand dollars \$20,000 pursuant to a stipulation and order signed by the facility September 1, 2014 for inspection findings of August 8, 2008, September 28, 2009, January 22, 2010 and March 22, 2011 for violations of 10 NYCRR.

August 8, 2008 – 10 NYCRR Section 415.3(e)(2)(ii)(b) Notification of Changes, 415.11(c)(3)(i) Comprehensive Care Plans, 415.12(l)(1) Quality of Care: Unnecessary Drugs, 415.12(m)(2) Quality of Care: Medication Errors, 415.15(b)(1)(i)(ii) Physician Services, 415.26 Administration, 415.26(b)(3)(1) Governing Body, 415.15(a) Medical Director, and 415.27(a-c) Quality Assessment and Assurance.

September 28, 2009 and January 22, 2010 – 10 NYCRR Section 415.12(h)(1)(2) Quality of Care: Accidents and Supervision, and 415.12 Quality of Care: Highest Practical Potential.

March 22, 2011 – 10 NYCRR 415.4(b)(1)(ii) Investigate/Report Allegations and 415.26 Administration.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

HOSPITALS AND DIAGNOSTIC & TREATMENT CENTERS

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

MANAGED LONG TERM CARE PLANS AND PACE PROGRAMS

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Responses were received from the states listed above with the exception of the States of Iowa and Maryland. Although the responses received from each of these states did not include all of the health care facility located in each respective state, the responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 504 State Street, Schenectady, New York 12305.

Albany Schenectady

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Audiology
Nutritional	Occupational Therapy	Housekeeping
Homemaker	Respiratory Therapy	

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: September 11, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Eddy Licensed Home Care Agency, Inc.
Address: Troy
County: Rensselaer
Structure: Not-For-Profit Corporation
Application Number: 2424-L

Description of Project:

Eddy Licensed Home Care Agency, Inc., a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Eddy Licensed Home Care Agency, Inc. was previously approved as a home care services agency by the Public Health Council at its October 22, 1999 meeting and subsequently licensed as 0846L001.

The current proposal seeks approval for a change in controlling person as described below. There will be no changes to the geographic service area, or the scope of services provided by Eddy Licensed Home Care Agency, Inc. as a result of this transaction.

This change in controlling person also affects the following Article 36-licensed agencies that are affiliated with St. Peter's Health Partners, and separate applications are simultaneously being submitted under separate cover:

- Senior Care Connection, Inc. (2423-L)
- Home Aide Services of Eastern New York, Inc. DBA Eddy Visiting Nurse Association (141082-E)

The purpose of this application is to seek approval of a change in controlling person that will result when Catholic Health East, Inc. ("CHE"), its great-great-grandparent organization, and CHE Trinity, Inc., CHE's sole member, merge into Trinity Health Corporation ("Trinity Health"). The surviving corporation will be called CHE Trinity, Inc. ("CHE Trinity").

CHE, a Pennsylvania nonprofit corporation, and Trinity Health, an Indiana nonprofit, are two national Catholic health care systems with operating entities in twenty states. CHE and Trinity Health have determined it is in the best interests of both to merge together through a two-step process. Step one involved the creation CHE Trinity, Inc., an Indiana nonprofit, which became the sole member of CHE and Trinity Health in June 2013. Step two is the merger CHE and CHE Trinity into Trinity Health, with the surviving corporation to be called CHE Trinity, Inc.

CHE, Trinity Health, and CHE Trinity, Inc., currently have mirror boards. Of the 19 individuals on these boards, two are current or former board members of St. Peter's Health Partners (SPHP) and St. Peter's Health Care Services and the others have served on the CHE board.

CHE is the sole member of SPHP, which is the sole member of Northeast Health, Inc., which is the sole member of LTC (Eddy), Inc., which is the sole member of each of the Article 36 Entities.

The proposed Board Members of CHE Trinity, Inc. comprises the following individuals:

Kevin Barnett – Director
Senior Investigator, Public Health Institute

Suzanne T. Brennan, CSC – Director
President and Executive Director, Holy Cross
Ministries

James D. Bentley, Ph.D. – Director
Retired

Joseph Betancourt, MD – Director
Physician, Massachusetts General Hospital

Affiliations:

- Board Member, Catholic Health East (5/13 – Present)
- Board Member, Holy Cross Hospital (2003 – 2008)
- Board Member, Trinity Health (2010 – Present)

Affiliations:

- Board Member, Trinity Health (2012 – Present)
- Board Member, Neighborhood Health Plan (2013 – Present)

George M. Philip, Esq. – Director
Retired

Affiliations:

- Board Member, St. Peter's Hospital (1992 – 2013)
- Board Member, Catholic Health East (2003 – 2013)

Larry Warren – Director
Retired

Affiliation:

- Board Member, Trinity Health (2011 – 2013)

Sister Kathleen Marie Popko, RN – Director
President, Sisters of Providence

Affiliations:

- Board Member, Catholic Health East (2009 – 2013)
- Board Member, Sisters of Providence Health System (2009 – 2013)
- Board Member, St. Joseph of the Pines Health System, Inc. (2009 – Present)
- Board Member, Mary's Meadow at Providence Place (2009 – Present)

David Southwell – Director
Retired

Affiliation:

- Director/Chair, ChildServe (2002 – 2008)

Roberta Waite, RN – Director
Associate Professor of Nursing & Assistant Dean of
Faculty Integration and Evaluation of Community
Programs, Drexel University

Barbara K. Wheeley, RSM (Clinical Psychologist,
MD) – Director
Retired

Affiliations:

- Board Member, Mercy Medical, Inc. (1989 – 2013)
- Board Member, Catholic Health East (2010 – 2013)
- Board Member, Trinity Health (2013 – Present)

Melanie C. Dreher, Ph.D., RN – Director
Dean, College of Nursing, Rush University Medical
Center

Affiliations:

- Board Member, Wewmark (3/08 – Present)
- Board Member, Trinity Health (2012 – 2013)

Richard J. Gilfillan, MD – Director
President/CEO, CHE Trinity Health, Inc.

Mary Catherine Karl, CPA – Director
Retired

Affiliations:

- Board Member, BayCare Health System
- Board Member, St. Anthony's Hospital (2000 – 2010)
- Board Member, BayCare Health System Insurance (2006 – 2010)
- Board Member, Catholic Health East
- Board Member, Surgical Safety Institute (2004 – Present)

Stanley Urban – Director
Retired

Affiliation:

- Board Member, Adirondack Health (2007 – Present)

Linda J. Werthman, RSM (Master's social work,
Michigan) – Director
Adjunct Associate Professor of Social Work,
University of Detroit Mercy

Affiliation:

- Board Member, Trinity Health (2009 – 2013)

The proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and The Eddy comprise the following individuals:

Robert J. Bylancik – Director
Retired

Affiliations:

- Board Member, Living Resources, Inc. (2007 – 2012)

Anne G. DiSarro – Director
Retired

John D. Filippone, MD – Director
Cardiologist, SPHP Medical Associates

Ronald L. Guzior, CPA – Director
Partner, Sax BST Advisory Network/Bollam, Sheedy Torani & Co.

Sr. Phyllis Herbert, RN – Director
Program Director – Honor Court, 820 River St.
(Alcoholism/Drug Treatment)

Beverly M. Karpiak – Director
Supervisor of student teachers, College of St. Rose

John M. Lang – Director
Retired

Sr. Kathleen M. Natwin – Director
Retired
Volunteer – Board Member, Community Outreach,
Daughters of Charity, St. Louise Provence

Affiliations:

- Board Member, Seton Manor (2012 – Present)
- Board Member/Sponsor, Catholic Health System (2002 – Present)
- Board Member, Mt. St. Mary's Hospital (2002 – Present)

Barbara D. Cottrell, Esq. – Director
Chief Clerk, Rensselaer County Family Court, NYS
Office of Court Administration

Affiliations:

- Member, Board of Trustees, St. Peter's Hospital
- St. Peter's Addiction Recovery Center (2003 – 12/07)

Rev. Kenneth J. Doyle – Director
Pastor of Parish, Diocesan Chancellor for Public
Information, Roman Catholic Diocese of Albany

Affiliation:

- Board Member, St. Peter's Hospital (2004 – 12/07)

Harold D. Gordon, Esq. – Director
Attorney, Couch White, LLP

George Hearst III – Director
Publisher/CEO, Times Union

Robert W. Johnson, III, Esq. – Director
Partner, Martin, Shudt, Wallace, DiLorenzo &
Johnson

Michael T. Keegan – Director
Regional President, Albany & Hudson Valley
Division, M & T Bank

Norman I. Massry – Director
Principal, Massry Realty Partners

Affiliation:

- Board Member, St. Peter's Hospital (2007 – 12/09)

Curtis N. Powell – Director
Vice President, Human Resources, Rensselaer
Polytechnic Institute

James K. Reed, MD – Director
President, St. Peter's Health Partners, Catholic
Health East

Affiliation:

- Director, Rubin Dialysis Centers
(1997 – 2011)

James A. Slavin, MD – Director
President/Owner, Practitioner, Burdett Orthopedics,
PC

Affiliations:

- Board Member, Unity House of Troy
(2009 – Present)
- President/Owner, Burdett Orthopedics
(1998 – Present)

Lisa M. Thorn, MD – Director
Family Physician Member, Averill Park site Medical
Director, Capital Care Medical Group

Affiliation:

- Physician Member, Capital Care Medical
Group, Averil Park (2006 – Present)

Alan M. Sanders, MD – Director
Senior Partner/Physician, Upstate Infectious
Disease Association, LLP
Chief of Department of Medicine, St. Peter's
Hospital

Anthony P. Tartaglia, MD – Director
Retired

Sr. Kathleen M. Turley – Director
Leadership Team Member, Sisters of Mercy

All of the above proposed Board Members of St. Peter's Health Partners, Northeast Health, Inc. and The Eddy comprises the following individuals are affiliated with the following entities:

- St. Peter's Hospital of the City of Albany
- Our Lady of Mercy Life Center
- Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
- Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
- Eddy Licensed Home Care Agency, Inc.
- Glen Eddy, Inc. (Terrace at Glen Eddy)
- Hawthorne Ridge, Inc.
- Heritage House Nursing center, Inc.
- Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association
- Memorial Hospital
- Samaritan Hospital of Troy
- Senior Care Connection, Inc. d/b/a Eddy SeniorCare
- Sunnyview Hospital and Rehabilitation Center
- The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
- The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
- The Marjorie Doyle Rockwell Center, Inc.
- Seton Health System, Inc. d/b/a St. Mary's Hospital
- Seton Health at Schulyer Ridge Residential Healthcare

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 State of Michigan's Department of Licensing and Regulatory Affairs, Bureau of Health Care Services indicated no issue with the licensure of Linda Werthman's Masters Social Worker License. The Bureau of Health Care Services has never taken disciplinary action against this individual or license.

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 all attorneys.

The Bureau of Professional Credentialing has indicated that Sister Mary Anne Weldon NHA license 04039, issued January 1, 1991. Her license is currently in voluntary inactive status. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license

A seven year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Alabama
Mercy Medical – Mobile County Home Care
Mercy Medical – Baldwin County Home Care
Mercy Medical – Mercy LIFE of Alabama (PACE)

California
Saint Agnes Medical Center
Saint Agnes Home Health & Hospice

Connecticut
Saint Mary Home, Inc. – Chronic Convalescent Nursing Home
Saint Mary Home, Inc. – Frances Ward Towers Residential Care Home
The McAuley Center, Inc. – Assisted Living Service Agency

Delaware
St. Francis Hospital, Inc. d/b/a/ Saint Francis Healthcare

Florida
Holy Cross Hospital, Inc.
Holy Cross Hospital Home Health Agency
Physician Outpatient Surgery Center, LLC
Mercy Hospital, Inc.
BayCare Health System (10 hospitals) (2003-2013)
St. Anthony’s Hospital (2000 – 2010)

Georgia
St. Joseph Hospital of Atlanta
St. Joseph’s Foundation
Mercy Senior Care
St. Joseph’s Mercy Care Services, Inc.
Good Samaritan Hospital, Inc.
St. Mary’s Hospital
St. Mary’s Health Care System, Inc. – Home Health
St. Mary’s Health Care System, Inc. – Home Hospice
St. Mary’s Health Care System, Inc. – Hospice House
St. Mary’s Health Care System, Inc. – Assisted Living License

Idaho
Saint Alphonsus Regional Medical Center – Boise
Saint Alphonsus Regional Medical Center – Nampa
Saint Alphonsus Regional Medical Center – Baker City Nursing Facility
Saint Alphonsus Regional Medical Center – Baker City Hospital

Illinois
Loyola Center for Home Care and Hospice
Loyola University Medical Center – Hospice Agency
Loyola University Medical – Ambulatory Surgical Treatment Center
Gottlieb Home Health Services
Gottlieb Memorial Hospital Hospice
Gottlieb Memorial Hospital Pharmacy
Gottlieb Memorial Hospital Pharmacy Controlled Substances
Gottlieb Memorial Hospital Mammography Facility

Indiana
Saint Joseph’s Regional Medical Center – South Bend Campus (1/12– Present)
Saint Joseph’s Regional Medical Center (1/12– Present)
Saint Joseph VNA Home Care (1/12– Present)
Sanctuary at St. Pauls (1/12– Present)
Sanctuary at Holy Cross (1/12– Present)

Iowa
Mercy Medical Center – Clinton
Mercy Living Center North
Mercy Medical Center – Dubuque
Mercy Medical Center – North Iowa/Mason City
Mercy Medical Center – Sioux City
The Alverno Health Care Facility
ChildServe (2002 – 2008)

Maryland
Holy Cross Hospital of Silver Spring
Holy Cross Hospital of Silver Spring
Sanctuary at Holy Cross
Holy Cross Hospital (2003 – 2008)

Massachusetts
The Mercy Hospital (8/12– Present)
Sisters of Providence Health System (2009 – 2013)
Mary’s Meadow at Providence Place (2009 – Present)

Michigan
Saint Mary’s Health Care
St. Joseph Mercy – Ann Arbor Psychiatric
St. Joseph Mercy – Saline
St. Joseph Mercy – Livingston
St. Joseph Mercy – Oakland
St. Joseph Mercy – Oakland Psychiatric
St. Joseph Mercy – Port Huron
St. Joseph Mercy – Port Huron Helistop

Mercy Health Partners – Mercy Campus
Mercy Health Partners – Hackley Campus
Mercy Health Partners – Hackley Campus Psychiatric
Mercy Health Partners – Lakeshore Campus
St. Mary Mercy Hospital
St. Mary Mercy Hospital – Psychiatric
Chelsea Community Hospital
Mercy Hospice
Mercy Hospice Grayling
Mercy Hospice – Cadillac
Mercy VNS and Hospice Services
Sanctuary at Mcauley
Sanctuary at the Abbey
Sanctuary at Bellbrook
Sanctuary at St. Mary's
Sanctuary at the Park
Sanctuary at Fraser Villa
Sanctuary at St. Joseph's Village #1 (3/2005-Present)
Sanctuary at St. Joseph's Village #2 (3/2005-Present)
Marycrest Manor
Sanctuary at White Lake
Sanctuary at the Oaks #2 (4/2005-Present)
Sanctuary at the Oaks #1 (4/2005-Present)
Sanctuary at the Shore
Mercy Bellbrook/Frances Warde (2/2010-Present)
Mercy Bellbrook/McAuley (2/2010-Present)
Sanctuary at Bellbrook
Sanctuary at Woodland #1 (4/2005-Present)
Sanctuary at Woodland #2 (4/2005-Present)
Sanctuary at Fraser Villa
Sanctuary at Mercy Village #2 (4/2005-Present)
Sanctuary at Mercy Village #1 (4/2005-Present)

Nebraska
Mercy Home Care

New Jersey
Our Lady of Lourdes Medical Center
Lourdes Medical Center of Burlington County
Saint Michael's Medical Center, Inc. – 12 Months
St. Francis Medical Center

New York
Northeast Health, Inc.
St. Peter's Addiction Recovery Center (2003 – 12/07)
Seton Manor (2012 – Present)
Catholic Health System (2002 – Present)
Mt. St. Mary's Hospital (2002 – Present)
St. Peter's Hospital of the City of Albany
Our Lady of Mercy Life Center
Villa Mary Immaculate d/b/a St. Peter's Nursing and Rehabilitation Center
Beverwyck, Inc. d/b/a Eddy Village Green (Terrace at Beverwyck)
Eddy Licensed Home Care Agency, Inc.
Glen Eddy, Inc. (Terrace at Glen Eddy)
Hawthorne Ridge, Inc.
Heritage House Nursing center, Inc. d/b/a Eddy Heritage House Nursing and Rehabilitation Center

Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (CHHA)
Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nursing Association (LTHHCP)
Memorial Hospital
Samaritan Hospital of Troy
Senior Care Connection, Inc. d/b/a Eddy SeniorCare
Sunnyview Hospital and Rehabilitation Center
The Capital Region Geriatric Center, Inc. d/b/a Eddy Village Green
The James A. Eddy Memorial Geriatric Center, Inc. (Terrace at Eddy Memorial)
The Marjorie Doyle Rockwell Center, Inc.
Father Baker Manor (Nursing Home)
Mercy Hospital Skilled Nursing Facility
St. Francis Home of Williamsville (Nursing Home)
Mercy Living Center (Nursing Home)
Uihlein Living Center (Nursing Home)
Seton Health System, Inc. d/b/a St. Mary's Hospital
Seton Health at Schulyer Ridge Residential Healthcare
St. Peter's Health Partners d/b/a Eddy Village Green at Beverwyck
St. James Mercy Hospital
Adirondack Medical Center (Hospital)
Adirondack Medical Center/Lake Placid (Hospital)
Sisters of Charity Hospital of Buffalo, NY
Kenmore Mercy Hospital
Mercy Hospital of Buffalo
Niagara Homemakers Services, Inc. d/b/a Mercy Home Care of Western New York
St. Vincent's Home for the Aged
St. Elizabeth's Home of Lancaster, New York
McAuley-Seton Home Care Corporation (LHCSA)
Mercy Uihlein Health Corporation
Mercy Health-Care Center, Inc.
The Uihlein Health Corporation, Inc.
Mcauley Manor at Mercycare (Nursing Home)
Adult Day services, Mercycare Break
Hospice associated with St. James Mercy Hospital
Catholic Health System Program of All-Inclusive Care for the Elderly, Inc.

North Carolina
St. Joseph of the Pines, Inc. Family Care Home Zeno Villa at St. Joseph of the Pines (3/18/11-8/26/13)
St. Joseph of the Pines, Inc. Family Care Home Constance Cottage (11/28/11-2014)
St. Joseph of the Pines, Inc. Family Care Home Mary Manor (2004-2014)
St. Joseph of the Pines, Inc. Adult Care Home The Coventry
St. Joseph of the Pines, Inc. Nursing Facility St. Joseph of the Pines Health Center
St. Joseph of the Pines Belle Meade and Pine Knoll at St. Joseph of the Pines
St. Joseph of the Pines, Inc. St. Joseph of the Pines Home Care
LIFE St. Joseph of the Pines, Inc. Adult Day Health Home
St. Joseph of the Pines Health System, Inc. (2002 – Present)

Ohio
Mount Carmel East – Columbus (2004-2014)
Mount Carmel West (2004-2014)
Mount Carmel St. Anne's (2004-2014)
Oregon
St. Alphonsus Regional Medical Center – Ontario
Pennsylvania
Mercy Suburban Hospital
Nazareth Hospital
Mercy Catholic Medical Center of Southeastern Pennsylvania d/b/a Mercy Fitzgerald Hospital and Mercy Hospital of Philadelphia
St. Agnes Continuing Care Center Living Independently for Elders
Mercy Home Health
St. Agnes Continuing Care Center d/b/a/ Mercy Life Broad Street
St. Agnes Continuing Care Center d/b/a Mercy Life/North Hancock Street
Mercy Family Support Home Care Agency Facility
Mercy Home Health, Health Care Facility
St. Mary Medical Center
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Life Center Corporation Outlook Manor
Mercy Behavior Health Munhall Manor
Mercy Life Center Corporation Mercy Behavioral Health
Mercy Behavioral Health Mercy Behavioral Health - LTSR(2)
Mercy Life Center Corporation Garden View Manor
Mercy Life Center Corporation Monarch Springs LTSR
Mercy Life Center Corporation Extended Acute Care Unit - LTSR
Mercy Life Center Corporation Mercy Behavior Health
Mercy Life Center Corporation Mercy Behavioral Health Psychiatric Rehabilitation Clubhouse
Mercy Life Center Corporation d/b/a Mercy Behavior health Psychiatric Rehab
Mercy Life Center Corporation Mercy Behavioral Health Partial Hospitalization
Mercy Life Center Corporation Mercy Behavioral Health Outpatient
Mercy Behavioral Health
Mercy Life Center Corporation d/b/a/ Mercy Behavioral Health Mercy Behavioral Health Ross Adult Training Facility-Seniors

Mercy Life Center Corporation Mercy Behavioral Health
Mercy Life Center Corporation Mercy Behavioral Health Wexford Employ. Svcs.
Mercy Life Center Corporation Mercy Behavioral Health - Brookline Employment Services
Mercy Life Center Corporation Mercy Behavioral Health - Beachview ATF
Mercy Life Center Corporation Mercy Behavioral Health LTSR I - The Journey Home
Mercy Life Center Corporation Mercy Behavioral Health Family Living Home
Mercy Life Center Corporation Mercy Behavioral Health Reedsdale Center
Mercy Life Center Corporation Mercy Behavioral Health - Baldwin ATF
Mercy Life Center Corporation Mercy Behavioral Health Ross Adult Training Facility - SENI

CALIFORNIA

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CCR Title 22 70739(a) – Infection Control for findings on June 2, 2008.

Saint Agnes Home Health and Hospice, was fined eighteen thousand five hundred dollars (\$18,500.00) pursuant to CA Health and Safety Code Death during or within 24 hours of surgery for findings on September 9, 2008.

Saint Agnes Home Health and Hospice, was fined fifty thousand dollars (\$50,000.00) pursuant Health and Safety Code 1279.1(c) and CCR Title 22 70223(6)(2) for findings on October 11, 2010.

Saint Agnes Home Health and Hospice, was fined three thousand dollars (\$3,000.00) pursuant Health and Safety Code 1279.1(ab)(4)(F) – Pressure Ulcer State 3 or 4.

Saint Agnes Home Health and Hospice, was fined one thousand dollars (\$1,000.00) pursuant Health and Safety Code 1279.1(ab)(1)(O) – Retention of Foreign Object.

Saint Agnes Home Health and Hospice, was fined eight hundred dollars (\$800.00) pursuant Health and Safety Code - State 3 or 4 Pressure Ulcer.

CONNECTICUT

St. Mary's Home, West Hartford, CT Based on an inspection of the facility conducted October 29, 2007 St. Mary's Home was cited for violations of Connecticut State Agencies (Public Health Code). The facility was fined seven hundred and forty-five dollars (\$745.00) for the Class A violation of Section 19-13-D8t(j)(2)(L) - Chronic and convalescent nursing homes and rest homes with nursing supervision: Director of nurses.

FLORIDA

BayCare-Home Care Sarasota, Sarasota, Florida was fined three thousand dollars (\$3,000.00) pursuant to a Survey Deficiency – Failed to Ensure Physicians Plan of Care for repeat of Class III deficiency 2004, 2005, 2006 and 2007 for Violations of 59A-8.0215(2) – Plan of Care and 59A-8.0095(3), - Personnel

Saint Anthony's Hospital, St. Petersburg, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of December 12, 2007 for Aspen State Regulation H0022 ((2) Coordination of Care. Each hospital shall develop and implement policies and procedures on discharge planning which address: (a) Identification of patients requiring discharge planning; (b) Initiation of discharge planning on a timely basis; (c) The role of the physician, other health care givers, the patient, and the patient's family in the discharge planning process; and (d) Documentation of the discharge plan in the

patient's medical record including an assessment of the availability of appropriate services to meet identified needs following hospitalization.)

Holy Cross Hospital, Fort Lauderdale, Florida was fined one thousand dollars (\$1,000.00) pursuant to a Survey Deficiency for inspection findings of June 1, 2009 for Aspen State Regulation H0031 ((2) Transfer Procedures. Each hospital providing emergency services and care shall establish policies and procedures which incorporate the requirements of Chapter 395, F.S., relating to emergency services. The policies and procedures shall incorporate at a minimum: (a) Decision protocols identifying the emergency services personnel within the hospital responsible for the arrangement of outgoing and incoming transfers; and H0037 (Each hospital shall maintain records of all patients who request emergency care and services, or persons on whose behalf emergency care and services are requested, for a period of 5 years.)

MARYLAND

St. Catherine's Nursing Center was fined fifteen thousand dollars (\$15,000) pursuant to Survey Deficiencies for inspection findings of July 9, 14 and 15, 2009 for violations of COMAR 10.07.09.08 C (5) (c) (Resident's Rights and Services. C. A resident has the right to: (5) Be free from: (c) Sexual abuse), 10.07.09.15 D (1) (Abuse of Residents, D. Investigations. A nursing facility shall: (1) thoroughly investigate all allegations of abuse) and 10.07.09.15. D (2) (Abuse of Residents, D. Investigations. A nursing facility shall: (2) Take appropriate action to prevent further incidents of abuse while the investigation is in progress, and after that.)

NEW YORK

ADULT CARE FACILITIES

Hawthorne Ridge, Inc. d/b/a Hawthorn Ridge was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated March 28, 2012 for inspection findings of September 14, 2010 for violations 18 NYCRR Part 486.5(a)(4)(iii) – Endangerment.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

LICENSED HOME HEALTH CARE AGENCIES, CERTIFIED HOME HEALTH AGENCIES, LONG TERM HOME HEALTH CARE AGENCIES, HOSPICE

Eddy Visiting Nurse Association/Wesley VNA was fined three thousand five hundred dollars (\$3,500.00) pursuant to a stipulation and order dated August 19, 2010 for inspection findings of July 22, 2008 and October 1, 2008 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(a) – Patient Assessment and Plan of Care; 763.6(b) – Patient Assessment and Plan of Care and 763.11(b) – Governing Authority.

McCauley-Seton Home Care Corporation was fined six thousand five hundred dollars (\$6,500.00) pursuant to a stipulation and order dated July 11, 2011 19, 2010 for inspection findings of December 17, 2009 for violations of 10 NYCRR Sections 763.4(h) – Policies and Procedures of Service Delivery; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; 763.6(e) – Patient Assessment and Plan of Care; 763.11(a) – Governing Authority; and 763.11(b) – Governing Authority.

McCauley-Seton Home Care Corporation was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated June 10, 2013 for inspection findings of September 15, 2011 for violations of 10 NYCRR Sections 763.11(b) – Governing Authority; 763.5(a) – Patient Referral, Admission and Discharge; 763.6(b) – Patient Assessment and Plan of Care; 763.6(c) – Patient Assessment and Plan of Care; and 763.7(a) – Clinical Records.

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.

RESIDENTIAL HEALTH CARE FACILITIES

Our Lady of Mercy Life Center was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated August 16, 2010 for inspection findings of June 1, 2009 for violations 10 NYCRR Section 415.12 – Quality of Care.

St. Francis Home of Williamsville was fined ten thousand dollars (\$10,000.00) pursuant to a stipulation and order dated January 18, 2012 for inspection findings of October 28, 2010 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

St. Francis Home of Williamsville was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 10, 2012 for inspection findings of January 24, 2011 for violations 10 NYCRR Section 415.12 – Quality of Care Highest Practicable Potential.

Adirondack Medical Center – Mercy was fined \$2,000 pursuant to a stipulation and order signed by the facility on September 1, 2014 for inspection findings of August 13, 2008, August 20, 2009 and October 1, 2009 for violations of 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision, 415.12(l)(1) Quality of Care: Nutritional Status, 415.12(h)(l)(2), 415.26 Administration, 415.27(a-c) Quality Assessment and Assurance.

Adirondack Medical Center – Uihlein was fined twenty thousand dollars \$20,000 pursuant to a stipulation and order signed by the facility September 1, 2014 for inspection findings of August 8, 2008, September 28, 2009, January 22, 2010 and March 22, 2011 for violations of 10 NYCRR.

August 8, 2008 – 10 NYCRR Section 415.3(e)(2)(ii)(b) Notification of Changes, 415.11(c)(3)(i) Comprehensive Care Plans, 415.12(l)(1) Quality of Care: Unnecessary Drugs, 415.12(m)(2) Quality of Care: Medication Errors, 415.15(b)(1)(i)(ii) Physician Services, 415.26 Administration, 415.26(b)(3)(1) Governing Body, 415.15(a) Medical Director, and 415.27(a-c) Quality Assessment and Assurance.

September 28, 2009 and January 22, 2010 – 10 NYCRR Section 415.12(h)(1)(2) Quality of Care: Accidents and Supervision, and 415.12 Quality of Care: Highest Practical Potential.

March 22, 2011 – 10 NYCRR 415.4(b)(1)(ii) Investigate/Report Allegations and 415.26 Administration.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

HOSPITALS AND DIAGNOSTIC & TREATMENT CENTERS

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

MANAGED LONG TERM CARE PLANS AND PACE PROGRAMS

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Responses were received from the states listed above with the exception of the States of Iowa and Maryland. Although the responses received from each of these states did not include all of the health care facility located in each respective state, the responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

A review of all personal qualifying information indicates there is nothing in the background of the proposed members and managers to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 433 River Street, Suite 3000, Troy, New York 12180.

Albany	Columbia	Fulton	Greene
Montgomery	Rensselaer	Saratoga	Schenectady
Schoharie	Warren	Washington	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Personal Care	Physical Therapy	Speech-Language Pathology
Nutritional	Occupational Therapy	Housekeeping
Homemaker	Respiratory Therapy	

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: September 11, 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<u>NUMBER:</u>	<u>FACILITY:</u>
2148 L	Apex Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York, Westchester Counties)
2000 L	Arvut Home Care, Inc. (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)
2147 L	Attentive Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2136 L	Beautiful Day Home Care, Inc. (Cayuga, Tompkins, Onondaga, Cortland, Oswego, and Seneca Counties)

2134 L Best Professional Home Care Agency, Inc.
(Bronx, Kings, Queens, New York, and Richmond
Counties)

2371 L CNY Helpers, LLC
d/b/a Home Helpers & Direct Link #58740
(Oneida, Madison, Onondaga and Oswego Counties)

2123 L EOM Service, Inc. d/b/a BrightStar of South Brooklyn
(Kings, Bronx, Queens, Richmond, and New York
Counties)

1980 L Clear Waters Home Care Services, LLC
(Bronx, Orange, and Westchester Counties)

2038 L Gentle Hands Agency, Inc.
(Bronx, New York, Queens, Kings and Richmond
Counties)

2104 L Joyful NY, LLC d/b/a Joyful Home Care Services
(Suffolk, Nassau and Queens Counties)

2150 L Professional Assistance for Seniors, Inc.
(Monroe, Livingston, Wayne, Genesee, and Ontario
Counties)

2066 L Reliance Home Care, Inc.
(Kings, Bronx, Queens, Richmond, New York and
Nassau Counties)

1614 L Taconic Innovations, Inc.
(Westchester and Dutchess Counties)

1787 L The Terrance at Park Place, Inc.
d/b/a The Terrance at Park Place Lansing
(Tompkins County)

2223 L Alliance Nursing Staffing of New York, Inc.
(Nassau, Putnam, Dutchess, New York, Rockland,
Westchester, Suffolk, Sullivan and Orange Counties)

2294 L Astra Home Care, Inc. d/b/a True Care
(New York, Bronx, Kings, Richmond, Queens, and
Westchester Counties)

- 2267 L Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
(Queens, Kings, New York, Bronx, and Richmond Counties)
- 2303 A Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Richmond County)
- 2303 L Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Queens, Kings, New York, and Richmond Counties)
- 2105 L Healthy and Long Life Care, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
- 1935 L Supreme Homecare Agency of NY, Inc.
(New York, Bronx, Kings, Richmond, Queens and Westchester Counties)
- 2212 L Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 2496 L A & T Healthcare, LLC
(Dutchess, Rockland, Nassau, Suffolk, Orange, Westchester, Putnam, Bronx, Sullivan, Ulster, Kings, New York, Richmond, Queens, and Greene Counties)
- 2219 L Healthwood Assisted Living at Williamsville, Inc.
(Erie County)
- 2220 L Healthwood Assisted Living at Penfield, Inc.
(Monroe County)
- 2231 L Intergen Health, LLC
(Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)
- 2309 L Two K Management Corp. d/b/a Family Aides Home Care
(Nassau, Suffolk, Queens, Westchester, Bronx, Kings, New York, Queens, Richmond, and Suffolk Counties)

- 2423 L Senior Care Connection, Inc. d/b/a Eddy Senior Care
(See Exhibit for Counties)
- 2424 L Eddy Licensed Home Care Agency, Inc.
(See Exhibit for Counties)



Public Health and Health Planning Council

Project # 141248-E
White Plains Hospital Center

Program: Hospital
Purpose: Establishment

County: Westchester
Acknowledged: June 20, 2014

Executive Summary

Description

Montefiore Health System, Inc., requests approval to become the active parent and co-operator of White Plains Hospital (WPH). The proposed project, as described, does not result in any immediate changes in services at White Plains Hospital, in the projected utilization and staffing, or in any restructuring. BFA Attachment A is the organizational chart of Montefiore Health System, Inc. after the approval of the proposed application.

Montefiore Health System, Inc. is the active parent/co-operator of the following facilities: Montefiore Medical Center-Montefiore Hospital (779-bed hospital), Montefiore Medical Center-Weiler Hospital (424-bed hospital), Montefiore Medical Center-Wakefield Hospital (309-bed hospital), Wakefield Ambulatory Care Center (DTC), Montefiore Medical Center Long Term Home Health Care Program (LTHHCP), Montefiore Medical Center Home Care and Extended Services (CHHA), Montefiore New Rochelle Hospital (242-bed hospital), Montefiore Mount Vernon Hospital (176-bed hospital), Schaffer Extended Care Center (150-bed nursing home), and Montefiore Westchester Square (off-campus ED).

The applicant will exercise the following active powers:

- Approve the appointment of WPH management level employees (Chief Executive Officer, President, Chief Medical Officer and Chief Financial Officer).
- Approve WPH operating and capital budgets.
- Approve certain WPH operating policies and procedures.
- Approve certificate of need applications.

- Approve WPH debt necessary to finance the cost of compliance with operational or physical plant standards required by law.
- Approve hospital contracts for management or for clinical services, other than in the ordinary course of business.
- Approve settlements of administrative proceedings or litigation to which WPH is a party that may have a material adverse impact on WPH or MHS.

DOH Recommendation
Contingent Approval

Need Summary

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care.

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 will no costs or budgets associated with this application.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and 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 evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted amended Bylaws of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
5. Submission of the adopted Amended and Restated Bylaws of Montefiore Health System, Inc., 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

October 2, 2014

Need Analysis

Background

White Plains Hospital Medical Center (WPH) has proven to be a community asset, with approximately 15% of the market share in Westchester County, and is a leader in tertiary care in the area. The addition of WPH to the Montefiore Health System help enhance quaternary care in Westchester County.

There will be no changes in beds, services or utilization at WPH as a result of this project.

Table 1 White Plains Hospital Center

<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	8
Intensive Care	8
Maternity	28
Medical/Surgical	218
Neonatal Intensive Care	9
Neonatal Intermediate Care	6
Pediatric	15
Total	292

White Plains Hospital Center will be used as the hub for Montefiore Health System's tertiary level of hospital services.

Conclusion

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care. For these reasons, approval of this project is recommended.

From a need perspective, approval is recommended.

Program Analysis

Program Description

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, seeks approval for the establishment of Montefiore Health System, Inc. as the sole member, active parent and co-operator of White Plains Hospital Medical Center (White Plains Hospital, or WPH). The project aims to build a regional network of hospitals and community physicians closely aligned in an integrated system of care serving Westchester and the Hudson Valley. The proposed project will not result in any immediate changes in staffing or in the number and/or type of beds or authorized services at White Plains Hospital.

Montefiore Health System, Inc. (MHS) will become the active parent over:

White Plains Hospital Medical Center

WPH licensed Article 28 locations:

- Armonk Clinic
- Physical Therapy & Occupational Therapy Center at Westchester Avenue
- WPHC – Women's Imaging Center
- White Plains HC OT & PT Clinic
- White Plains Hospital Imaging at New Rochelle

WPH licensed Article 31 Programs

- White Plains Hospital Center Psychiatric Outpatient Clinic
- White Plains Hospital Continuing Day Treatment

Character and Competence

White Plains Hospital's current board members will remain on the WPH Board, and MHS may appoint three additional directors to the WPH Board. All 49 Trustees of the MHS Board were previously subjected to a character and competence review.

The officers of the Montefiore Health System, Inc. Board are:

Steven M. Safyer, MD	President/CEO
David A. Tanner	Chairman
Oded Aboodi	Vice Chairman
Kennet D. Weiser	Treasurer
Lewis Henkind	Secretary
Christopher Panczner	Assistant Secretary

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.

In a Stipulation and Order dated March 6, 2007, Montefiore Medical Center was fined \$14,000 based on a the findings of a complaint investigation into the care rendered to a child who presented with signs and symptoms of child abuse but was discharged home to an unsafe environment.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B are the 2012 and 2013, certified financial statements of Montefiore Health System, Inc. As shown, 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 income from operations of \$106,367,000 from 2012 through 2013.

BFA Attachment C are the 2012 and 2013 certified financial statements of White Plains Hospital Center. As shown, the entity had an average positive working capital position from 2012 through 2013. The entity had a negative working capital position in 2013, which was the result of \$7 million in capital spending (Major Modernization Phase II and Cancer Center Expansion and Renovation Projects) for which reimbursement was expected through either proceeds of a financing or an affiliation agreement. The agreement with Montefiore occurred in the first quarter of 2014 and the capital expenditures were reimbursed through that agreement in March 2014. Year-to-date results show a positive working capital position. Also, the entity achieved income from operations of \$5,240,645 from 2012 through 2013.

BFA Attachment D are the March 31, 2014 internal financial statements of Montefiore Health System, Inc. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity achieved an income from operations of \$6,779,000 through March 31, 2014.

BFA Attachment E are the June 30, 2014 internal financial statements of White Plains Hospital Center. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity achieved an income from operations of \$1,691,944 through June 30, 2014.

The applicant has demonstrated that 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	Organizational Chart of Montefiore Health System, Inc.
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of Montefiore Health System
BFA Attachment C	Financial Summary- 2013 and 2013 certified financial statements of White Plains Hospital Center
BFA Attachment D	Financial Summary- March 31, 2014 internal financial statements of Montefiore Health System
BFA Attachment E	Financial Summary- June 30, 2014 internal financial statements of White Plains Hospital Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Montefiore Health System, Inc. (MHS) as the active parent/co-operator of White Plains Hospital Medical Center , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141248 E

White Plains Hospital Center

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted amended Bylaws of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
5. Submission of the adopted Amended and Restated Bylaws of Montefiore Health System, Inc., 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 142009-E
RU System

Program: Hospital
Purpose: Establishment

County: Ontario
Acknowledged: July 11, 2014

Executive Summary

Description

RU System, a/k/a Rochester Regional Health System, requests approval to become the active parent and co-operator of The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC).

RU System will be the active parent/co-operator of the following facilities: Clifton Springs Hospital and Clinic (104-bed hospital) and Clifton Springs Hospital and Clinic Extended Care (108 RHCF beds). BFA Attachment A is the organizational chart of RU System. Also included in the organizational chart of RU System is the transaction in CON 141018, which was approved with contingencies by the Public Health and Health Planning Council on April 10, 2014, and received final approval on June 27, 2014. RU System became the active parent and co-operator of the licensed healthcare affiliates of both Rochester General Health System (RGHS) and Unity Health System.

The applicant will exercise the following active powers:

- Approve and interpret the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with the Corporation's mission and philosophy.
- Set the number of trustees of the Corporation within the limits set by New York State legislation that establishes the minimum and maximum number of trustees of the Corporation.
- Appoint and remove, with or without cause, the trustees of the Corporation.
- Appoint and remove, with or without cause, the chief executive officer of the Corporation.
- Approve any amendment of the Certificate of Incorporation and the bylaws of the Corporation.
- Approve any debt of the Corporation, other than in the ordinary course of business, in excess of an amount to be fixed from time to time by the Corporation's members for a single borrowing and in

the aggregate for the preceding twelve month period, including any debt necessary to finance the cost of compliance with operational, or physical plant standards required by applicable law.

- Approve the sale, lease, exchange or disposition of all, or substantially all the assets of the Corporation, and to approve any sale, acquisition lease, transfer, mortgage, pledge or other alienation of an interest in any real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Corporation's member, in a single transaction or in the aggregate for the preceding twelve month period, or otherwise outside of the ordinary course of the business.
- Approve the capital and operating budgets of the Corporation.
- Approve any plan of merger, consolidation, reorganization, dissolution or liquidation of the Corporation, including the addition of any entities as new members of the Corporation and the Corporation's participation in, or development or dissolution of, any subsidiary organizations, including corporations, partnerships or joint ventures of the Corporation and other entities.
- Approve the strategic plan of the Corporation.
- Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund.
- Approve contracts that require Department of Health approval.
- Approve Certificate of Need applications that are to be filed with the Department of Health.

DOH Recommendation
Contingent Approval

Need Summary

This project will not change utilization, services, or beds. The project will allow RU System to oversee the two facilities and act with power to facilitate all Article 28 applicable laws. Patients will benefit by the continued access to care and the enhanced program quality and service.

There will be no change in beds or services and there are no anticipated utilization changes for 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 will be no costs or budgets associated with this application.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and 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 evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
4. Submission of the adopted Amended and Restated Corporate Bylaws of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
5. Submission of an executed amended Certificate of Incorporation of RU System, Inc., 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

October 2, 2014

Need Analysis

Background

RU System, Inc. is seeking approval to be established as the active parent and co-operator of the Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic ("CSHC"), a 154 bed acute care Hospital located at 2 Coulter Road, Clifton Springs (Ontario County), New York, 14432. CSHC also operates Clifton Springs Hospital and Clinic Extended Care, a 108 bed Residential Health Care Facility. Both facilities will fall under the integrated hospital system and allow RU System to exercise Article 28 powers over the facilities.

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	30
Intensive Care	6
Medical/Surgical	100
Psychiatric	18
Total	154

Clifton Springs Hospital and Clinic Extended Care had a 98.1% utilization rate in July, 2014.

Conclusion

This project will help the RU Health system to be more cost effective, providing a more streamlined patient health system and better access to care. Approval of this project is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Establish RU System, Inc. as the active parent and co-operator of The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC).

CSHC is a 154-bed acute care hospital that also operates a residential health care facility (RHCF) in Ontario County, New York.

Upon approval, RU System will become the active parent and will have the ability, as sole corporate member, to exercise active powers over CSHC and gain oversight with respect to day-to-day operations over both The Clifton Springs Sanitarium Company d/b/a Clifton Springs Hospital and Clinic (CSHC) and Clifton Springs Hospital and Clinic Extended Care (108-bed RHCF).

The applicant's objective is to establish a coordinated, integrated system aimed at improving quality, increasing access and lowering the costs of health care in the communities served by CSHC.

CSHC will remain a separate not-for-profit corporation and no reduction in authorized services or the number and/or type of beds is planned. Further, there are no costs associated with this project and no changes to staffing are anticipated.

RU System, Inc. will be renamed Rochester Regional Health System and will operate under a Certificate of Assumed Name until its Certificate of Incorporation is amended to reflect the new name.

Character and Competence

The proposed governing board of RU System consists of 24 members who were subject to a Character and Competence review. The proposed Officers of RU System's Board are:

Name	Title
Robert A. Dobies	Chair
Michael R. Nuccitelli	Vice Chair
Robert S. Sands	Secretary
Faheem A. R. Masood	Treasurer

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.

Of the twenty-four (24) members reviewed, there were two disclosures: Mr. Leonard Olivieri revealed that his New Jersey law license was administratively revoked for failure to pay fees to maintain its active status when he ceased to practice law in New Jersey and Dr. Thomas Penn, a vascular surgeon, disclosed one pending and one settled medical malpractice case.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B are the 2012 and 2013 certified financial statements of Clifton Springs Hospital and Clinic and Affiliates. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 and 2013. Also, the entity incurred average historical losses of \$2,223,474 from 2012 and 2013. The applicant has indicated that the reason for the losses are as follows: In October 2011, the orthopedic group left Clifton Springs Hospital and Clinic, which represented 40% of the hospital's operating room volume. The hospital continued to experience a decrease in overall volume, including a 15% decrease in acute discharges from 2011 to 2012. As volume decreased, the hospital did not adjust its staffing levels. The applicant implemented the following steps to improve operations: At the end of 2012, Management and the Board of Trustees engaged a consulting firm that assisted with the implementation of an approximately \$6 million ongoing annual operating margin improvement plan. The plan included a \$4 million restructuring of the workforce, which took place in January 2013. The workforce reduction eliminated 92 FTE's. The balance of the plan included revenue improvements and other operating expense reductions being implemented throughout 2013 and 2014.

BFA Attachment C is the June 30, 2014 internal financial statements of Clifton Springs Hospital and Clinic and Affiliates. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2014. Also, the entity incurred an operating loss of \$396,352 through June 30, 2014. The applicant has been improving operations through June 30, 2014 from historical.

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	Organizational Chart of RU System
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of Clifton Springs Hospital and Affiliates
BFA Attachment C	Financial Summary- June 30, 2014 internal financial statements of Clifton Springs Hospital and Clinic and Affiliates

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish RU system as the active parent/co-operator of Clifton Springs Hospital and Clinic, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142009 E

RU System

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
4. Submission of the adopted Amended and Restated Corporate Bylaws of The Clifton Springs Sanitarium Company, acceptable to the Department. [CSL]
5. Submission of an executed amended Certificate of Incorporation of RU System, Inc., 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 142041-E
RU System

Program: Hospital
Purpose: Establishment

County: Genesee
Acknowledged: August 4, 2014

Executive Summary

Description

RU System, a/k/a Rochester Regional Health System, requests approval to become the active parent and co-operator of the United Memorial Medical Center (UMMC) a 131-bed community hospital operating at two sites in Batavia. BFA Attachment A is the organizational chart of RU System. Also included in the organizational chart of RU System, is the transaction under CON 141018, which was approved with contingencies by the Public Health and Health Planning Council on April 10, 2014, and received final approval on June 27, 2014. CON 141018 was for RU System to become the active parent and co-operator of the licensed healthcare affiliates of both Rochester General Health System and Unity Health System.

- Approve the capital and operating budgets of the Corporation.
- Approve any plan of merger, consolidation, reorganization, dissolution or liquidation of the Corporation.
- Approve the strategic plan of the Corporation.
- Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund.
- Approve contracts that require Department of Health approval.
- Approve Certificate of Need applications that are to be filed with the Department of Health.

The applicant will exercise the following active powers:

- Approve and interpret the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with the corporate mission and philosophy.
- Set the number of directors of the Corporation.
- Appoint and remove, with or without cause, the directors of the Corporation.
- Appoint and remove, with or without cause, the chief executive officer of the Corporation.
- Approve any amendment of the Certificate of Incorporation and the bylaws of the Corporation.
- Approve any debt of the Corporation, other than in the ordinary course of business, in excess of an amount to be fixed from time to time by the Corporation's member.
- Approve the sale, lease, exchange or disposition of all, or substantially all, of the assets of the Corporation.

DOH Recommendation
Contingent Approval

Need Summary

This project will not change utilization, services, or beds. The project will allow RU System to oversee the facility and act with power to facilitate all Article 28 applicable laws. Patients will benefit by the preservation of access to care, delivered with a more streamlined approach.

There will be no change in beds or services at UMMC and there are no anticipated utilization changes for the facility.

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 will be no costs or budgets associated with this application.

The applicant has demonstrated the capability to proceed in a financially feasible manner and 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 evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of a finalized and executed Restated Certificate of Incorporation of United Memorial Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted Amended and Restated Corporate Bylaws of United Memorial Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed amended Certificate of Incorporation of RU System, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 2, 2014

Need Analysis

Background

RU System, Inc. is seeking approval to be established as the active parent and co-operator of United Memorial Medical Center, a 131 bed community hospital having two sites in Batavia NY. The facility will fall under the integrated hospital system and allow RU System to exercise Article 28 powers over the facilities.

<u>Bed Category</u>	<u>Certified Capacity</u>
Chemical Dependence – Rehab	18
Chemical Dependence – Detox	2
Total	20

<u>Bed Category</u>	<u>Certified Capacity</u>
Coronary Care	6
Intensive Care	4
Maternity	10
Medical/Surgical	86
Pediatric	5
Total	111

Conclusion

This project will allow RU System to operate in a more cost effective manner, providing a more streamlined patient health system and better access to care. Approval of this project is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Establish RU System, Inc. as the active parent and co-operator of United Memorial Medical Center (UMMC). UMMC is a 131-bed community hospital operating at two sites in Batavia (Genesee County). UMMC also operates five (5) extension clinics in Genesee and Orleans Counties.

Upon approval, RU System will become the active parent and will have the ability, as sole corporate member, to exercise active powers over UMMC and gain oversight with respect to day-to-day-operations. The applicant's objective is to establish a coordinated, integrated system that will provide affordable, quality healthcare services to the communities served by UMMC. UMMC will remain a separate not-for-profit corporation and no reduction in authorized services or the number and/or type of beds is planned. Further, no costs are associated with this project and no staffing changes are anticipated.

RU System, Inc. will be renamed Rochester Regional Health System and will operate under a Certificate of Assumed Name until its Certificate of Incorporation is amended to reflect the new name.

Character and Competence

The proposed governing board of RU System consists of 24 members who were subject to a Character and Competence review. The proposed Officers of RU System's Board are:

Name	Title
Robert A. Dobies	Chair
Michael R. Nuccitelli	Vice Chair
Robert S. Sands	Secretary
Faheem A. R. Masood	Treasurer

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.

Of the twenty-four (24) members reviewed, there were two disclosures: Mr. Leonard Olivieri revealed that his New Jersey law license was administratively revoked for failure to pay fees to maintain its active status when he ceased to practice law in New Jersey, and Dr. Thomas Penn, a vascular surgeon, disclosed one pending and one settled medical malpractice case.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B is the 2012 and 2013 certified financial statements of United Memorial Medical Center and Subsidiary. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved an average income from operations of \$2,592,638 from 2012 through 2013.

BFA Attachment C is the May 31, 2014, internal financial statements of United Memorial Medical Center. As shown, the entity had a positive working capital position and a positive net asset position through May 31, 2014. Also, the entity achieved income from operations of \$2,411,000 for the period ending May 31, 2014.

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	Organizational Chart of RU System
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of United Memorial Medical Center
BFA Attachment C	May 31, 2014 internal financial statements of United Memorial Medical Center.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish RU System as the active parent/co-operator of United Memorial medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142041 E

RU System

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of a finalized and executed Restated Certificate of Incorporation of United Memorial Medical Center, acceptable to the Department. [CSL]
3. Submission of the adopted Amended and Restated Corporate Bylaws of United Memorial Medical Center, acceptable to the Department. [CSL]
4. Submission of an executed amended Certificate of Incorporation of RU System, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 142024-E
Charles Evans Health Center, Inc.

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment **Acknowledged:** July 21, 2014

Executive Summary

Description

Charles Evans Health Center, Inc. (CEHC), a proposed not-for-profit entity, is seeking approval to be established as the new operator of the existing Article 28 diagnostic and treatment center (D&TC) currently operated by Adults and Children with Learning and Developmental Disabilities, Inc. (ACLD). ACLD is a dually licensed Article 28 D&TC and Article 16 clinic facility, which began operations in September 1992. Both the Article 28 and Article 16 operations are located at 857 South Oyster Bay Road, Bethpage.

ACLD wants to convert the Article 28 D&TC to a FQHC. Due to federal program requirements that stipulate the FQHC must be a separate arms-length entity, ACLD cannot convert to a FQHC under their current operating structure. Therefore, CEHC is being formed as a separate, but related, business entity to serve as the new operator of the Article 28 D&TC, which will be eligible to apply for FQHC designation upon establishment. The sole member of Charles Evans Health Center, Inc., is Adults and Children with Learning and Developmental Disabilities, Inc.

The applicant is proposing to be the new medical home for the current patients of ACLD, and intends to expand their service area and services to the medically underserved residents of Long Island, including residents of Nassau County and the western areas of Suffolk County.

The applicant has a Letter of Intent (LOI) to become an FQHC sub-recipient of Hudson River Healthcare (HRHCare), an existing FQHC. HRHCare is a network of 22 health centers serving the 10 counties of the Hudson Valley and Long Island regions. The applicant is proposing to join HRHCare's network once they receive FQHC designation. As an FQHC, the

applicant would receive cost-based reimbursement under Medicare and Medicaid law, and would be eligible for HRSA Section 330 Grant funding. Additionally, it would be eligible for participation in the Federal Tort Claims Act, which eliminates malpractice insurance costs.

Upon approval of this CON, CEHC will operate the Article 28 D&TC currently operated by ACLD with the following changes:

- All services and staff related to the DOH Article 28 D&TC will be transferred to CEHC, which will be located on the 1st floor.
- All OMRDD Article 16 services will be relocated to the 2nd floor in order to eliminate any shared space issues that might arise.
- The Article 28 D&TC will provide the same services as currently for ACLD, plus the addition of Pediatric services.

It is noted that the majority of the patients that use the services of this D&TC are classified as individuals with developmental disabilities.

DOH Recommendation
Contingent Approval

Need Summary
The clinic will continue to provide necessary services and serve as a medical home to a special population of people with developmental disabilities.

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 facility has completed several steps involved in the FQHC certification process and expects to receive FQHC designation before the end of the first year of operations.

FQHC Budget (Year 1)	Revenues:	\$4,091,651
	Expenses:	<u>\$4,081,150</u>
	Gain/(Loss):	\$ 10,501

FQHC Budget (Year 3)	Revenues:	\$4,503,091
	Expenses:	<u>\$4,157,390</u>
	Gain/(Loss):	\$ 345,701

As the facility is currently in the process of applying for FQHC designation, the DOH requested a sensitized budget to be provided for both year 1 and year 3 based on the current D&TC rates.

D&TC rate sensitized budget (Year 1)	Revenues:	\$3,158,893
	Expenses:	<u>\$3,157,054</u>
	Gain/(Loss):	\$1,839

D&TC rate sensitized budget (Year 3)	Revenues:	\$3,349,536
	Expenses:	<u>\$3,343,510</u>
	Gain/(Loss):	\$6,026

DOH staff has reviewed the D&TC budgets under both rate structures and has determined that the applicant can meet costs and maintain at least a break-even operating margin under current D&TC rates of payment.

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

Approval contingent upon:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed building lease agreement acceptable to the Department of Health. [BFA]
3. Submission of an executed medical records custody agreement acceptable to the Department of Health. [BFA]
4. Submission of an executed movable equipment asset purchase agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement for the movable equipment between Adults and Children with Learning and Developmental Disabilities, Inc., and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
6. Submission of an executed subvention agreement for the working capital between Adults and Children with Learning and Developmental Disabilities, Inc. and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
7. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of the applicants executed bylaws, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Amendment to the applicants Certificate of Incorporation, acceptable to the Department. [CSL]
12. Submission of evidence of the transfer of the operational assets of Adults and Children with Learning and Developmental Disabilities, Inc. to the applicants, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of Federally Qualified Health Center (FQHC) designation for the Charles Evans Health Center, Inc. [BFA]
3. Submission of an executed FQHC sub-recipient agreement between Hudson River Health Care, Inc., and Charles Evans Health Care Center, Inc. [BFA]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Charles Evans Health Center, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]

Council Action Date

October 2, 2014

Need Analysis

Background

Charles Evans Health Center, Inc. (CEHC) is requesting approval to establish ownership of an existing Article 28 diagnostic and treatment center operated by Adults and Children with Learning and Developmental Disabilities, Inc. (ACLD). The location of the D&TC is 857 South Oyster Bay Road, Bethpage, 11714, in Nassau County. CEHC is a proposed new 501(c)(3) not-for-profit entity.

Analysis

Service area includes all of Nassau County and the western section of Suffolk County having zip codes 11701, 11702, 11703, 11704, 11726, 11729, 11743, 11746, 11747, 11757, 11795, and 11798. Upon approval of this CON, CEHC will continue operations at the existing Article 28 site on South Oyster Bay Road. All services related to the Article 28 D&TC will be transferred to CEHC and be located on the 1st floor of the building, while the Article 16 services will be re-located to the 2nd floor.

The center will provide the following services:

- Medical Services – Primary Care
- Certified Mental Health Services
- Dental
- Medical Social Services
- Nutrition
- Podiatry
- Psychology
- Radiology-Diagnostic
- Therapy-Occupational
- Therapy-Physical
- Therapy-Speech Language Pathology

Total number of visits in 2013 was 16,855, 35 percent of which were primary care visits. The number of projected visits is 17,901 in year 1 and 18,804 in year 3, with 36 percent primary care visits.

Prevention Quality Indicators - PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The applicant reports a total of nine zip codes within Nassau County having residents at risk; these zip codes are 11520, 11550, 11096, 11561, 11590, 11575, 11553, 11003, and 11542. The table below provides information on the PQI rates for selected major condition categories for these nine zip codes. It shows that these rates are significantly higher for the nine zip codes combined than those for New York State. (Source: NYSDOH)

PQI Rates: Hospital Admissions/100,000 Adults	Nine Zip Codes Combined	New York State
All Acute	654	526
All Circulatory	622	456
All Diabetes	336	224
All Respiratory	448	357
Total All	2,060	1,563

As mentioned earlier, the service area includes all of Nassau County and 12 zip codes (11701, 11702, 11703, 11704, 11726, 11729, 11743, 11746, 11747, 11757, 11795, and 11798) in the western section of Suffolk County. The table below provides information on PQI rates for selected major condition categories for these 12 zip codes in western Suffolk County, plus zip code 11714 where the site is

located. This table shows that these PQI rates for acute and circulatory conditions rates are higher for the 13 zip codes combined than the rates for New York State as a whole. (Source: NYSDOH)

PQI Rates: Hospital Admissions/100,000 Adults	Thirteen Zip Codes Combined*	New York State
All Acute	592	526
All Circulatory	515	456
Total	1,107	982

*Service Area 12 Zip Codes plus Project Site Zip Code 11714 Combined.

Conclusion

The clinic will continue to provide a necessary service and a medical home to a special population of people with developmental disabilities. The clinic also serves several Medically Underserved Areas (MUAs) within Nassau County.

From a need perspective, approval is recommended.

Program Analysis

Program Description

Adults and Children With Learning and Developmental Disabilities, Inc. (ACLD), a dually licensed provider (Article 28 and Article 16), located at 857 South Oyster Bay Road, Bethpage, seeks approval to transfer the site to a new, separate but related, business entity named the Charles Evans Health Center (CEHC).

The Center anticipates being designated as a Federally Qualified Health Center (FQHC) through an agreement with Hudson River Health Care, an FQHC in Long Island. However, due to federal program requirements which stipulate that FQHCs must be separate arms-length entities, ACLD created Charles Evans Health Center, Inc. to serve as the new operator of the site.

Article 28 services will be provided on the 1st floor of the clinic and Article 16 services will be relocated to the 2nd floor of the building. No construction or programmatic changes are planned.

The Center will provide the following services: Certified Mental Health; Dental; Medical Social Services; Nutrition; Podiatry; Psychology; Radiology – Diagnostic; Therapy – Occupational; Therapy – Physical; and Therapy - Speech Language Pathology; Medical Services – Primary Care

Character and Competence

The board of directors of the Charles Evans Health Center, Inc. are:

Anne Emmerson, EdD	President
Robert Dibble, PhD	Vice President
Ellen Spiegel	Secretary/Treasurer

Dr. Emmerson has 30 years of experience in academia in roles such as Associate Vice President for Academic Affairs and Associate Dean of Instruction. Presently, she serves as a part-time Adjunct Faculty Member in the Administrative Business Technology Department at Nassau Community College. Dr. Dibble has over 15 years of experience as the Director of the Center for Human Resources Studies at New York Institute of Technology. Ms. Spiegel is recently retired from Suffolk Community College where she was employed as an Adjunct Professor of Mathematics. All three of the aforementioned individuals have each served for over 18 years on the Board of Directors of Adults & Children with Learning & Developmental Disabilities.

In addition, Richard Kessler, D.O., has served as the Center's Medical Director since 1995, and he will continue to serve the Center in that role.

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.

From a programmatic perspective, approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operation will be effectuated in accordance with the terms of the draft Acquisition Agreement summarized below:

Transferor:	Adults and Children with Learning and Developmental Disabilities, Inc.
Transferee:	Charles Evans Health Center, Inc.
Assets Transferred:	ACLD's D&TC Operating Certificate only
Liabilities Assumed:	None
Purchase Price:	\$0

Medical Records Custody Agreement

The change in ownership of the facility also includes the change in ownership of the medical records of the facility and will be effectuated in accordance with the terms of the draft Medical Records Custody Agreement summarized below:

Transferor	Adults and Children with Learning and Developmental Disabilities, Inc.
Transferee:	Charles Evans Health Center, Inc.
Assets Transferred:	All medical records associated with the operation of the facility.
Purchase Price:	\$0

Moveable Equipment Asset Purchase Agreement

The change in ownership of the movable equipment of the operation will be effectuated in accordance with the terms of the draft Movable Equipment Asset Purchase Agreement summarized below:

Seller:	Adults and Children with Learning and Developmental Disabilities, Inc.
Purchaser:	Charles Evans Health Center, Inc.
Assets Transferred:	All furniture and equipment, medical and non-medical, used in the daily operations of the facility.
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	Net book value of the movable equipment (to be determined when final approval of the NYSDOH Public Health and Health Planning Council is issued to the purchaser for operation of an Article 28 D&TC, estimated at approximately \$277,149 as of 8/21/2014)

Financing is proposed as follows:

Cash for Movable equipment \$277,149
(Through Subvention Agreement)

Subvention Agreements

The Applicant has entered into 2 subvention agreements for the project cost of \$277,149 and for the working capital of \$1,800,000.

Date: To be determined
Subvention Grantor: Adult and Children with Learning and Developmental Disabilities (ACLD)
Subvention Grantee: Charles Evans Health Center, Inc.
Subvention Amount: \$277,149 movable equipment
 \$1,800,000 working capital

The subvention agreements bear interest in the amount of 4% per annum, but are subordinate to all other debts and liabilities of the CEHC and will only be paid back to the Grantor when the financial condition of CEHC permits the required payment to be made from the surplus of CEHC.

Lease Rental Agreement

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

Premise: 857 South Oyster Bay Road, Bethpage, NY (1st floor & portion of basement) 10,894 sq. ft.
Lessor: Adults and Children with Learning and Developmental Disabilities, Inc.
Lessee: Charles Evans Health Center, Inc.
Rental: \$460,816.20 (\$42.30 per sq. ft. and \$38,401.35 per month)
Term: 10 years
Provision: The lessee shall be responsible for any real estate taxes, utilities and repairs and maintenance.
Type: Arm's Length

The landlord has agreed to eliminate the rental fees for the first 3 years of operation of the facility. The rental fees will be restored once the facility achieves FQHC status.

The applicant has provided two real estate letters attesting to the reasonableness of the per square foot rental amount for the site.

Operating Budget

The applicant has submitted an operating budget, in 2014 dollars, for the 1st and 3rd years of operation, summarized below:

FQHC	<u>YEAR 1</u>	<u>YEAR 3</u>
Revenues*	\$4,091,651	\$4,503,091
Expenses		
Operating	\$3,323,597	\$3,524,087
Capital	<u>757,553</u>	<u>633,303</u>
Excess of Revenues over Expenses	\$10,501	\$345,701
Visits	17,901	18,804
Cost Per Visit	\$227.98	\$221.09

**Revenues include: HRSA Federal 330 Grant Funds in the amount of \$50,000 for year 1 and \$50,000 for year 3; Meaningful Use Incentives in the amount of \$85,000 for year 1 and \$85,000 for year 3; \$130,791 in 340B Pharmacy Program revenue for year 3 only; and Other Revenue classified as Non-MH Revenue Managed Care Incentives in the amount of \$174,295 for year 1 and \$218,273 for year 3.*

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

FQHC	<u>YEAR 1</u>	<u>YEAR 3</u>
Medicaid Managed Care	17.07%	17.07%
Medicare Fee-for-Service	73.53%	73.54%
Commercial Fee-for-Service	1.63%	1.62%
Self-Pay/Other	7.77%	7.77%

Expense and utilization assumptions are based on the current operating experience at ACLD. The Medicare, Medicaid and Self-Pay rates are based on cost-based FQHC rates. The Private Insurance rates are based on ACLD's experience, using their most recent AHCF cost report as the source.

The applicant has indicated that charity care utilization is lacking because ACLD's historical mission was to provide services to the developmentally disabled population, the majority of which qualified for either Medicare and/or Medicaid benefits. As such, ACLD served a specialized population and had few uninsured walk-in patients. For such uninsured patients, the facility provided eligibility assistance services to see if they could qualify for public or private insurance programs. Once the facility converts to a FQHC, their mission will be to expand their operation to include the general population as well as the developmentally disabled. As an FQHC, the facility will see all patients regardless of their ability to pay and anticipates an increase in charity care as a result of FQHC designation.

Sensitized Budget

The applicant has provided a sensitized budget for the 1st and 3rd years of operation in 2014 dollars based on the current D&TC reimbursement rates, as summarized below:

Sensitized D&TC rates	<u>YEAR 1</u>	<u>YEAR 3</u>
Revenues*	\$3,158,893	\$3,349,536
Expenses		
Operating	\$3,048,544	\$3,288,466
Capital	<u>108,510</u>	<u>55,044</u>
Total Expenses	\$3,157,054	\$3,343,510
Excess of Revenues over Expenses	\$1,839	\$6,026
Visits	17,901	18,804
Cost Per Visit	\$176.36	\$177.81

**Revenues include Meaningful Use Incentives in the amount of \$85,000 for year 1 and \$85,000 for year 3, and Other Revenue classified as Non-MH Revenue Managed Care Incentives in the amount of \$174,295 for year 1 and \$218,273 for year 3.*

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

Sensitized rates	<u>YEAR 1</u>	<u>YEAR 3</u>
Medicaid Managed Care	17.07%	17.07%
Medicare Fee-for-Service	73.53%	73.54%
Commercial Fee-for-Service	1.63%	1.62%
Self-Pay/Other	7.77%	7.77%

Budget differences resulting from the use of sensitized D&TC rate assumptions are due to the following:

- ACLD, who is both the lessor and the subvention grantor, is eliminating the rental fees for the first 3 years of operations and eliminating the subvention interest for the first year of operations. The rental fees and the subvention interest will be restored once FQHC status is achieved.
- The HRSA Section 330 Grant revenue and the 340B pharmacy revenues have been eliminated from other revenues.

- Outreach and case management administrative staff expenses have been removed from operating expenses. These operating expenses will not be incurred prior to FQHC designation.

Capability and Feasibility

The applicant has provided draft subvention agreements at the above stated terms to cover the working capital requirements, the purchase price of the required movable equipment and start-up costs for operations. The funds will come from ACLD. ACLD has provided their most current certified financial statements, shown as BFA Attachment B, which shows sufficient resource to cover this funding.

Working capital requirements based on the FQHC budgets are estimated at \$692,898 based on 2 months of year 3 expenses. This appears reasonable based on the facility achieving FQHC status.

Working capital requirements based on the sensitized D&TC rate based budgets are estimated at \$557,252 based on 2 months of year 3 expenses. This appears reasonable based on current D&TC rate assumptions.

The applicant has provided a draft subvention agreement sufficient to cover either of the working capital requirements (FQHC or D&TC) shown above. The working capital subvention agreement is for \$1,800,000 at a 4% interest rate issued by ACLD.

The submitted FQHC rate based budgets indicate a net income of \$10,501 in year 1 and \$345,701 in Year 3. Revenues are based on current reimbursement methodologies for D&TC services for Private Pay only, and are based on the FQHC rates for Medicaid, Medicare and Self-Pay. The budgets appear reasonable based on the facility receiving FQHC designation.

The submitted sensitized D&TC rate based budgets indicate a net income of \$1,839 in year 1 and \$6,026 in year 3. Revenues are based on the current reimbursement methodologies for D&TC facilities. The sensitized budgets appear reasonable.

As shown on BFA Attachment B Certified Financial Statements for ACLD, ACLD had average positive working capital and net asset positions, and generated an average net income of \$275,117 during the period 2012 through 2013.

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	Pro-forma Balance Sheet of Charles Even Center, Inc.
BFA Attachment B	Certified Financial Statements for Adults & Children with Learning & Developmental Disabilities 2012-2013

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Charles Evans Health Center, Inc. as the new operator of the facility located at 857 South Oyster Bay Road, Bethpage, currently operated by Adults and Children With Learning and Developmental Disabilities, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142024 E

Charles Evans Health Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of an executed building lease agreement acceptable to the Department of Health. [BFA]
3. Submission of an executed medical records custody agreement acceptable to the Department of Health. [BFA]
4. Submission of an executed movable equipment asset purchase agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement for the movable equipment between Adults and Children with Learning and Developmental Disabilities, Inc., and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
6. Submission of an executed subvention agreement for the working capital between Adults and Children with Learning and Developmental Disabilities, Inc. and Charles Evans Health Center, Inc., acceptable to the Department of Health. [BFA]
7. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of the applicants executed bylaws, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed and signed facility lease agreement, acceptable to the Department. [CSL]
11. Submission of an executed Certificate of Amendment to the applicants Certificate of Incorporation, acceptable to the Department. [CSL]
12. Submission of evidence of the transfer of the operational assets of Adults and Children with Learning and Developmental Disabilities, Inc. to the applicants, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of Federally Qualified Health Center (FQHC) designation for the Charles Evans Health Center, Inc. [BFA]
3. Submission of an executed FQHC sub-recipient agreement between Hudson River Health Care, Inc., and Charles Evans Health Care Center, Inc. [BFA]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]

7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Charles Evans Health Center, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 142031-B
LISH, Inc. d/b/a LISH at Central Islip

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment and Construction **Acknowledged:** July 25, 2014

Executive Summary

Description

LISH, Inc. (LISH), a newly formed, New York State not-for-profit corporation, is seeking approval to be established as the operator of a diagnostic and treatment center (DTC) located at 159 Carleton Avenue, Central Islip, and 6 extension clinic sites located in Suffolk and Nassau counties. LISH will take over the operation of four Article 28 DTC sites and three DTC extension clinics currently operated by four organizations that provide primary and specialty medical and dental services, predominantly to developmentally disabled individuals. These four entities are as follows:

- Developmental Disabilities Institute, Inc. (DDI)
- Family Residences and Essential Enterprises, Inc. (FREE)
- United Cerebral Palsy of Nassau County, Inc. (UCPN)
- United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk).

The entities are currently certified for the following Article 28 services:

- DDI: Primary Medical Care; Podiatry; Psychology; Speech, Physical and Occupational Therapies; Radiology-Diagnostic; Dental; Medical Social Services; Nursing and Nutritional services; Audiology; Physical Medicine and Rehabilitation; Certified Mental Health Services; Optometry; Clinical Laboratory service; Pediatric; Well Child Care and Clinic Part Time services.
- FREE: Primary Medical Care; Podiatry; Psychology; Speech, Physical and Occupational Therapies; Radiology-Diagnostic; Dental; Medical Social Services; Audiology; Physical Medicine and Rehabilitation; Optometry; Pediatric and Family Planning.
- UCPN: Primary Medical Care; Podiatry; Psychology; Vocational, Speech, Physical and Occupational Therapies; Dental; Medical Social Services;

Nutritional services; Audiology; Physical Medicine and Rehabilitation; Optometry; Pediatric and Certified Mental Health services.

- UCP Suffolk: Primary Medical Care; Podiatry; Psychology; Vocational, Speech, Physical and Occupational Therapies; Dental; Medical Social Services; Nursing; Audiology; Physical Medicine and Rehabilitation; Certified Mental Health services and Clinic Part Time services.

DDI, FREE, UCPN and UCP Suffolk have joined together to form LISH, Inc. for the purpose of ensuring that health services currently provided to their at-risk populations remain financially viable for the future.

DDI, FREE, UCPN and UCP Suffolk do not have an ownership percentage or a right to manage or control the operations of LISH. The intent of this new entity is to increase overall access to care and achieve efficiencies of scale by placing currently fragmented operations under one comprehensive network of community health centers. LISH intends to serve all underserved populations throughout Long Island, with a primary focus on patients with developmental disabilities.

LISH, Inc.'s main site will be located in Suffolk County at 159 Carleton Avenue, Central Islip, NY. Site control for all of the above listed locations will be done through the lease agreements. The six extension clinics that will be operated by LISH, Inc. are listed below:

- LISH at the Family Wellness Center located at 120 Plant Street, Hauppauge, NY (Suffolk County);
- LISH at the Fortunoff Treatment & Rehabilitation Center located at 380 Washington Avenue, Roosevelt, NY (Nassau County);
- LISH at Manorville located at 221 North Sunrise Highway Service Road, Manorville, NY (Suffolk County);

- LISH at Port Jefferson Station located at 51-33 Terryville Road, Port Jefferson Station, NY (Suffolk County);
- LISH at Riverhead located at 883 E. Main Street, Riverhead, NY (Suffolk County);
- LISH at Smithtown located at Landing Meadow Road, Smithtown, NY (Suffolk County).

Upon approval of this CON, LISH will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare (HRCCare), a Federally Qualified Health Center (FQHC) with a network of 22 health centers serving 10 counties in the Hudson Valley and Long Island. LISH, Inc. has a Letter of Interest from HRCCare to become a FQHC sub-grantee.

DOH Recommendation
Contingent Approval

Need Summary

LISH proposes to serve all underserved populations throughout Long Island, but its primary focus will be on serving patients with developmental disabilities (DD).

Upon approval of this project, LISH will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

The number of projected visits for all sites combined is 74,820 in year 1, of which 36 percent is expected to be primary care visits.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's

character and competence or standing in the community.

Financial Summary

Total Project costs of \$1,080,645 will be met with cash through a subvention agreement.

The project is comprised of seven sub-projects as follows:

<u>Project Specific Budgets:</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Gain/(Loss)</u>
Central Islip	\$2,810,306	\$2,725,365	\$84,941
Family Wellness Ctr.	\$4,153,304	\$2,181,439	\$1,971,865
Fortunoff TR Ctr.	\$2,413,678	\$1,800,548	\$613,130
Manorville	\$338,736	\$217,554	\$121,182
Port Jefferson Station	\$829,870	\$412,236	\$417,634
Riverhead	\$3,153,850	\$2,530,764	\$623,086
Smithtown	\$2,377,512	\$1,651,188	\$726,324
Total	\$16,077,256	\$11,519,094	\$4,558,162
Total Proj. Budget * /**	\$16,152,256	\$15,157,131	\$995,125

* Total Project Budget Revenue includes \$75,000 in HRSA Section 330 Grant funding, anticipated in year three, which is not reflected in any of the subproject schedules.

**Total Project Budget Expenses includes \$3,638,037 for administrative office centralization that is not reflected in the site specific subprojects.

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 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 evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the seven (7) sites. [HSP]
4. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc., United Cerebral Palsy of Nassau County, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
6. Submission of the executed building lease agreements, acceptable to the Department of Health, for the LISH at Central Islip site, Port Jefferson Station site, Smithtown site, Manorville site, LISH at Riverhead site, Family Wellness Center and Fortunoff Treatment & Rehabilitation Center. [BFA]
7. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc., and LISH, Inc. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee) acceptable to the Department of Health. [BFA]
9. 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 date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from 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. LISH, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AER]
8. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
9. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]
10. The applicant shall complete construction by December 31, 2014. 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

October 2, 2014

Need Analysis

Background

LISH, Inc. is requesting approval to establish a diagnostic and treatment center (DTC) and six (6) extension clinics to serve Nassau and Suffolk counties. All sites are currently operated as Article 28 facilities by four different operators.

Analysis

LISH will take over the operations of four (4) DTCs and three (3) extension clinics, which are currently operated by four (4) human services organizations, to provide primary and specialty medical care and dental services primarily to patients with developmental disabilities.

The table below identifies the service area for each site.

<u>Proposed Sites</u>	<u>City</u>	<u>Zip Code</u>	<u>Service Area</u>
Suffolk County			
D&TC Main Site: UCPA of Greater Suffolk, Inc.-159 Carleton Avenue	Central Islip	11722	11722, 11716, 11717, 11752
Extension Clinic: Family Residence & Essential Enterprises (Fam Wellness Ctr) 120 Plant Street	Hauppauge	11788	11788, 11725, 11749, 11779
Extension Clinic: DD @Opti-Healthcare-Meadow Glen, Landing Meadow Road	Smithtown	11787	11787, 11754, 11767, 11780
Extension Clinic: DD @Opti-Healthcare 221 North Sunrise Hwy Service Road	Manorville	11941	11941, 11949, 11940, 11977, 11978
Extension Clinic: UCPA-Greater Suffolk (GS) @UCPA-GS-51-33 Terryville Road	Port Jefferson Stn.	11776	11776, 11720, 11733, 11766, 11777, 11784
Extension Clinic: Opti-Healthcare 883 E Main Street	Riverhead	11901	11901, 11792, 11933, 11948
Nassau County			
Extension Clinic: UCP Treatment And Rehab Center, 380 Washington Ave (Fortunoff T&R Ctr)	Roosevelt	11575	11575, 11520, 11550, 11549, 11553, 11590, 11530, 11554

Proposed services at the main site and the six extension clinics are Medical Services-Primary Care, Medical Services-Other Medical Specialties, and Dental Care O/P.

The number of projected visits for all sites combined is 74,820 in year 1 and 78,608 in year 3, which includes 36 percent primary care visits, as shown below.

Type	LISH		Year 1	Year 3	Year 1	Year 3
	Proposed Sites		Total Visits	Total Visits	% Primary Care	% Primary Care
Main Site	Central Islip		12,060	12,670	32.7%	32.7%
Ext. Clinic	Hauppauge-Fam Wellness Ctr		19,904	20,912	37.2%	37.2%
Ext. Clinic	Manorville		1,500	1,577	56.2%	56.2%
Ext. Clinic	Port Jefferson Station		3,430	3,604	49.4%	49.4%
Ext. Clinic	Riverhead		14,597	15,335	35.5%	35.5%
Ext. Clinic	Roosevelt-Fortunoff T&R		12,746	13,391	27.2%	27.2%
Ext. Clinic	Smithtown		10,583	11,119	42.2%	42.2%
Total Project			74,820	78,608	36.1%	36.1%

Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for major condition categories such as acute conditions and respiratory. The rates are presented for the zip codes of the six sites combined in Suffolk County, the zip code of the Nassau County site, and also for the entire State.

The table shows that these rates are significantly unfavorable for these PQI conditions in the service areas. The overall total rate is significantly higher at 1,756 admissions per 100,000 adults for the Suffolk County Sites and 3,224 admissions per 100,000 adults for the Nassau County Site vs. 1,563 admissions per 100,000 adults for NYS.

Hospital Admissions per 100,000 Adult for Selected PQIs:

<u>PQI Rates</u>	<u>Suffolk County Sites*</u>	<u>Nassau County Site**</u>	<u>NYS</u>
All Acute	607	851	526
All Respiratory	362	696	357
All PQIs***	1,756	3,224	1,563

Source: NYSDOH-PQI

*Suffolk County Sites Zip Codes: Main Site (11722) plus Five Extension Clinic Sites (11788, 11787, 11941, 11776, and 11901) Combined.

**Nassau County Site Zip Code: 11575.

***All PQIs include major condition categories such as acute conditions, circulatory, diabetes, and respiratory.

Conclusion

The proposed project will reorganize these respective Article 28 clinics into a comprehensive network of community health centers, thereby increasing access to primary and specialty medical and dental care services for all underserved populations throughout Long Island. Its primary focus will be serving patients with developmental disabilities (DD).

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

LISH, Inc. (LISH), a newly-formed, New York not-for-profit corporation formed through the joining of four (4) human services organizations—Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc., United Cerebral Palsy of Nassau County, Inc., and United Cerebral Palsy of Greater Suffolk, Inc. —seeks approval to establish an Article 28 diagnostic and treatment center (D&TC) and six (6) extension clinic sites located throughout Suffolk and Nassau Counties.

As part of this proposal, LISH will take over the operations of four (4) D&TCs and three (3) extension clinics that provide primary and specialty medical and dental services primarily to patients with developmental disabilities. The clinics have been operated by the aforementioned organizations, however, by reorganizing their respective Article 28 clinic services into a comprehensive network of community health centers, the entities aim to increase access to primary and specialty medical and dental care and achieve efficiencies of scale that will ensure the financial sustainability of the organizations, resulting in preservation of essential developmental disability services.

Construction is proposed for only one site (LISH at Port Jefferson Station). The applicant does not anticipate any changes in hours or staffing from the current operators. LISH will add hours and adjust staffing as volume and demand for services increases. Upon approval, LISH, Inc. will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

LISH, Inc. will become the operator of the following:

Proposed Name of Site	Proposed Site Type	Address	Current Operator	PFI	OpCert#	County
LISH at Central Islip	D&TC Main Site	159 Carleton Ave. Central Islip NY 11722	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	914	5157203R	Suffolk
LISH at Port Jefferson Station	Ext Clinic	51-33 Terryville Rd. Port Jefferson Station, NY 11776	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	5718	5157203R	Suffolk
LISH at the Family Wellness Center	Ext Clinic	120 Plant St. Hauppauge, NY 11788	Family Residences and Essential Enterprises, Inc.	6240	5157205R	Suffolk
LISH at Smithtown	Ext Clinic	Landing Meadow Rd, Smithtown, NY 11787	Developmental Disabilities Institute, Inc.	4940	5155202R	Suffolk
LISH at Manorville	Ext Clinic	221 North Sunrise Highway Service Rd, Manorville, NY 11941	Developmental Disabilities Institute, Inc.	4864	5155202R	Suffolk
LISH at Riverhead	Ext Clinic	883 East Main St. Riverhead, NY 11901	Developmental Disabilities Institute, Inc.	4862	5155202R	Suffolk
LISH at the Fortunoff Treatment and Rehabilitation Center	Ext Clinic	380 Washington Ave. Roosevelt, NY 11575	United Cerebral Palsy Association of Nassau County Inc.	529	2950200R	Nassau

Character and Competence

The members of LISH, Inc. are:

<u>Name</u>	<u>Affiliation</u>
Robert McGuire	United Cerebral Palsy of Nassau County, Inc.
Robert Budd	Family Residences and Essential Enterprises, Inc.
John Lessard	Developmental Disabilities Institute, Inc.
Stephen Friedman	United Cerebral Palsy of Greater Suffolk, Inc.

Mr. McGuire has over 30 years of employ with United Cerebral Palsy of Nassau County and currently serves as its Executive Director. Similarly, Mr. Budd has been employed nearly 30 years with Family Residences and Essential Enterprises, Inc. and is its Chief Executive Officer. Mr. Lessard's background includes a Pharmacy degree and an M.B.A. For 12 years, he has been employed by Developmental Disabilities Institute, Inc., most recently as its Executive Director. Mr. Friedman has Master's degrees in Education and Business Administration (MBA). For more than 10 years, he has been employed with United Cerebral Palsy of Greater Suffolk, Inc. and currently serves as the agency's President and Chief Executive Officer. As none of the board members are physicians, disclosure information was also submitted and reviewed for James Powell, MD. Dr. Powell has greater than 10 years of experience as the Medical Director of Developmental Disabilities Institute. He has been selected to serve as the Medical Director of the D&TC and all for the extension clinic locations.

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

Mr. Lessard disclosed a pending civil lawsuit dated July 2013 involving all former trustees of a group self-insured trust for Worker's Compensation. Mr. McGuire disclosed a pending legal matter in which a family claimed an event hurt their adult child. Dr. Powell disclosed one settled malpractice case.

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operations will be effectuated in accordance with the terms of the draft Acquisition Agreement, as summarized below:

Transferors:	DDI, FREE, UCPN and UCP Suffolk
Transferee:	LISH, Inc.
Assets Transferred:	The Article 28 D&TC Operating Certificates for DDI, FREE, UCPN and UCP Suffolk only
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	\$0

DDI, FREE, UCPN and UCP Suffolk will surrender their respective Article 28 operating certificates when LISH receives all required approvals to become the operator of the D&TC clinics currently under their licensure.

Total Project Cost and Financing

Total project cost for the renovation and demolition and acquisition of movable equipment for the entire project is estimated at \$1,080,645 broken down as follows:

	Grand Total
Renovation & Demolition	\$ 21,789
Design Contingency	2,179
Construction Contingency	2,179
Movable Equipment	1,046,598
CON Fees	2,000
Additional Processing Fees	<u>5,900</u>
Total Project Cost	<u>\$1,080,645</u>

Subproject costs broken down by site are as follows:

	<u>Central Islip</u>	<u>Family Wellness</u>	<u>Fortunoff TRC</u>	<u>Subtotal</u>
Renovation/Demolition	\$0	\$0	\$0	\$0
Design Contingency	\$0	\$0	\$0	\$0
Constr. Contingency	\$0	\$0	\$0	\$0
Movable Equipment	\$209,336	\$144,714	\$214,446	\$568,496
CON Fees	\$286	\$286	\$286	\$858
Add. Processing Fees	<u>\$1,151</u>	<u>\$796</u>	<u>\$1,180</u>	<u>\$3,127</u>
Total Project Cost	<u>\$210,773</u>	<u>\$145,796</u>	<u>\$215,912</u>	<u>\$572,481</u>

	<u>Manorville</u>	* <u>Port Jefferson</u>	<u>Riverhead</u>	<u>Subtotal</u>
Renovation/Demolition	\$0	\$21,789	\$0	\$21,789
Design Contingency	\$0	\$2,179	\$0	\$2,179
Constr. Contingency	\$0	\$2,179	\$0	\$2,179
Movable Equipment	\$18,373		\$91,864	\$110,237
CON Fees	\$285	\$286	\$286	\$857
Add. Processing Fees	<u>\$101</u>	<u>\$144</u>	<u>\$505</u>	<u>\$750</u>
Total Project Cost	<u>\$18,759</u>	<u>\$26,577</u>	<u>\$92,655</u>	<u>\$137,991</u>

* Project costs are based on a construction start date of June 1, 2015 and a one month construction period.

	<u>Smithtown</u>	<u>Central Admin.</u>	<u>Subtotal</u>	<u>Grand Total</u>
Renovation/Demolition	\$0	\$0	\$0	\$21,789
Design Contingency	\$0	\$0	\$0	\$2,179
Constr. Contingency	\$0	\$0	\$0	\$2,179
Movable Equipment	\$73,491	\$294,374	\$367,865	\$1,046,598
CON Fees	\$285	\$0	\$285	\$2,000
Add. Processing Fees	<u>\$404</u>	<u>\$1,619</u>	<u>\$2,023</u>	<u>\$5,900</u>
Total Project Cost	<u>\$74,180</u>	<u>\$295,993</u>	<u>\$370,173</u>	<u>\$1,080,645</u>

Movable equipment costs of \$294,374 and associated processing fees of \$1,619 are not reflected in the subproject costs as they are specific to the centralization of administrative services.

Financing of the \$1,080,645 total project cost will be met through a subvention agreement.

Subvention Agreement

The Applicant has entered into a subvention agreement for the project cost of \$1,080,645 and the working capital of \$5,000,000.

<u>Date:</u>	<u>To be determined</u>
Subvention Grantors:	<ul style="list-style-type: none"> • DDI • FREE • UCPN • UCP Suffolk
Subvention Grantee:	LISH, Inc.
Subvention Amount:	\$1,080,645 Project cost/ \$5,000,000 Working capital
Interest Charged	0%

This agreement has no interest associated with it, and will only be paid back to the Grantors when the financial condition of LISH permits the required payment to be made without impairment of LISH's operations or injury to its creditors.

Lease Rental Agreements

The applicant has submitted draft leases for all of the sites. The terms of each lease are summarized below:

LISH at Central Islip:

Premises:	14,225 sq. ft. located at 159 Carleton Avenue, Central Islip, NY
Lessor:	UCP Suffolk
Lessee:	LISH, Inc.
Rental:	\$697,648 for year 1 with a 2.5% increase per every year thereafter (\$49.04 per sq. ft.)

Term: 10 Years with (1) 10 year renewal term
Provisions: Triple net, Non-arm's length

LISH at the Family Wellness Center:

Premises: 5,236 sq. ft. located at 120 Plant Street, Hauppauge, NY
Lessor: FREE
Lessee: LISH, Inc.
Rental: \$138,764 for year 1 with a 2.5% increase per every year thereafter (\$26.50 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

LISH at Fortunoff Treatment & Rehabilitation Center:

Premises: 10,238 sq. ft. located at 380 Washington Avenue, Roosevelt, NY
Lessor: UCPN
Lessee: LISH, Inc.
Rental: \$358,140 for year 1 with a 2.5% increase per every year thereafter (\$34.98 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

LISH at Manorville:

Premises: 800 sq. ft. located at 221 North Sunrise Highway Service Road, Manorville, NY
Lessor: Independent Group Home Living, Inc.
Lessee: LISH, Inc.
Rental: \$10,973 year one with a 2.5% increase each year thereafter annually (\$13.72 per sq. ft.)
Term: 5 year term, with (2) 5 year renewal terms
Provisions: Triple Net, arm's length

LISH at Port Jefferson Station:

Premises: 642 sq. ft. located at 51-33 Terryville Road, Port Jefferson Station, NY
Lessor: Mayhaven Center of Hope, Inc.
Lessee: LISH, Inc.
Rental: \$13,024 for year 1 with a 2.5% increase per every year thereafter (\$20.29 per sq. ft.)
Term: Assignment of Lease expires 12/31/15
Provisions: Triple Net, arm's length

LISH at Riverhead:

Premises: 8,672 sq. ft. located at 883 E. Main Street, Riverhead, NY
Lessor: East Riverhead Equities
Lessee/Sublessor: DDI
Sublessee: LISH, Inc.
Rental: \$494,220 for year 1 with a 2.5% increase per every year thereafter (\$56.99 per sq. ft.)
Term: Expires with Prime lease on 6/30/23
Provisions: Triple Net, Non-arm's length

LISH at Smithtown:

Premises: 4,289 sq. ft. located at Landing Meadow Road, Smithtown, NY.
Lessor: DDI
Lessee: LISH, Inc.
Rental: \$184,399 for year 1 with a 2.5% increase per every year thereafter (\$42.99 per sq. ft.)
Term: 10 Years with (1) 10 year renewal term
Provisions: Triple Net, Non-arm's length

The applicant has provided confirmation that the leases with UCP Suffolk, FREE, and DDI will be pass through rates based on costs. The lease with UCPN will be based on Fair Market Value.

Operating Budget

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

	<u>Year 1</u>	<u>Year 3</u>
Revenues*	\$14,703,921	\$16,152,256
Expenses		
Operating	\$12,519,721	\$13,008,981
Capital	<u>2,074,462</u>	<u>2,148,150</u>
Total Expenses	\$14,594,183	\$15,157,131
Excess of Revenues over Expenses	<u>\$109,738</u>	<u>\$995,125</u>
Visits	74,820	78,608
Cost Per Visit	\$195.06	\$192.82

*Revenues include \$75,000 in HRSA Federal 330 Grant Funds for both year 1 and year 3, \$176,501 in meaningful use incentives for both year 1 and year 3, \$558,428 in 340B net revenue for year 3 only, \$959,125 year 1 and \$1,007,681 year 3 Non-MH Therapy MCR/MCD Revenue and \$481,325 in Other revenue for both year 1 and year 3.

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	27.30%	27.30%
Medicare	59.04%	59.04%
Commercial	2.52%	2.52%
Private Pay/Other*	10.88%	10.88%
Charity Care	.26%	.26%

*Other payor source is comprised of visits classified as Non- Mental Health and are included as other operating revenue under the line non-MH Therapy MCR/MCD revenue. Year 1 was \$959,125 and year 3 was \$1,007,681.

Charity care is below the recommended 2% as the clinics currently focus on the developmentally disabled population, nearly all of whom are covered by Medicaid or Medicare. Once the facility becomes a FQHC sub-grantee, they will expand to provide services to a broader array of patients including the general public. As a FQHC sub-grantee, the facility will see all types of patients regardless of their ability to pay and anticipates an increase in charity care.

The applicant has also submitted operating budgets in 2014 dollars for each of the 7 subprojects/sites, as summarized below:

LISH at Central Islip:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,564,741	\$2,810,306
Expenses		
Operating	\$1,804,342	\$1,950,417
Capital	<u>739,630</u>	<u>774,948</u>
Total Expenses	\$2,543,972	\$2,725,365
Excess of Revenues over Expenses	\$20,769	\$84,941
Visits	12,060	12,670
Cost Per Visit	\$210.94	\$215.10

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	15.86%	15.86%
Medicare	60.67%	60.67%
Commercial	5.79%	5.79%
Private Pay/Other	17.45%	17.44%
Charity Care	.23%	.24%

LISH at the Family Wellness Center:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$3,905,268	\$4,153,304
Expenses		
Operating	\$1,849,978	\$1,998,024
Capital	<u>174,452</u>	<u>183,415</u>
Total Expenses	\$2,024,430	\$2,181,439
Excess of Revenues over Expenses	\$1,880,838	\$1,971,865
Visits	19,904	20,912
Cost Per Visit	\$101.71	\$104.32

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	24.73%	24.73%
Medicare	67.53%	67.53%
Commercial	1.39%	1.39%
Private Pay/Other	6.24%	6.24%
Charity Care	.11%	.11%

LISH at the Fortunoff Treatment & Rehabilitation Center:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,211,207	\$2,413,678
Expenses		
Operating	\$1,293,883	\$1,385,693
Capital	<u>396,108</u>	<u>414,855</u>
Total Expenses	\$1,689,991	\$1,800,548
Excess of Revenues over Expenses	\$521,216	\$613,130
Visits	12,746	13,391
Cost Per Visit	\$132.59	\$134.46

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	34.63%	34.63%
Medicare	31.30%	31.30%
Commercial	.98%	.98%
Private Pay/Other	33.08%	33.08%
Charity Care	.01%	.01%

LISH at Manorville:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$299,950	\$338,736
Expenses		
Operating	\$187,635	\$202,359
Capital	<u>14,639</u>	<u>15,195</u>
Total Expenses	\$202,274	\$217,554
Excess of Revenues over Expenses	\$97,676	\$121,182
Visits	1,500	1,577
Cost Per Visit	\$134.85	\$137.95

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	32.47%	32.47%
Medicare	66.33%	66.33%
Commercial	.93%	.95%
Private Pay	.20%	.19%
Charity Care	.07%	.06%

LISH at Port Jefferson Station:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$756,569	\$829,870
Expenses		
Operating	\$369,390	\$398,553
Capital	<u>13,024</u>	<u>13,683</u>
Total Expenses	\$382,414	\$412,236
Excess of Revenues over Expenses	\$374,155	\$417,634
Visits	3,430	3,604
Cost Per Visit	\$111.49	\$114.38

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	19.10%	19.10%
Medicare	73.00%	73.00%
Commercial	6.97%	6.97%
Private Pay/Other	.64%	.64%
Charity Care	.29%	.29%

LISH at Riverhead:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,786,318	\$3,153,850
Expenses		
Operating	\$1,846,091	\$1,993,194
Capital	<u>512,550</u>	<u>537,570</u>
Total Expenses	\$2,358,641	\$2,530,764
Excess of Revenues over Expenses	\$427,677	\$623,086
Visits	14,597	15,335
Cost Per Visit	\$161.58	\$165.03

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	31.86%	31.86%
Medicare	61.69%	61.69%
Commercial	2.97%	2.97%
Private Pay	2.58%	2.59%
Charity Care	.90%	.89%

LISH at Smithtown:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,104,868	\$2,377,512
Expenses		
Operating	\$1,521,629	\$1,636,524
Capital	<u>14,664</u>	<u>14,664</u>
Total Expenses	\$1,536,293	\$1,651,188
Excess of Revenues over Expenses	\$568,575	\$726,324
Visits	10,583	11,119
Cost Per Visit	\$145.17	\$148.50

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

	<u>Year 1</u>	<u>Year 3</u>
Medicaid	31.98%	31.98%
Medicare	65.36%	65.36%
Commercial	.94%	.94%
Private Pay	1.64%	1.64%
Charity Care	.08%	.08%

Revenue, expense and utilization assumptions are based on the historical operating experience of the seven currently operating Article 28 clinics sites along with the experience of the four entities that have run the clinics: DDI, FREE, UCPN and UCP Suffolk.

Capability and Feasibility

The project costs and the working capital will be provided by a subvention agreement from DDI, FREE, UCPN and UCP Suffolk for \$6,080,645 at the stated terms. The current certified financial statements for the four entities are provided as BFA Attachments B through E, which show sufficient resources.

Working capital requirements are estimated at \$2,526,189 based on 2 months of year 3 expenses of \$15,157,131, which appear reasonable. The applicant has provided the Department with a subvention agreement for the working capital in the amount of \$5,000,000 at the above stated terms. The additional working capital provided through the subvention agreement is to minimize any cash flow concerns that may be encountered resulting from a delay in obtaining FQHC Medicaid rates due to the rate-setting process.

The submitted budget indicates a net income of \$109,738 and \$995,125 in Year 1 and 3 respectively, and assumes receipt of stated grant funds. Revenues are based on current reimbursement methodologies for FQHC diagnostic and treatment services. HRHCare has provided a letter of interest for LISH to become a sub-grantee and will submit a change in scope request on or about October 1, 2014, to add the LISH sites to its Federal scope of project. HRSA typically approves such changes in scope requests within approximately 120 days of submission of the request, at which point the LISH sites would be eligible for FQHC Medicaid rates. The DTC is anticipated to go live on or about February 1, 2015, the same time that the FQHC sub-grantee recipient/change in scope of project approval is expected to be obtained. Hence, approvals will converge and the DTC will never be operational without the FQHC rates. The budget appears reasonable.

BFA Attachment B is the certified financial summary of DDI for 2012 and 2013, which indicates the facility experienced an average positive working capital, maintained an average positive member's equity, and generated an average net income of \$755,091 for the period.

BFA Attachment C is the certified financial summary of FREE for 2012 and 2013, which indicates the facility experienced an average negative working capital, maintained an average positive member's equity, and generated an average net income of \$654,549 for the period. The negative working capital in 2013 is a result of \$3.4 million in deferred revenue and recoveries, primarily due to the following:

- In July 2011, OPWDD issued a draft rate adjustment in FREE's Intermediate Care Facilities (ICF) program that was a reduction of about \$1.2 million per year. They were not able to get final approval on that rate until this year, and have begun to recover the overpayment this month. In the interim, FREE deferred the revenue on its financial statements.
- In 2013 FREE received retroactive payments via its Medicaid rates to pay for day rehab services for ICF residents. Since New York State had previously paid FREE directly for this service, the rate adjustment was deferred pending recovery by the State. A recoupment of approximately \$1.2 million occurred in January and February 2014.
- The remaining amount comes from other smaller contract advances and unearned revenue.

BFA Attachment D is the certified financial summary of UCPN for 2012 and 2013, which indicates the facility experienced an average positive working capital, maintained an average positive member's equity, and generated an average net income of \$1,023,363 for the period

BFA Attachment E is the certified financial summary of UCP Suffolk for 2012 and 2013, which indicates the facility experienced an average positive working capital, average positive member's equity, and generated an average net income of \$182,702 for the period.

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	Pro-forma Balance Sheet of LISH, Inc.
BFA Attachment B	2012-2013 Certified financials Developmental Disabilities Institute, Inc. and Affiliate
BFA Attachment C	2012-2013 Certified financials Family Residences & Essential Enterprises, Inc.
BFA Attachment D	2012-2013 Certified financials United Cerebral Palsy Association of Nassau County, Inc.
BFA Attachment E	2012-2013 Certified financials United Cerebral Palsy Association of Greater Suffolk, Inc.
BFA Attachment F	LISH, Inc. Org chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a diagnostic and treatment center to be located at 159 Carleton Avenue, Central Islip and six (6) extension clinics to serve Nassau and Suffolk counties. All sites are currently operated as Article 28 facilities by four different operators, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142031 B

LISH, Inc. d/b/a LISH at Central Islip

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 evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the seven (7) sites. [HSP]
4. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
5. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc., United Cerebral Palsy of Nassau County, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
6. Submission of the executed building lease agreements, acceptable to the Department of Health, for the LISH at Central Islip site, Port Jefferson Station site, Smithtown site, Manorville site, LISH at Riverhead site, Family Wellness Center and Fortunoff Treatment & Rehabilitation Center. [BFA]
7. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc., and LISH, Inc. [BFA]
8. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee) acceptable to the Department of Health. [BFA]
9. 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 date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from 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. LISH, Inc. may not commence operations until the Article 16 services have relocated to separate and distinct space. [OPWDD]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AER]

8. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
9. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]
10. The applicant shall complete construction by December 31, 2014. 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141221-B
 True North DC, LLC d/b/a Port Washington Dialysis Center

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment and Construction **Acknowledged:** May 21, 2014

Executive Summary

Description

True North DC, LLC (True North) is requesting approval to acquire Port Washington Dialysis Center, an 18-station chronic renal dialysis facility located at 50 Seaview Blvd., Port Washington (Nassau County), from the current operator, Knickerbocker Dialysis, Inc. The applicant also seeks approval for the construction and certification of an extension clinic to provide chronic renal dialysis home training and support for patients suffering from end stage renal disease. The training clinic will operate under the name Floral Park Home Training Center. The Training Center will be located at One Cisney Avenue, Floral Park, NY 11001 (Nassau County).

The current and proposed ownership is as follows:

Current Owners:

Knickerbocker Dialysis, Inc.	100%
------------------------------	------

Proposed Owners:

*NSLIJ Renal Ventures, LLC	49%
** Knickerbocker Dialysis, Inc.	51%

*The members of North Shore-LIJ Renal Ventures, LLC (NSLIJ) are North Shore University Hospital (60% ownership member), and Long Island Jewish Medical Center (40% ownership member). North Shore-Long Island Jewish Health System, Inc. is the Active Parent of both facilities.

**Knickerbocker Dialysis, Inc. shares are owned by Davita of New York, Inc (DAVNY). DAVNY is owned by Davita Healthcare Partners, Inc.

DOH Recommendation
 Contingent Approval

Need Summary
 This project will not result in any change to the number of dialysis stations in Nassau County. The addition of the home training extension clinic will help more patients to be able to access care in the comfort of their own home. This is consistent with the Department's initiative to increase the number of patients being dialyzed at home.

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

Financial Summary
 Total project costs of \$1,266,025 will be met with equity proportionally from Davita Healthcare Partners Inc. and North Shore-Long Island Jewish Health System, Inc.

Budget: Revenues:	\$4,861,935
Expenses:	<u>4,021,321</u>
Gain/ (Loss)	\$ 840,614

Revenue and expenses of True North DC, LLC are based on current reimbursement methodologies and historical utilization.

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 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. A copy of the check must be uploaded into NYSE-CON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for both sites. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultant Agreement, acceptable to the Department. [HSP]
5. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
6. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the executed Restated Certificate of Incorporation of Knickerbocker Dialysis Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Consulting Agreement and Administrative Services Agreement between the applicant and Davita Healthcare Partners Inc., 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 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 applicant shall complete construction by March 31, 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

October 2, 2014

Need Analysis

Project Description

True North DC, LLC (True North) is seeking to be approved as the new owner-operator of Port Washington Dialysis Center, an existing 18 station chronic dialysis facility located at 50 Seaview Blvd., Port Washington (Nassau County). In addition, they would like to construct a home training extension clinic.

Analysis

The primary service area for Port Washington Dialysis Center is Nassau County, which had a population estimate of 1,352,146 in 2013. The percentage of the population aged 65 and over was 16.1%. The nonwhite population percentage was 36.7%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

Ages 65 and Over:	16.1%	State Average:	14.4%
Nonwhite:	36.7%	State Average:	42.8%
<i>Source: U.S. Census 2013</i>			

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 calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 346 free standing chronic dialysis stations operating in Nassau County and 44 in pipeline for a total of 390. This project will not result in any changes to the system. The total will remain 390 chronic dialysis stations. The total stations (390) will be able to treat 1,755 patients.

Projected Need

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	1917	1539	2223	1733
Free Standing Stations Needed	426	342	494	386
Existing Stations	346	346	346	346
Pipeline Stations	44	44	44	44
Total Stations w/pipeline	390	390	390	390
w/Approval of This CON and Pipeline	390	390	390	390
Unmet Need With Approval	36	-44	104	-4

*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 390 stations in Nassau County currently serve a population of 1,352,146 residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

True North DC, LLC (True North) requests approval to acquire Port Washington Dialysis Center, an existing 18-station chronic renal dialysis facility in Nassau County, from the current operator, Knickerbocker Dialysis, Inc. (Knickerbocker). Additionally, True North DC, LLC seeks approval to construct an extension clinic of the Center which will operate under that name Floral Park Home Training Center. The extension clinic will provide training and support to patients suffering from end stage renal disease who elect a home treatment modality. Upon approval, the LLC will amend its articles of organization to changes its name to True North Dialysis Center, LLC.

Proposed Operator	True North DC, LLC
Doing Business As	Port Washington Dialysis Center
Site #1 Address	50 Seaview Boulevard, Port Washington (Nassau)
Approved Services	Chronic Renal Dialysis (18 Stations)
Shifts/Hours/Schedule	Open 6 days per week, hours sufficient to meet the needs of the patients.
Staffing (1st Year/3rd Year)	12.30 FTEs / 12.5 FTEs
Medical Director(s)	Lionel U. Mailloux, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore University Hospital 5.1 miles / 12 minutes

Proposed Operator	True North DC, LLC
Doing Business As	Floral Park Home Training Center
Site #2 Address	One Cisney Avenue, Floral Park (Nassau)
Approved Services	Medical Social Services Nutritional Services Renal Dialysis Home Training Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Shifts/Hours/Schedule	Will operate 6 days per week by the 3 rd year and the daily operating hours will be sufficient to meet the needs of dialysis patients treated at the facility.
Staffing (1st Year/3rd Year)	3.10 FTEs / 6.10 FTEs
Medical Director(s)	Azzour Hazzan, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by North Shore University Hospital 4.4 miles / 12 minutes

Character and Competence

The members of the LLC are:

Name	Percent
Knickerbocker Dialysis, Inc. (Knickerbocker)	51.0%
DaVita of New York, Inc. (DVANY) (100%)	
North Shore – LIJ Renal Ventures, LLC (NSLIJ Renal)	49.0%
North Shore University Hospital (60%)	
Long Island Jewish Medical Center (40%)	

Knickerbocker Dialysis, Inc. is the operator of Bronx Dialysis Center, a 25-station chronic renal dialysis center with 19 dialysis extension clinics, including Port Washington Dialysis Center. DaVita of New York, Inc. (DVANY), which is owned by DaVita HealthCare Partners, Inc. (DaVita), is the sole owner of the shares of Knickerbocker. DaVita owns or operates more than 1,800 dialysis facilities across the U.S.

The Board of Trustees for the North Shore-Long Island Jewish Health System was subject to a recent full Character and Competence Review and all disclosures were made under CON #141004, a project that received PHHPC's approval in June 2014.

The Officers for True North DC, LLC are:

Name	Title
Elsie Vincens Duke	President
Luann Regensburg	Vice President
Garry M. Menzel	Treasurer
Laurence A. Kraemer	Secretary
Martha M. Ha	Assistant Secretary

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 for all Officers, Managers and Directors of NSLIJ Renal Ventures, LLC., Knickerbocker Dialysis, Inc., and True North DC, LLC. 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.

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.

On October 16, 2006, a Stipulation and Order and a \$14,000 fine was issued against Southside Hospital based on the findings of a complaint investigation where a patient was admitted with a large dermoid cyst on her left ovary. Although a consent was signed for left-sided surgery, the physician performed a right ovarian cystectomy. It was noted that much of the accompanying documentation referred to a right-sided cyst.

On December 8, 2006, a Stipulation and Order and a \$12,000 fine was issued against Forest Hills Hospital based on the findings of an investigation regarding a patient who entered the hospital for left sided hernias repair, however, the surgery was performed on the patient's right side.

On February 6, 2007, a Stipulation and Order and an \$8,000 fine was issued against Staten Island University Hospital based on an investigation regarding a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and the error was noticed by the anesthesiologist after ten minutes.

On July 23, 2007, a Stipulation and Order and a \$12,000 fine was issued against Staten Island University Hospital based on the findings of a complaint investigation that an overdose of a controlled substance by the hospital had caused a patient's death. The investigation revealed nursing staff administered a drug at a higher rate than was ordered and continued the administration even after it was discontinued by the surgical resident.

On December 11, 2008, a Stipulation and Order and \$18,000 fine was issued against North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

On July 8, 2010, a Stipulation and Order and a \$42,000 fine was issued against Syosset Hospital based based on the findings of an investigation of the care to a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and that despite multiple comorbidities was not kept for observation post-operatively. The patient expired after discharge.

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.

Summary of Dialysis Facility Compare Statistics

The table below compares the Summary Statistic (which is the percent of scores at, or above, the New York State average) of the dialysis facilities currently operated by Knickerbocker and Knickerbocker-affiliated entities. The Summary Statistic is intended to be a rough indicator of performance. *(Higher is better.)*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Operator	Sites	Reportable Statistics per Site	Total Statistics Possible (1) x (2)	Statistics Not Available or Do Not Apply	Denominator (3)-(4)	Statistics Not Reported	Statistics below NYS Average	Numerator (6)+(7)	Summary Statistic at or above NYS Average $100-((8)/(5))$
NYC	11	10	110	29	81	0	6	6	93%
Other than NYC	14	10	140	28	112	10	11	21	81%

Source: <http://www.medicare.gov/DialysisFacilityCompare/search.html>

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreements:

Port Washington Dialysis Center

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which

Premises: 8,700 Sq. Ft. located at 50 Seaview Blvd., Port Washington, NY 10050
Sub-Lessor: TRC of New York, Inc.
Sub-Lessee: Knickerbocker Dialysis, Inc.
Lessor: A.Y.C Associates, LLC.
Lessee: I.H.S. of New York, Inc.
Term: Ten year term with 2 consecutive 5 yr renewal options ending 2017
Rental: 2014 \$129,544.75 or 14.89 sq. ft.
2015 \$134,726.00 or 15.48 sq. ft.
2016 \$140,115.60 or 16.10 sq. ft.
2017 \$145,720.22 or 16.74 sq. ft.
Provisions: Alterations and repair shall be the Tenants responsibility.

The applicant has indicated via an affidavit that the lease arrangement will be an arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per square foot rental. Also, the applicant believes it will come to an agreement on an acceptable lease extension upon expiration of the current lease.

True North DC, LLC d/b/a Floral Park Home Training Center

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

Premises: 1 Cisney Avenue, Floral Park, New York 11001 – 4,200-4,700 sq ft.
Lessor: Hadlay, LLC
Lessee: True North DC, LLC.
Term: 10 Years
Rental: \$164,500 or \$35.00 per square ft. with 3% annual increases
Provisions: Tenant is responsible for utilities, taxes, and insurance.

The applicant has indicated via an affidavit, that the lease arrangement will be an arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per square foot rental.

Asset Purchase Agreement

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

Date: May 13, 2014
Buyer: NSLIJ Renal
Seller: Knickerbocker Dialysis Center
Assets Acquired: All tangible property, equipment, inventories (including office supplies and at least 15 treatment days of medical supplies, EPO and other similar drugs), goodwill, prepaid expenses and deposits.
Excluded Assets: Knickerbocker's cash, cash equivalents, short term investments of cash, accounts receivable, original patient medical records and files, inter-company receivables, income tax refunds and tax deposits.
Liabilities Assumed: Breach of any Assigned Contracts, Personal Property Leases

Excluded Liabilities: All property leased by Knickerbocker Dialysis Center; personal contracts, property leases, taxes, or benefit plans or sales taxes owed.

Member Purchase Price: *\$6,682,300 which will be paid proportionally. Knickerbocker Dialysis Center will pay \$3,407,973 for 51% with in-kind contribution as they currently own 100% of the Center. NSLIJ will be \$3,274,327 for their 49% portion in cash as of the closing date.

Consulting & Administrative Services Agreement

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

Provider: DaVita HealthCare Partners Inc.
 Facility Operator: True North DC, LLC.
 Services Provided: Administrative and Support services such as; recruitment, selection and hiring clerical staff, administering benefit plans, maintenance services, repairs for wear and tear items, ordering supplies, bookkeeping, accounting and taxes. The administrator of services will not have any authority to make any substantial changes without written authority from the board.

*Annual Compensation: Consultant Fee for Port Washington: \$181,696
 Consultant Fee for Floral Park: \$45,854
 Development Fee for Floral Park: \$41,286

Term: 15 Year Term

While DaVita HealthCare Partners Inc. will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

Total Project Cost and Financing

Total project cost, which includes renovation and movable equipment and CON Fees, is estimated at \$1,266,025, further broken down as follows:

Moveable Equipment	\$167,102
Renovation and Demolition	817,305
Design Contingency	81,731
Construction Contingency	81,731
Architect/Engineering Fees	48,410
Telecommunications	42,292
Other Fees (Consultant, etc.)	18,540
Application Fee	2,000
Processing Fee	<u>6,914</u>
Total Project Cost	\$1,266,025

Operating Budget

True North DC, LLC d/b/a Port Washington Dialysis Center

The applicant has submitted an operating budget for the first and third years of operation in 2014 dollars.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,598,465	\$2,804,898
Expenses:		
Operating	\$2,086,789	\$2,180,435
Capital	<u>160,982</u>	<u>171,976</u>
Total Expenses	\$2,247,771	\$2,352,411

Net Income	<u>\$350,694</u>	<u>\$452,487</u>
Utilization: (Treatments)	7,800	8,424
Cost Per Treatment	\$ 288.17	\$ 279.25

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

Commercial Fee-for Service	8%	7.4%
Commercial Managed Care	0%	3.7%
Medicare Fee-for-Service	78%	75.9%
Medicaid Fee-for-Service	14%	13.0%

With regard to charity care, patients without insurance are eligible for Medicare payment of dialysis treatment, therefore DaVita does not include charity care in their budgets.

Operating Budget

True North DC, LLC d/b/a Floral Park Home Training Center

The applicant has submitted an operating budget for the first and third years of operation.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$563,886	\$2,057,037
Expenses:		
Operating	\$584,306	\$1,432,502
Capital	<u>229,646</u>	<u>236,408</u>
Total Expenses	\$813,952	\$1,668,910
Net Income	<u>(250,066)</u>	<u>388,127</u>
Utilization: (Treatments)	1,404	6,084
Cost Per Treatment	\$579.74	\$274.31

Cost per treatment has decreased from year one to year three due to startup costs and increased volume.

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

	<u>First Year</u>	<u>Third Year</u>
Commercial Fee-for Service	66.7%	15.4%
Commercial Managed Care	0%	7.7%
Medicare Fee-for-Service	33.3%	71.8%
Medicaid Fee-for-Service	0%	5.1%

With regard to charity care, patients without insurance are eligible for Medicare payment of dialysis treatment, therefore DaVita does not include charity care in their budgets.

Capability and Feasibility

Project cost in the amount of \$1,266,025 will be met using equity proportional from North Shore-Long Island Health System, Inc. for their 49% membership and Davita Healthcare Partners, Inc. for their 51% membership. BFA Attachments B and C indicate sufficient equity from both members to fund the proposed project proportionally.

Working capital requirements are estimated at \$392,069 for Port Washington Dialysis Center, and \$278,152 for Floral Park Home Training Center, totaling \$670,221, which appears reasonable based on two months of third year expenses. The applicant will provide equity proportionally from Davita Healthcare Partners Inc. and North Shore-Long Island Jewish Health System, Inc. BFA Attachments B and C indicate sufficient equity to fund the proposed project proportionally.

The submitted combined budget indicates a net income of \$100,628 and \$840,614 during the first and third years, respectively.

BFA Attachment B is a financial summary of North Shore-Long Island Health System, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position from 2012-2013. Also, the facility achieved an average operating gain of \$90,912 from 2012 thru 2013.

BFA Attachment C is a financial summary of Davita Healthcare Partners, Inc. As shown on Attachment C, the facility had an average positive working capital position and an average positive net asset position from 2012-2013. Also, the facility achieved an average operating income \$1,423,609 from 2012 thru 2013.

BFA Attachment D is the pro-forma balance sheet of True North DC, LLC, as of the first day of operation, which indicates a positive member's equity position of \$571,606 for Port Washington Dialysis and \$1,544,176 for Floral Parking Training Center.

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
BFA Attachment B	Financial Summary- North Shore-Long Island Health System, Inc.
BFA Attachment C	Financial Summary- Davita Healthcare Partners, Inc.
BFA Attachment D	Pro-forma Balance Sheet
HSP Attachment A	Dialysis Facility Compare

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to acquisition of Port Washington Dialysis Center located at 50 Seaview Boulevard, Port Washington and certification and construction of a chronic renal dialysis extension clinic to provide chronic renal dialysis home training to be located at One Cisney Avenue, Floral Park, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

141221 E

FACILITY/APPLICANT:

True North DC, LLC d/b/a Port Washington
Dialysis Center

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. A copy of the check must be uploaded into NYSE-CON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for both sites. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultant Agreement, acceptable to the Department. [HSP]
5. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
6. Submission of an executed asset purchase agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the executed Restated Certificate of Incorporation of Knickerbocker Dialysis Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Consulting Agreement and Administrative Services Agreement between the applicant and Davita Healthcare Partners Inc., 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 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 applicant shall complete construction by March 31, 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

The table below compares the Summary Statistic (which is the percent of scores at, or better than, the New York State average) for the facilities operated by or affiliated with Knickerbocker Dialysis. The Summary Statistic is intended to be a rough indicator of performance (*Higher is better*)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Operator: Knickerbocker Dialysis	Sites	Reportable Statistics per Site	Total Statistics Possible	Statistics Not Available or Do Not Apply	Denominator	Statistics Not Reported	Statistics worse than NYS Average	Numerator	Summary Statistic [at or better than NYS Average]
			(1) x (2)		(3)-(4)			(6)+(7)	$1.00 - ((8)/(5))$
NYC Facilities	11	10	110	29	81	0	6	6	93%
Other than NYC Facilities	14	10	140	28	112	10	11	21	81%



Public Health and Health Planning Council

Project # 142015-E
West Nassau Dialysis Center, Inc.

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment **Acknowledged:** July 16, 2014

Executive Summary

Description

West Nassau Dialysis Center, Inc. is an existing proprietary business corporation that operates a 24-station renal dialysis facility located in Valley Stream. The facility leases its premises from an unrelated party. This application proposes a change in shareholder interests through the requested recognition of five shareholders to be approved by the Public Health and Health Planning Council. Three of the existing shareholders, who collectively own 91% of the shares, will sell 11% of their shares to the new shareholders. Ownership of the corporation before and after the requested change appears below.

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
Jodumutt G. Bhat, M.D.	30.34%	30.00%
Nirmal K. Mattoo, M.D.	30.33%	30.00%
Vincent S. Avila, M.D.	30.33%	20.00%
Audrey Goncharuk, M.D.	2.25%	5.00%
Madhu Korrapati, M.D.	1.5%	3.34%
Mario Marotta, M.D.	2.25%	5.00%
Binny Koshy, M.D.	1.5%	3.33%
Eduard Bover, M.D.	1.5%	3.33%

In accordance with the terms of the shareholders' agreement, the purchase price per share is \$2,003.20.

There will be no change in the day-to-day operation of the Center as a result of the membership change.

DOH Recommendation
Contingent Approval

Need Summary
This project will not result in any change to the number of dialysis stations or services in Nassau County.

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

Financial Summary
There are no project costs or budget associated with this application. The purchase price per share is \$2,003.20 and will be paid in cash.

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 shareholders affidavit for each shareholder of the applicant, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 2, 2014

Need Analysis

Background

West Nassau Dialysis Center Inc., an existing 24 station chronic dialysis center located in Nassau County at 75 Rockaway Ave. Valley Stream, NY 11580 requests approval to transfer a portion of the Center's membership interests to five (5) new shareholders. There will be no change in the scope of the services to the existing center.

Analysis

The primary service area for West Nassau Dialysis Center is Nassau County, which had a population estimate of 1,352,146 in 2013. The percentage of the population aged 65 and over was 16.1%. The nonwhite population percentage was 72.89%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

Nassau County

Ages 65 and Over:	16.1%	State Average:	14.4%
Nonwhite:	36.7%	State Average:	42.8%

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 calculation the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 346 free standing chronic dialysis stations operating in Nassau County and 44 in pipeline for a total of 390. This project will not result in any changes to the system. The total will remain 390 chronic dialysis stations. The total stations (390) will be able to treat 1,755 patients.

	2012		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	1917	1539	2223	1733
Free Standing Stations Needed	426	342	494	386
Existing Stations	346	346	346	346
Pipeline Stations	44	44	44	44
Total Stations w/pipeline	390	390	390	390
w/Approval of This CON and Pipeline	390	390	390	390
Unmet Need With Approval	36	-44	104	-4

**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 390 stations in Nassau County currently serve a population of 1,352,146 residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

West Nassau Dialysis Center Inc., an existing Article 28 end stage renal disease center requests approval to transfer a portion of the Center's ownership interests to five (5) new shareholders. There will be no change in the scope of the services to the existing center.

Character and Competence

The following table details the proposed ownership:

<u>Member Name</u>	<u>Proposed Ownership</u>
Jodumutt G. Bhat, MD (President)	30.00%
Nirmal Mattoo, MD (Secretary)	30.00%
Vincent S. Avila, MD (Vice-President)	20.00%
Audrey Goncharuk, MD**	5.00%
Madhu Korrapati, MD**	3.34%
Mario Marotta, MD**	5.00%
Binny Koshy, MD**	3.33%
Eduard Bover, DO**	3.33%

***individuals in this application subject to C&C review*

All five of the new members are practicing physicians with experience in nephrology.

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

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Financial Analysis

There are two separate stock purchase agreements. The first agreement involves the corporate entity West Nassau Dialysis Center, Inc. selling 175.823 shares of Treasury Stock at \$2003.20 per share for a total of \$352,208.64, which were previously authorized, but not issued. The second Stock Purchase Agreement involves the five physicians purchasing shares from seller.

Common Stock Purchase Agreement

The applicant has submitted an executed common stock purchase agreement for the change in ownership interests of West Nassau Dialysis Center, Inc., the terms of which are summarized below:

Date: August 27, 2013
Company: West Nassau Dialysis Center, Inc.
Purchaser: Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D, Eduard Bover, M.D., Jodumutt G. Bhat, M.D, and Nirmal K. Mattoo, M.D.
Purpose: The sale of 175.823 shares of common stock ownership of West Nassau Dialysis Center, Inc., of which each proposed shareholder will acquire a certain number of shares.
Purchase Price: \$2003.20/ share for a total purchase price of \$352,208.64.

BFA Attachment D is the schedule of Common Stock purchasers. The sale will take place upon final approval by the Public Health and Health Planning Council.

Stock Purchase Agreement

The applicant has submitted an executed stock agreement for the change in ownership interests of West Nassau Dialysis Center, Inc., the terms of which are summarized below:

Date: August 27, 2013
Seller: Vincent S. Avila, M.D.
Purchaser: Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D., and Eduard Bover, M.D.
Purpose: The sale of 50 shares stock ownership of West Nassau Dialysis Center, Inc., of which each proposed shareholder will acquire a certain number of shares.
Purchase Price: \$2003.20/ share for a total purchase price of \$100,160.

BFA Attachment D is the schedule of the stock purchase. The sale will take place upon final approval by the Public Health and Health Planning Council. Dr. Vincent Avila will be selling 50 of his 250 shares among the five new members to be recognized by the Public Health and Health Planning Council.

Andrey Goncharuk, M.D., Madhu Korrapatti, M.D., Mario Marotta, M.D., Binny Koshy, M.D., and Eduard Bover, M.D., will satisfy the payment of the purchase price, as shown on BFA Attachment D, of \$100,160, from personal funds. BFA Attachment A are the net worth statements showing sufficient funds available.

Capability and Feasibility

Each proposed shareholder will pay \$2003.20 per share to acquire shares of the corporation. Review of BFA Attachment A reveals the availability of sufficient funds from each proposed shareholder for the stated purpose.

The change in ownership has no impact on existing operations. BFA Attachment B indicates that the facility generated positive working capital and net equity and average annual net operating income of

\$1,214,512 during 2012- 2013. BFA Attachment C indicates that the facility generated positive working capital, net equity, and net operating income of \$439,102 as of June 30, 2014.

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	Summary Net Worth Statement
BFA Attachment B	Financial Summary, West Nassau Dialysis Center, Inc., 2012-2013
BFA Attachment C	Financial Summary, West Nassau Dialysis Center, Inc., June 30, 2014
BFA Attachment D	Schedule of Common Stock Purchase and Stock Purchase

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for Public Health and Health Planning Council approval of five (5) new shareholders for an existing end stage renal disease center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

142015 E

West Nassau Dialysis Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a shareholders affidavit for each shareholder of the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Professional Assistance for Seniors, Inc.
Address: Rochester
County: Monroe
Structure: For-Profit Corporation
Application Number: 2150-L

Description of Project:

Professional Assistance for Seniors, 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: Mary-Joy Lipari owns 10 shares. 190 shares remain unissued.

The Board of Directors of Professional Assistance for Seniors, Inc. comprises the following individual:

Mary-Joy Lipari, President
President/Owner, Lipari & Associates, Inc. d/b/a Home Instead Senior Care (companion care agency)

A search of the individual 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 97 Canal Landing Boulevard, Suite 10, Rochester, New York 14626:

Monroe	Wayne	Ontario
Livingston	Genesee	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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

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: August 1, 2014

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Heathwood Assisted Living at Penfield, Inc.
Address: Penfield
County: Monroe
Structure: For-Profit Corporation
Application Number: 2220-L

Description of Project:

Heathwood Assisted Living at Penfield, Inc., a business corporation, requests approval for a change in ownership of a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law. This LHCSA is associated with Elderwood Assisted Living at Penfield, LLC and their Assisted Living Program (ALP).

Elderwood Assisted Living at Penfield, LLC was previously approved as a home care services agency by the Public Health Council at its May 8, 2009 meeting and subsequently licensed as 1744L001. At that time its membership was as follows: Robert Chur – 75% and Carol Chur – 25%.

The purpose of this proposal is to purchase the existing Licensed Home Care Services Agency and continue to serve the patients of the Assisted Living Program. A corresponding application for a change of ownership of the Assisted Living Program has been submitted to the Division of Assisted Living.

The applicant has authorized 200 shares of stock, which are owned as follows:

Carla C. Suero – 10 shares

190 shares of stock remain unissued.

The Board of Directors of Heathwood Assisted Living at Penfield, Inc. comprises the following individual:

Carla C. Suero, President
Director of Assisted Living Operations, Elderwood Senior Care

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

The Bureau of Professional Credentialing has indicated that Carla Suero NHA license #04423 placed her license on inactive status. While her NHA license was active it was in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license.

The applicant proposes to continue to serve the residents of Monroe County from an office located at 100 ElderWood Court, Penfield, New York 14526.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Speech-Language Pathology
Occupational Therapy	Medical Social Services	Nutrition	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.

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: August 26, 2014

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<u>NUMBER:</u>	<u>FACILITY:</u>
2148 L	Apex Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York, Westchester Counties)
2000 L	Arvut Home Care, Inc. (Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)
2147 L	Attentive Licensed Home Care Agency, LLC (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2136 L	Beautiful Day Home Care, Inc. (Cayuga, Tompkins, Onondaga, Cortland, Oswego, and Seneca Counties)

2134 L Best Professional Home Care Agency, Inc.
(Bronx, Kings, Queens, New York, and Richmond
Counties)

2371 L CNY Helpers, LLC
d/b/a Home Helpers & Direct Link #58740
(Oneida, Madison, Onondaga and Oswego Counties)

2123 L EOM Service, Inc. d/b/a BrightStar of South Brooklyn
(Kings, Bronx, Queens, Richmond, and New York
Counties)

1980 L Clear Waters Home Care Services, LLC
(Bronx, Orange, and Westchester Counties)

2038 L Gentle Hands Agency, Inc.
(Bronx, New York, Queens, Kings and Richmond
Counties)

2104 L Joyful NY, LLC d/b/a Joyful Home Care Services
(Suffolk, Nassau and Queens Counties)

2150 L Professional Assistance for Seniors, Inc.
(Monroe, Livingston, Wayne, Genesee, and Ontario
Counties)

2066 L Reliance Home Care, Inc.
(Kings, Bronx, Queens, Richmond, New York and
Nassau Counties)

1614 L Taconic Innovations, Inc.
(Westchester and Dutchess Counties)

1787 L The Terrance at Park Place, Inc.
d/b/a The Terrance at Park Place Lansing
(Tompkins County)

2223 L Alliance Nursing Staffing of New York, Inc.
(Nassau, Putnam, Dutchess, New York, Rockland,
Westchester, Suffolk, Sullivan and Orange Counties)

2294 L Astra Home Care, Inc. d/b/a True Care
(New York, Bronx, Kings, Richmond, Queens, and
Westchester Counties)

2267 L Bridgewood, LLC d/b/a New Fordham Arms Assisted Living LHCSA
(Queens, Kings, New York, Bronx, and Richmond Counties)

2303 A Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Richmond County)

2303 L Baywood, LLC d/b/a Plan and Partner Home Healthcare
(Queens, Kings, New York, and Richmond Counties)

2105 L Healthy and Long Life Care, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)

1935 L Supreme Homecare Agency of NY, Inc.
(New York, Bronx, Kings, Richmond, Queens and Westchester Counties)

2212 L Ameritech Homecare Solutions, LLC d/b/a PC Aide Plus
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)

2496 L A & T Healthcare, LLC
(Dutchess, Rockland, Nassau, Suffolk, Orange, Westchester, Putnam, Bronx, Sullivan, Ulster, Kings, New York, Richmond, Queens, and Greene Counties)

2219 L Healthwood Assisted Living at Williamsville, Inc.
(Erie County)

2220 L Healthwood Assisted Living at Penfield, Inc.
(Monroe County)

2231 L Intergen Health, LLC
(Bronx, Queens, Kings, Nassau, New York, and Richmond Counties)

2309 L Two K Management Corp. d/b/a Family Aides Home Care
(Nassau, Suffolk, Queens, Westchester, Bronx, Kings, New York, Queens, Richmond, and Suffolk Counties)

2423 L Senior Care Connection, Inc. d/b/a Eddy Senior Care
(See Exhibit for Counties)

2424 L Eddy Licensed Home Care Agency, Inc.
(See Exhibit for Counties)



Public Health and Health Planning Council

Project # 141201-E
New York Endoscopy Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Westchester
Acknowledged: May 9, 2014

Executive Summary

Description

New York Endoscopy Center, LLC, (Center), an existing proprietary Article 28 diagnostic and treatment center, is requesting approval to convert its limited life operating certificate to indefinite life. The original application, CON 082037, for the establishment and construction of a single specialty freestanding ambulatory surgery center specializing in gastroenterology, was contingently approved by the Public Health Council on March 13, 2009, for a five year limited life.

New York Endoscopy Center, LLC is located at 2 Westchester Park Drive, White Plains, New York and continues to operate under the original lease, which will expire in April, 2018. Note, on December 20, 2012, the Town of Harrison renamed Gannett Drive to Westchester Park Drive.

The members of New York Endoscopy Center, LLC are as follows:

Jack Rosemarin, M.D.	33.34%
Alfred Roston, M.D.	33.33%
Charles Noyer, M.D.	33.33%

DOH Recommendation

Contingent Approval for a two year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation.

Need Summary

Data submission by the applicant, as a contingency of CON 082037, is completed.

Based on CON 082037, the Center projected 5,520 procedures in year 1 (2010) and 6,086 procedures in

year 3 (2012). The percent of Medicaid procedures projected was five (5) percent and that of charity was two (2) percent. Because only three of the five expected physicians chose to remain with the facility, the number of actual procedures was 1,173 in 2010 and 2,129 in year 3 (2012). The actual charity care in year 3 (2012) was 2.1 percent, but there was no significant Medicaid volume because of delays in the facility's Medicaid certification until late 2013.

Upon approval of this project, the Center projects 1,823 procedures in years 1 and 3 with five (5) percent Medicaid visits and two (2) percent charity care. 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	\$1,673,508
	Expenses	<u>852,575</u>
	Gains	\$820,933

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 for a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation, contingent upon:

1. Develop and implement a plan, satisfactory to the DOH, to improve Medicaid visits as projected in CON 082037. [RNR]
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. For the period 2010 to present, review and re-submit corrected data to SPARCS. [RNR]
4. Submission of an affidavit attesting that there have been no changes to the legal documentation as originally approved by 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

October 2, 2014

Need Analysis

Background

New York Endoscopy Center, LLC (NYEC), an Article 28 diagnostic and treatment center certified as a single-specialty ambulatory surgery center providing gastroenterology procedures, is requesting permission to convert to indefinite life following a five (5) year limited life (CON 082037). The facility is located at 2 Westchester Park Drive, White Plains, 10604, in Westchester County. NYEC has two procedure rooms.

Analysis

The primary service area is Westchester County. The table below provides information on projections and utilization for years 1 and 3 based on CON 082037.

CON 082037	Projections- Procedures	Projections- Procedures	Actual- Procedures- ICR Cost Report	Actual- Procedures- ICR Cost Report
NYEC	Year 1 (2010)	Year 3 (2012)	Year 1 (2010)	Year 3 (2012)
Total	5,520	6,086	1,173	2,129

The applicant projected a total of 6,086 procedures in year 3 vs. 2,129 actual procedures in year 3 (2012). The applicant reports the reasons for not meeting the original projections are as follows:

- The operation of NYEC started in March 2010 instead of October 2009.
- NYEC did not get support from two surgeons as originally planned; one surgeon worked only part-time instead of full-time. In the end, they both left NYEC in mid-2012.
- The Medicaid certification was approved in late 2013. Negotiations with health plans were very difficult and took a long time to complete. On April 1, 2014, NYEC entered into a Provider Agreement with Hudson Health Plan, a primary Medicaid HMO in Westchester County. Recently, NYEC also entered into a Provider Agreement with Fidelis. With these agreements, NYEC will be able to reach larger populations of Medicaid patients than in previous years.

The table below provides information on NYEC's original projections by payor and its actual distributions by payor for 2012.

NYEC CON 082037 Projections	Projections Years 1 and 3 (2012)	Actual 2012
Medicaid FFS*	3%	---
Medicaid MC*	2%	---
Medicare FFS	38%	23.6%
Medicare MC	2%	0.8%
Commercial FFS	5%	73.3%
Commercial MC	45%	---
Charity Care	2%	2.1%
Private Pay	3%	0.3%
All Other	-----	-----
Total	100%	100%

Because NYEC did not receive Medicaid certification until late in 2013, the facility met none of its Medicaid projections for years 1 through 3.

Based on its experience to date and the earlier loss of two physicians, NYEC now projects a volume of 1,823 procedures per year. The table below provides payor distribution information for 2013 and projections of payor distribution for years 1 and 3 subsequent to receipt of a permanent life operating certificate.

NYEC CON 141201 Projections	Actual 2013	Projections Years 1 and 3
Medicaid FFS	0.3%	1.0%
Medicaid MC	0.1%	4.0%
Medicare FFS	26.4%	26.4%
Medicare MC	1.3%	1.3%
Commercial FFS	54.8%	50.2%
Commercial MC	---	---
Charity Care	2.0%	2.1%
Private Pay	5.6%	5.6%
All Other	9.5%	9.1%
Total:	100%	100%

Conclusion

In the first six months of 2014, Medicaid patients represented five percent of NYEC cases. However, additional time is needed to determine whether the facility can sustain a significant Medicaid caseload on an extended basis. Therefore, NYEC's limited life status should be extended for two years, to ensure the maintenance of its target of five percent Medicaid volume.

Recommendation

From a need perspective, an extension of limited life approval for two years is recommended.

Program Analysis

Program Proposal

New York Endoscopy 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 indefinite life following a five (5) year limited life. There will be no changes in services and staffing is expected to remain at 12.0 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 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

Financial Analysis

The applicant has submitted an operating budget, in 2014 dollars, for the current year and the first and third years of operations subsequent to receiving a permanent life operating certificate, as summarized below:

	<u>Current Year-2013</u>	<u>Year One</u>	<u>Year Three</u>
Revenues			
Operating	\$1,719,233	\$1,660,939	\$1,660,939
Non-Operating (a)	<u>12,569</u>	<u>12,569</u>	<u>12,569</u>
Total Revenues	<u>\$1,731,802</u>	<u>\$1,673,508</u>	<u>\$1,673,508</u>
Expenses			
Operating	\$646,654	\$646,654	\$646,654
Capital	<u>205,921</u>	<u>205,921</u>	<u>205,921</u>
Total Expenses	<u>\$852,575</u>	<u>\$852,575</u>	<u>\$852,575</u>
 Net Income or (Loss)	 \$879,227	 \$820,933	 \$820,933
 Utilization (visits)	 1,546	 1,546	 1,546
Utilization (procedures)	1,823	1,823	1,823
Cost per Procedure	\$467.68	\$467.68	\$467.68
(a) Interest income			

Projected utilization and expenses are based on current operating results.

Below is the comparison of CON 082037 projected and actual utilization for the first and third years.

<u>Utilization (procedures)</u>	<u>Year One 2010</u>	<u>Year Three 2012</u>
Projected	5,520	6,086
Actual	1,173	2,129

The applicant provides the following reasons for the difference between 2010 and 2012 projected utilization and actual utilization:

- The center started treating patients in March 2010, approximately five months after receiving their operating certificate in October 5, 2009.
- The two surgeons that were committed to practicing full-time (under CON 082037) never worked more than part-time and ultimately left the center, one in April 2012 and the other in May 2012.
- The Center did not receive Medicare certification until 2011 and did not receive Medicaid certification until the latter part of 2013.
- The Center had unexpectedly long negotiations with Hudson Health Plan (Medicaid HMO), which was finally executed in February 2014. The collaboration accounts for approximately 4% of the Center's total cases during the first half of 2014.
- The Center's contract applications with Affinity and Fidelis Health Plans have been pending for approximately six months, both are Medicaid HMO carriers.

- The Center's contract negotiations with commercial carriers have been unusually drawn out, as an example, United/Oxford contract became effective as of November 1, 2011, but the Blue Cross/Blue Shield did not become effective until July 1, 2014.

The applicant states that due to a computer/programming interface error between the New York Endoscopy Center, LLC and Statewide Planning & Research Cooperative System (SPARCS), the Center has determined that the information previously submitted is not accurate. The Center has offered to resubmit the correct 2010- 2013 data to SPARCS.

Below is the comparison of CON 082037 projected third year utilization by payor source and actual.

<u>Utilization by Payor</u>	<u>Projected Third Year-2012</u>	<u>Actual Third Year-2012</u>
Medicaid Fee-For-Service**	3%	
Medicaid Managed Care**	2%	
Medicare Fee-For-Service	38%	23.58%
Medicare Manage Care	2%	.77%
Commercial Fee-for-Service	5%	73.27%
Commercial Managed Care	45%	0%
Private Pay	3%	.28%
Charity Care*	2%	2.10%

*Includes highly discounted care to the poor and uninsured patients who otherwise would not have been able to afford the care.

**As noted above, the Center did not received its Medicaid Certification until the latter part of 2013.

The applicant has outlined a number of factors and affiliations that have and will increase its charity care and Medicaid utilization. The Center engages in community outreach programs, participants in the NYSDOH Cancer Screening Program, is involve is collaborating with Open Door Family Medical Centers (which works directly with Hudson Health Plan), Hudson River Healthcare, Inc. and Witness CARES (Community Awareness, Reach and Empowerment for Screening). As previously mentioned, the collaboration with Hudson Health Plan, a Medicaid HMO, accounted for 4% of the Center's cases during the first half of 2014.

Below is the utilization by payor source for 2013 and for the first and third years subsequent to receipt of a permanent life operating certificate.

<u>Utilization by Payor Source</u>	<u>2013</u>	<u>Year One and Three</u>
Medicaid Fee-For-Service	.26%	.97%
Medicaid Managed Care	.13%	4.01%
Medicare Fee-For-Service	26.39%	26.39%
Medicare Managed Care	1.29%	1.29%
Commercial Fee-for-Service	54.79%	50.19%
Private Pay	5.56%	5.56%
All Other	9.51%	9.51%
Charity Care	2.07%	2.08%

During the first six months of 2014, Medicaid patients represented 5% of the 785 cases and the uninsured/self-pay represented 9% of the cases which are provided at a discounted rate. In addition, from January through June 2014, approximately 4% of the Center's cases were provided to uninsured and underinsured individuals through the NYSDOH's Cancer Services Program. The applicant anticipates that its affiliation with Witness CARES will generate increased referrals for charity care and Medicaid patients.

Capability and Feasibility

There are no project costs associated with this application.

New York Endoscopy Center, LLC projects an operating surplus of \$820,933 in both of the first and third years. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

BFA Attachment A and B are New York Endoscopy Center, LLC's 2012 and 2013 financial summaries, which show an average positive working capital and an average positive equity position, and generated an average positive net income of \$1,279,628 for the period.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A

Financial Summary for 2012, New York Endoscopy Center, LLC

BFA Attachment B

Financial Summary for 2013, New York Endoscopy Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life for Project #082037, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141201 E

New York Endoscopy Center

APPROVAL CONTINGENT UPON:

Approval for a two-year extension of limited life certification, contingent upon:

1. Develop and implement a plan, satisfactory to the DOH, to improve Medicaid visits as projected in CON 082037. [RNR]
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. For the period 2010 to present, review and re-submit corrected data to SPARCS. [RNR]
4. Submission of an affidavit attesting that there have been no changes to the legal documentation as originally approved by 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]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141300-B
Greenwich Village Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** July 11, 2014

Executive Summary

Description

Greenwich Village Ambulatory Surgery Center, LLC is requesting to establish and construct a multi-specialty, freestanding ambulatory surgery center specializing in orthopedic surgery and pain management, which will have four operating rooms and two procedure rooms, and will be located in leased space at 200 West 13th Street, Suite 400, New York, NY 10011. Greenwich Village Ambulatory Surgery Center, LLC's primary service area will be in New York County. This application has been developed with the cooperation and support of Lenox Hill Hospital and North Shore-LIJ Health System. Lenox Hill Hospital is a subsidiary of the North Shore-LIJ Health System.

Greenwich Village Ambulatory Surgery Center, LLC (GVASC), a New York State limited liability corporation, consists of fifteen individual member surgeons (26%), three individual members of NYSCA, LLC (10%), and North Shore-LIJ Ventures CCC, LLC (64%).

North Shore-LIJ Ventures CCC, LLC is a New York State not-for-profit corporation solely owned by North Shore University Hospital. All of the physician members of GVASC are surgeons with medical practices within the proposed service area of the FASC. BFA Attachment A is the proposed organizational chart of Greenwich Village Ambulatory Surgery Center, LLC.

GVASC will enter into an administrative services agreement with Surgical Care Affiliates, LLC (SCA), under which SCA will provide development, consulting, and administrative services to the proposed Center. SCA is a national provider of consulting and administrative services to ambulatory surgery centers. The three members of NYSCA, LLC are also employed

by SCA. DOH staff notes that the administrative services agreement appears to be in compliance with the principles set forth by the Department's guidelines regarding representative governance.

DOH Recommendation

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

Need Summary

The number of projected procedures is 3,125 in year 1 and 6,350 in year 3.

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

Project costs of \$14,299,962 will be met with \$4,679,107 in cash and a \$9,620,855 bank loan.

Budget:	Revenues:	\$19,699,291
	Expenses:	<u>13,947,552</u>
	Gain:	\$ 5,751,739

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 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, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of a loan commitment for project costs that is acceptable to the Department of Health. [BFA]
9. Submission of an Administrative Services Agreement that is acceptable to the Department of Health. [BFA]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in attached BAEFP Drawing Submission Guidelines DSG-03. Hardcopy plans must be addressed as follows: Attn: Contingency Response, NYS Department of Health, Bureau of Project Management, Corning Tower Room 1842, Empire State Plaza, Albany, NY 12237. Contingent approval has been recommended in lieu of missing requirements from the DSG-01. SHC submission shall incorporate this information also required by DSG-03. All exit components; i.e. corridors, stair & landing, widths, rise/runs, shall be dimensioned on drawings. Level of exit discharge shall be shown demonstrating compliance with NFPA. [AER]
11. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization,

- acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed amendment to applicants Operating Agreement, acceptable to the Department. [CSL]
 13. Submission of a photocopy of the executed agreement of Lease between Lenox Hill Hospital and the applicant, that is acceptable to the Department. [CSL]
 14. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of NYSCA, LLC, acceptable to the Department. [CSL]
 15. Submission of a photocopy of an executed amendment to the Operating Agreement of North Shore-LIJ Ventures CCC, LLC, 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 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 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]
7. The applicant shall start construction on or before 12/01/14 and complete construction by 12/31/15 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 10 NYCRR Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
October 2, 2014

Need Analysis

Project Description

Greenwich Village Ambulatory Surgery Center, LLC, a NYS limited liability corporation, is requesting approval to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services. It will have four operating rooms and two procedure rooms. The proposed location is 200 West 13th Street, Suite 400, New York, 10011, in New York County.

Background and Analysis

The primary service area is New York County. New York County currently has a total of 15 freestanding ambulatory surgery centers: seven (7) multi-specialty ASCs and eight (8) single specialty ASCs. Additionally, there are two freestanding multi-specialty ASCs in New York County that have been approved but are not yet operational. (Source-HFIS)

Ambulatory Surgery Total Patients 2013

PFI	Type of Facility	Facility	Total Patients
9313	Single-Specialty	Carnegie Hill Endo, LLC	10,695
3976	Multi-Specialty	Center for Specialty Care	4,174
9115	Single-Specialty	East Side Endoscopy	7,345
4295	Multi-Specialty	Fifth Avenue Surgery Center	1,665
8577	Multi-Specialty	Gramercy Park Digestive Disease Ctr	8,666
6908	Multi-Specialty	Gramercy Surgery Center, Inc.	2,550
6624	Single-Specialty	Kips Bay Endoscopy Center LLC	9,241
9274	Single-Specialty	Manhattan Endoscopy Ctr, LLC	12,014
9490	Multi-Specialty	Manhattan Surgery Center (Opened 4/1/13)	N/A
7874	Single-Specialty	Mid-Manhattan Surgi-Center	4,312
9139	Multi-Specialty	Midtown Surgery Center, LLC	3,114
8503	Single-Specialty	Retinal Ambulatory Surgery Ctr	1,862
9148	Multi-Specialty	Surgicare of Manhattan, LLC	3,648
		Total	69,286

The number of projected procedures is 3,125 in year 1 and 6,350 in year 3. These projections are based on the participating physicians' current case load. 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 improve access to ambulatory surgery services for 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

Greenwich Village Ambulatory Surgery Center, LLC (GVASC) seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center (ASC).

Proposed Operator	Greenwich Village Ambulatory Surgery Center, LLC
Site Address	200 West 13 th Street, Suite 400, New York, NY
Surgical Specialties	Multi-Specialty, to include: Orthopedics Pain Management
Operating Rooms	4 - Class C (2 additional Class C ORs will be constructed but not equipped at this time)
Procedure Rooms	2
Hours of Operation	Monday through Friday from 6:00 am to 6:00 pm (Will consider expanding hours as demand increases.)
Staffing (1st Year / 3rd Year)	21.50 FTEs / 30.00 FTEs
Medical Director(s)	Nicholas Sgaglione, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Lenox Hill Hospital 4.1 miles/15 minutes away
On-call service	Patients will be provided instructions at discharge and the center will have signage and an after-hours phone message.

Character and Competence

Presently, Greenwich Village Ambulatory Surgery Center, LLC is wholly owned by North Shore-LIJ Ventures CCC, LLC. However, upon approval, ownership interest will be transferred as follows:

<u>Name</u>	<u>Membership Percentage</u>
**North Shore LIJ Ventures CCC, LLC	64.00%
<i>Managers:</i> Dennis Dowling Laurence A. Kraemer John McGovern Mark Jarrett, MD Joseph Moscola	
NYSCA, LLC	10.00%
Ali Reza (33.3%)	
Christian Ellison (33.3%)	
Brian Mathis (33.3%)	
Individuals (15 physician members)	26.00%
Andrew Bazos, MD	1.00%
Fabien Bitan, MD	2.00%
Ed Cleeman, MD	2.00%
Joshua Dines, MD	1.00%
Gordon Freedman, MD	2.00%
Richard Gilbert, MD	2.00%
Elias Kassapidis, MD	2.00%
Mark Klion, MD	1.00%
Joel Kreitzer, MD	2.00%
Robert Meyerson, MD	2.00%

Robert Pae, MD	2.00%
Kevin Plancher, MD	1.00%
Andrew Sands, MD	2.00%
Vinoo Thomas, MD	2.00%
Vikas Varma, MD	2.00%
TOTAL	
100.00%	

NSLIJ Ventures CCC, LLC is a New York State not-for-profit corporation. The officers and board of trustees are employees of the North Shore-LIJ Health System (NSLIJ). The sole passive member of NSLIJ Ventures CCC, LLC is North Shore-LIJ Health System. A full Character and Competence Review was conducted on all voting members of the NSLIJ Board. Disclosures were made as part of project CON #141004 which was approved by PHHPC in June 2014.

GVASC will enter into an administrative services agreement with Surgical Care Affiliates, LLC (SCA), a national provider of consulting and administrative services to ambulatory surgery centers. The three (3) members of NYSCA, LLC are employed by SCA and bring with them considerable ASC consulting and management expertise.

The physician members of GVASC are Board-certified surgeons in their respective specialties and have medical practices within the proposed service area of the ASC.

Presently, the Managers of GVASC are all officers of NSLIJ (Dennis Dowling, Laurence Kraemer, John McGovern, Mark Jarrett, MD, and Joseph Moscola). However, upon approval and execution of GVASC's amended and restated Operating Agreement, three (3) of the NSLIJ managers will be replaced with two (2) managers appointed by the physician members. The final manager slot will be filled by one of the three owners of NYSCA, LLC. (All prospective new managers have undergone a character and competence review with this project.)

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.

Drs. Freedman, Kreitzer, and Thomas each disclosed one pending malpractice case and Dr. Meyerson disclosed two (2) pending malpractice cases. Dr. Bitan disclosed 7 pending malpractice cases. Dr. Dines disclosed one settled malpractice case.

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

On December 11, 2008, a Stipulation and Order and \$18,000 fine was issued against North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

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.

Integration with Community Resources

The Center is committed to providing charity care for persons without the ability to pay and a uniformly-administered system of reduced fees or financial assistance will be implemented for those who are uninsured or do not have access to the financial resources to pay for medical care.

The Center is exploring implementation of an electronic medical record (EMR) system that would best provide a rapid and accurate exchange of patient information. In the interim, the Center will use a paper medical record which, when closed, will be scanned into a virtual medical record (VMR) for archiving. The Center will consider joining a regional health information (RHIO) or qualified health information exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

Greenwich Village Ambulatory Surgery Center, LLC will enter into an Administrative Services Agreement with Surgical Care Affiliates, LLC.

The consultant would provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

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

Facility:	Greenwich Village Ambulatory Surgery Center, LLC
Contractor:	Surgical Care Affiliates, LLC
Administrative Term:	3 Years, with option to renew for an additional terms of 2 year periods.
Compensation:	\$500,000 per annum (\$41,666.67/month) for administrative services and can never exceed \$800,000 per annum. Billing and collection services are \$45-\$60 per claim based on the complexity of client's case mix.
Duties of the Contractor:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Utilities/Waste Management, Operating Licenses and Banking, Billing and Collection Services.

While Surgical Care Affiliates, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

Lease Rental Agreement

The applicant will lease approximately 30,897 square feet of space on the fourth floor, Suite 400 of 200 West 13th Street, New York, NY under the terms of the proposed lease agreement summarized below:

Landlord:	Lenox Hill Hospital
Tenant:	Greenwich Village Ambulatory Surgery Center , LLC
Term:	10 Years
Rental:	The annual base rent is \$1,755,600 calculated using 114 months with the first six months free, plus supplemental rent of \$1,512,588 per annum based on the amortized cost of the Landlord's leasehold improvements over 9.5 years. The first 6 months will also be free.

Provisions: Maintenance, insurance and taxes.

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the base per square foot rental.

Total Project Cost And Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$14,299,962, broken down as follows:

New Construction	\$ 6,630,612
Design Contingency	567,708
Construction Contingency	283,854
Planning Consultant Fees	170,312
Architect/Engineering Fees	454,167
Construction Manager Fees	283,854
Other Fees (Consulting)	283,854
Movable Equipment	5,159,600
Telecommunications	385,792
Application Fee	2,000
Additional Processing Fee	<u>78,209</u>
Total Project Cost	<u>\$14,299,962</u>

Project costs are based on a December 1, 2014 construction start date and a thirteen month construction period. The applicant's financing plan appears as follows:

Equity	\$ 4,679,107
Bank Loan @ 5.0% over 7 years	9,620,855

Equity contributions are based on proposed member's percentage of interest. A letter of interest has been submitted by Siemens Financial Services, Inc. for both the equipment and construction loan.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$9,694,037	\$19,699,291
Expenses:		
Operating	\$5,493,841	\$8,480,250
Interest	1,154,778	941,900
Depreciation and Rent	<u>4,493,259</u>	<u>4,525,402</u>
Total Expenses	\$11,141,878	\$13,947,552
Net Income (Loss)	<u>\$(1,447,841)</u>	<u>\$5,751,739</u>
Utilization: (procedures)	3,125	6,350
Cost Per Procedure	\$3,565.40	\$2,196.46

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

	<u>First and Third Years</u>
Commercial Insurance-Managed Care	64.5%
Medicare Fee-For-Service	11.5%
Medicaid Managed Care	2.9%
Self-Pay	1.5%
Other (Workmen's Comp and No Fault)	17.6%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the proposed physician members of Greenwich Village Ambulatory Surgery Center, LLC, and similar Ambulatory Surgery Centers administered by SCA. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Project cost will be satisfied by a loan from Siemens Financial Services, Inc., for \$9,620,855 at stated terms, with the remaining \$4,679,107 from proposed member's equity.

Working capital requirements, estimated at \$2,324,592, appears reasonable based on two months of third year expenses, and will be provided through equity of the proposed members. BFA Attachments C-E are the summaries of net worth statement of the proposed members of Greenwich Village Ambulatory Surgery Center, LLC, which indicate the availability of sufficient funds for the stated levels of equity. BFA Attachment F is the pro-forma balance sheet of Greenwich Village Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity position of \$5,713,693.

The submitted budget indicates a net loss of \$1,447,841 the first year, and a net profit of \$5,751,739 the third year of operation. The budget appears reasonable.

As shown on BFA Attachment E, North Shore-LIJ has maintained positive working capital, net assets and net profit from operations for the period shown.

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 Greenwich Village Ambulatory Surgery Center, LLC
BFA Attachment B	Physician Membership Interest
BFA Attachment C	Net Worth Statement of Proposed Physician Members
BFA Attachment D	Net Worth Statement of NYSCA, LLC members
BFA Attachment E	Financial Summary of North Shore-LIJ
BFA Attachment F	Pro-forma Balance Sheet
BFA Attachment G	Amortization of Leasehold Improvements
BHFP Attachment	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a freestanding ambulatory surgery center specializing in orthopedic surgery and pain management to be located at 200 West 13th Street, Suite 400, New York, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

141300 B

FACILITY/APPLICANT:

Greenwich Village Ambulatory Surgery Center,
LLC

APPROVAL CONTINGENT UPON:

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, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
8. Submission of a loan commitment for project costs that is acceptable to the Department of Health. [BFA]
9. Submission of an Administrative Services Agreement that is acceptable to the Department of Health. [BFA]

10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in attached BAEFP Drawing Submission Guidelines DSG-03. Hardcopy plans must be addressed as follows: Attn: Contingency Response, NYS Department of Health, Bureau of Project Management, Corning Tower Room 1842, Empire State Plaza, Albany, NY 12237. Contingent approval has been recommended in lieu of missing requirements from the DSG-01. SHC submission shall incorporate this information also required by DSG-03. All exit components; i.e. corridors, stair & landing, widths, rise/runs, shall be dimensioned on drawings. Level of exit discharge shall be shown demonstrating compliance with NFPA. [AER]
11. Submission of the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed amendment to applicants Operating Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed agreement of Lease between Lenox Hill Hospital and the applicant, that is acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of NYSCA, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed amendment to the Operating Agreement of North Shore-LIJ Ventures CCC, LLC, 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 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 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]
7. The applicant shall start construction on or before 12/01/14 and complete construction by 12/31/15 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 10 NYCRR Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 132356-E
KPRH IV Operations, LLC

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

Executive Summary

Description

KPRH IV Operations, LLC, is requesting to become the new operator of Flushing Manor Care Center, an existing proprietary business corporation and a 278-bed Residential Health Care Facility (RHCF) located at 139-66 35th Avenue in Flushing, and to decertify 10 RHCF beds, resulting in a total of 268 remaining RHCF beds. Ownership of the facility operation before and after the requested change is as follows:

(CHHA). The CHHA will go before the Public Health and Health Planning Council at a later date since it is in the process of receiving its operating certificate.

DOH Recommendation
Contingent Approval

Need Summary

KPRH IV Operations, LLC, seeks approval to be established as the operator of Flushing Manor Care Center, Inc. Flushing Manor Care Center is a 278-bed Article 28 residential health care facility (RHCF) located at 139-66 35th Avenue, Flushing, 11354, in Queens County. The facility also seeks approval to reduce its RHCF certified bed capacity by 10 beds, resulting in a 268-bed facility.

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

There are no project costs associated with this application.

Budget:	Revenues:	\$24,657,843
	Expenses:	<u>24,195,341</u>
	Gain:	\$ 462,502

<u>Current</u>	
Flushing Manor Care Center, Inc.	
<u>Name</u>	<u>Percentages</u>
Michael Benenson	17.3%
Sharon Sydney Benenson	17.3%
Amy Benenson	17.3%
Blanche Benenson	17.3%
Esther Benenson	30.8%

<u>Proposed</u>	
KPRHIV Operations, LLC	
<u>Name</u>	<u>Percentages</u>
Cheskel Berkowitz	23.34%
Sheya Landa	20.00%
David Rubenstein	16.66%
Gabrielle Philipson	15.00%
Leah Freidman	10.00%
Rochel David	10.00%
Bent Philipson	5.00%

CON 132355, CON 132349 and CON 132352 went to the Public Health and Health Planning Council on June 12, 2014, for approval, and are also under the Omnibus Sale Agreement which also includes this application, as well as the sale and acquisition of the Queens-Long Island Certified Home Health Agency

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 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; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of an annual report, for two years, to the DOH demonstrating 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 and programmatic approval of an acceptable name for the facility. [LTC]
5. Submission and programmatic approval of the floor plans showing the beds to be decertified. [LTC]
6. Submission of an executed building lease acceptable to the Department of Health. [BFA]
7. 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]
8. Submission of an executed working capital loan acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of an executed facility lease agreement, 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

October 2, 2014

Need Analysis

Background

The applicant proposes to decertify ten beds upon approval of this application by the Public Health and Health Planning Council, as shown in the following table:

<u>Flushing Manor Care Center</u>	<u>Current</u>	<u>Proposed Action</u>	<u>Upon Completion</u>
RHCF Beds	278	(10)	268
Total	278	(10)	268

Flushing Manor Care Center's utilization was 82.6% in 2010, 78.0% in 2011, and 81.2% in 2012. During the month of August, utilization at this facility increased to 96.5% when calculated using a bed count of 268. The proposed operator also noted that the same types of post-acute rehabilitation, bariatric, multiple sclerosis, and other programs that have been implemented to successfully turn around many of its other RHCFs will also be provided at Flushing Manor Care Center upon approval of this application. Reducing the facility's bed capacity will also result in the region's utilization moving closer to the Department's planning optimum.

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 the New York City Region 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

Table 2: Flushing Manor Care Center/Queens County/New York City Region Occupancy

<u>Facility/County/Region</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Flushing Manor Care Center	82.6%	78.0%	81.2%
Queens County	94.7%	94.4%	94.0%
New York City Region	95.4%	94.8%	94.8%

Flushing Manor Care Center's utilization was 82.6% in 2010, 78.0% in 2011, and 81.2% in 2012. The applicant stated that utilization was low during this period primarily due to residents of Flushing Manor Nursing Home occupying a unit in Flushing Manor Care Center while multi-phase renovations to Flushing Manor Nursing Home were being performed under an approved Limited Review Application (AEP-6509). The relocation of patients occurred through an arrangement with the Metropolitan Area Regional Office and under the development of operational protocols. Once the Flushing Manor Nursing Home residents were returned to their facility, Flushing Manor Care Center began cosmetic renovations to its own facility on that same unit, which also prevented them from accepting residents.

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.

Flushing Manor Care Center's Medicaid admissions of 50.8% in 2011 and 48.3% 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 community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

<h2>Program Analysis</h2>

Facility Information

	Existing	Proposed
Facility Name	Flushing Manor Care Center	TBD
Address	139-62 35th Avenue Flushing, NY 11354 PFI: 1709	Same
RHCF Capacity	278	268
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Flushing Manor Care Center Inc.	KPRH IV Operations, LLC <div style="font-size: small;"> Members: Cheskel Berkowitz 23.34% Sheya Landa 20.00% David Rubinstein 16.66% Gabrielle Philipson 15.00% Leah Friedman 10.00% Rochel David 10.00% Bent Philipson 5.00% 100.00% </div>

Character and Competence - Background

Facilities Reviewed

Nursing Homes:

Avalon Gardens Rehabilitation and Health Care Center	09/2004 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	09/2004 to present
Park Avenue Extended Care Facility	09/2004 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)	09/2004 to present
The Hamptons Center for Nursing	07/2008 to present
Throgs Neck Extended Care Facility	09/2004 to present
Townhouse Center for Rehabilitation & Nursing	09/2004 to present
North Westchester Restorative Therapy & Nursing Center	12/2010 to 04/2011
<u>Home Health Agency</u>	
Pella Care, LLC	01/2005 to present

Individual Background Review

Cheskel Berkowitz is the president of HHCNY, Inc., a healthcare staffing company doing business as Staff Blue, located in Brooklyn NY. Mr. Berkowitz discloses the following health facility interests:

North Westchester Restorative Therapy & Nursing Center	12/2010 to 04/2011
Pella Care, LLC (Home Care)	01/2005 to present

Sheya Landa is a licensed emergency medical technician in good standing in New York. He is employed part-time with the Richmond County Ambulance Service since 04/02/2014. Mr. Landa discloses no ownership interests in health care facilities.

David Rubinstein lists current employment as an administrator with Garden State Health Care Administrators Inc, and as owner of United Health Administrators Inc. Both companies are in the insurance industry providing health insurance benefits. Mr. Rubenstein is also owner of Tristate Nursing Staffing LLC, which provides staffing. Mr. Rubinstein discloses no ownership interests in health care facilities.

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 interests in health care facilities.

Leah (Zahler) Friedman is currently employed in human resources with Confidence Management Systems, in Linden NJ, since 1997. Ms. Friedman discloses no ownership interests in health care facilities.

Rochel (Zahler) David is currently employed in human resources and payroll with Confidence Management Systems, in Linden NJ, since 1991. Ms. David discloses no ownership interests in health care facilities.

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

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 operations for the Avalon Gardens Rehabilitation and Health Care Center 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 **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 detailed review of the enforcements listed above for Bay Park Center for Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

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 operations for the Crown 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 for **Nassau Extended Care Facility** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued August 29, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 415.5(a) Dignity and 415.26 Administration.

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 detailed review of the enforcements listed above for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for South Point Plaza Nursing and Rehabilitation Center for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **The Hamptons Center for Rehabilitation and 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 Hamptons Center for Rehabilitation and Nursing 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, Park Avenue Extended Care Facility, Pathways Nursing and Rehabilitative Center – Hilltop, Rosewood Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, North Westchester Restorative Therapy & Nursing Center, and Townhouse Center for Rehabilitation & Nursing for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Pella Care, LLC (Home Care) for the period 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, 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 Care Center, Inc.
Purchaser :	Kennedy Pavilion RH IV, 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:	\$3,708,000 for the operating interest.
Payment of Purchase Price:	\$711,600 has been paid in cash and put into escrow with the balance of \$2,996,400 to be paid at closing.

Kennedy Pavilion RH IV, LLC will be renamed KPRH IV Operations, 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:	RHCF located at 139-66 35 th Avenue, Flushing, NY
Landlord:	KPRH IV Realty, LLC
Tenant:	KPRH IV Operations, 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 existing lease was assigned and assumed to KPRH IV Realty, LLC from 13962 Realty, LLC, on December 18, 2013.

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

Operating Budget

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

<u>Revenues:</u>	
Medicaid	\$16,295,432
Medicare	3,554,700
Private Pay/Other	3,818,100
Assessment	<u>989,611</u>
Total RHCF	\$24,657,843
<u>Expenses:</u>	
Operating	\$21,114,243
Capital	<u>3,081,098</u>
Total	\$24,195,341

Net Income \$462,502

Total Patient Days 96,400

- 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 increases and elimination of the transition adjustment.
- Overall utilization is projected at 98.5% based on 268 beds.
- Utilization by payor source is anticipated as follows:

Medicaid	82.0%
Medicare	6.0%
Private/Other	12.0%
- Breakeven utilization is projected at 96.7%.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operations is \$3,708,000 will be paid by \$711,600 of the proposed members' equity and the remaining \$2,966,400 will 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 \$4,032,557 based on two months' of first year expenses and will be satisfied from a \$655,347 bank loan over 5 years at 6% interest and the facility's existing cash and receivables and additional members' equity. Net cash and receivables (\$1,992,421) minus accounts payable (\$1,309,834) was \$682,587 at December 31, 2013, resulting in a need for additional equity of \$2,694,623 from the proposed members. A bank letter of interest from Greystone Funding Corporation has been submitted by the applicant. An affidavit from proposed applicant member, Bent Philipson, states that he is willing to contribute resources disproportionate to his ownership percentage. Review of BFA Attachment B, net worth of proposed members, reveals sufficient resources to satisfy the working capital requirements for the RHCF change in ownership.

The submitted budget indicates that a net income of \$462,502 would be maintained during the first year following change in ownership. As of August 31, 2014, the facility has an occupancy level of 96.5% utilizing 268-beds based on the 10 RHCF bed decertification. The first year budget is based on the current occupancy levels and payor mix between the third party payors. BFA Attachment C presents the pro-forma balance sheet of KPRH IV Operations, LLC. As shown, the facility will initiate operation with \$3,497,738 members' equity. It is noted that assets include \$3,708,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, members' equity would be negative \$2,311,053. 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.

Review of BFA Attachment D, financial summary of Flushing Manor Care Center, shows positive net equity for the period shown and positive working capital and net equity for 2011-2013. The facility has experienced an ongoing net loss from operations for the period shown. The net losses from 2011 to 2013 were due to operational inefficiencies and low utilization in which the RHCF has currently turned around as of August 31, 2014 with an overall utilization of 96.5%. The proposed members will take the following necessary steps to achieve further financial viability:

- Reduction of staff without interruption of patient services.
- Renegotiating current purchasing contracts.
- Increasing the case mix of the residents by working with area hospitals and placement staff.

Review of BFA Attachment E, financial summaries of proposed members' affiliated facilities, shows the thirteen RHCFs had current positive net income for the period shown with the following exceptions: Bayview Nursing had an operational loss due to Hurricane Sandy and Diamond Hill Nursing has a net loss due to operational inefficiencies which are being corrected by management to reach positive margins.

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, KPRH IV Operations, LLC
BFA Attachment D	Financial Summary, Flushing Manor Care Center, 2011- 2013
BFA Attachment E	Financial Summary of proposed members affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Reports

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish KPRH IV Operations, LLC to become the new operator of Flushing Manor Care Center, an existing proprietary 278-bed RHCF located at 139-66 35th Avenue in Flushing, and decertify 10 RHCF beds, resulting in a total of 268 RHCF beds, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

132356 E

KPRH IV Operations, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of an annual report, for two years, to the DOH demonstrating 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 and programmatic approval of an acceptable name for the facility. [LTC]
5. Submission and programmatic approval of the floor plans showing the beds to be decertified. [LTC]
6. Submission of an executed building lease acceptable to the Department of Health. [BFA]
7. 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]
8. Submission of an executed working capital loan acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of an executed facility lease agreement, 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]

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237



Public Health and Health Planning Council

Project # 141215-E
Dunkirk Operating, LLC d/b/a Chautauqua Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Chautauqua
Acknowledged: May 15, 2014

Executive Summary

Description

Dunkirk Operating, LLC, a recently formed New York for-profit entity, is seeking approval to be established as the new operator of Chautauqua County Home, an existing 216-bed public residential health care facility (RHCF) located at 10836 Temple Road, Dunkirk. Upon CON approval the facility's name will be Chautauqua Nursing and Rehabilitation Center. A separate realty entity, Dunkirk Realty Holdings, LLC, will acquire the facility's real property.

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

<u>Current Operator:</u>	<u>Ownership</u>
County of Chautauqua	100.00%

<u>Proposed Operator</u>	<u>Ownership</u>
Dunkirk Operating, LLC	
Anthony Bacchi	23.34%
Bernadette Brinsko *	2.00%
Shannon Cayea*	3.00%
Isaac Hersh	25.33%
Deena Hersh	21.00%
Edward Farbenblum*	20.33%
Martin Farbenblum	5.00%

* Existing members of Dunkirk Operating, LLC. The remaining individuals will purchase membership interest in Dunkirk Operations, LLC via a subscription agreement at \$42,857 per unit, or approximately \$3,199,713, broken down as follows: Anthony Bacchi \$999,854; Isaac Hersh \$1,085,577; Deena Hersh \$899,997; and Martin Farbenblum \$214,285.

DOH Recommendation
Contingent Approval

Need Summary

Chautauqua County Home's utilization was 97.6% in 2010, 97.5% in 2011, and 98.3% in 2012. Current utilization, as of June 25, 2014, was 98.6%, which exceeds the County's overall utilization rate and the Department's 97% planning optimum..

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 aggregate purchase price for the real property and operating assets is \$16,000,000 which is being allocated to the real property. Project funding will be as follows: the members of Dunkirk Operating, LLC who are subject to the subscription agreement will provide \$3,199,713 in equity, and Dunkirk Realty Holdings, LLC members will provide \$2,300,287 in equity, of which \$1,600,000 has already been paid. The \$10,500,000 balance will be funded through a five year self-amortizing loan at 5.5%. A letter of interest for the loan has been provided by First Niagara Bank.

There are no project costs associated with this proposal.

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

<u>Budget:</u>	Revenues:	\$19,718,345
	Expenses:	<u>\$18,986,028</u>
	Gain:	\$732,317

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 commitment for a real property loan acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of the executed Amended and Restated Articles of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
6. Submission of the amended Operating Agreement of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
7. Submission of an executed lease agreement between Dunkirk Realty Holdings, LLC and the applicant, 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. Certification that the facility is in full compliance with the CMS 2013 sprinkler mandate at the time of closing. [LTC]

Council Action Date

October 2, 2014

Need Analysis

Background

Dunkirk Operating, LLC seeks approval to become the established operator of Chautauqua County Home, a 216-bed Article 28 residential health care facility, located at 10836 Temple Road, Dunkirk, 14048, in Chautauqua County. Upon approval of this application, Chautauqua County Home will be Chautauqua Nursing and Rehabilitation Center.

Analysis

There is currently a surplus of 213 beds in Chautauqua County as indicated in Table 1 below. The overall occupancy for Chautauqua County is 92.1% for 2012 as indicated in Table 2.

Table 1: RHCN Need – Chautauqua County

2016 Projected Need	831
Current Beds	1,044
Beds Under Construction	0
Total Resources	1,044
Unmet Need	-213

Chautauqua County Home's utilization was 97.6% in 2010, 97.5% in 2011, and 98.3% in 2012. Chautauqua County Home has continually exceeded both the Department's 97% optimum utilization rate and the County's overall occupancy rates.

Table 2: Chautauqua County Home / Chautauqua County Occupancy

<u>Facility/County</u>	<u>% Occupancy 2010</u>	<u>% Occupancy 2011</u>	<u>% Occupancy 2012</u>
Chautauqua County Home	97.6%	97.5%	98.3%
Chautauqua County	93.7%	94.0%	92.1%

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. Chautauqua County Home's Medicaid admissions of 17.0% in 2011 and 19.0% in 2012 exceeded the Chautauqua County 75% rates of 10.9% in 2011 and 12.3% in 2012.

Conclusion

Approval of this application will result in the maintenance of a necessary community resource that provides needed services to county residents and the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Chautauqua County Home	Chautauqua Nursing and Rehabilitation Center
Address	10836 Temple Road Dunkirk, NY. 14048	Same
RHCF Capacity	216	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	County	Proprietary
Class of Operator	Public	Limited Liability Company
Operator	County of Chautauqua	Dunkirk Operating, LLC Managing Member: Edward Farbenblum 20.33% Members: Isaac Hersh 25.33% Anthony Bacchi 23.33% Deena Hersh 21.00% Martin Farbenblum 5.00% Shannon Cayea 3.00% Bernadette Brinsko 2.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avalon Gardens Rehabilitation and Health Care Center	09/2004 to present
Bay Park Center for Nursing and Rehabilitation	01/2005 to present
Eastchester Rehabilitation and Health Care Center	09/2004 to present
Fort Tryon Center for Nursing	09/2004 to 01/2009
Franklin Center for Rehabilitation and Nursing	09/2004 to 12/2009
Golden Gate Rehabilitation and Health Care Center	09/2004 to present
Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	09/2004 to present
Nathan Miller Center for Nursing (closed)	09/2004 to 12/2009
Park Avenue Extended Care Facility	09/2004 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	09/2004 to present
Split Rock Rehabilitation and Health Care Center	09/2004 to 12/2009
Spring Creek Rehabilitation and Nursing Care Center	01/2009 to present
Susquehanna Nursing and Rehabilitation Center	02/2005 to present
The Hamptons Center for Rehabilitation and Nursing	09/2007 to present
Throgs Neck Extended Care Facility	09/2004 to present
Townhouse Extended Care Center	09/2004 to present
White Plains Center for Nursing	09/2004 to present
Woodmere Rehab and Health Care Center, Inc.	09/2004 to present

Diagnostic and Treatment Center

Privilege Care Diagnostic and Treatment Center	04/2008 to present
Woodmere Dialysis, LLC	09/2004 to present

Individual Background Review

Edward Farbenblum is the Vice President of the Pinetree Group, Inc., a real estate agency located in New York, New York. Mr. Farbenblum discloses the following ownership interests:

Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	07/2004 to present
The Hamptons Center for Rehabilitation and Nursing	10/2007 to present
Park Avenue Extended Care Facility	07/2004 to present
Susquehanna Nursing and Rehabilitation Center	02/2005 to present
Townhouse Extended Care Center	07/2004 to present
Privilege Care Diagnostic and Treatment Center	04/2008 to present

Isaac Hersh lists his employment as Assistant Administrator of Woodmere Rehab and Healthcare Center, Inc. since March 2013. Previously, he was the Medicaid Coordinator of New Surfside Nursing Home. Mr. Hersh discloses the following ownership interests:

Fort Tryon Center for Nursing	2003 to 01/2009
Franklin Center for Rehabilitation and Nursing	2003 to 12/2009

Anthony Bacchi lists himself as a Partner in Magna Enterprises, LLC, a real estate investment firm located in Roslyn, New York since 1999. Dr. Bacchi holds a New York State physician license, currently in good standing. Dr. Bacchi discloses the following ownership interests in health facilities:

Avalon Gardens Rehabilitation and Health Care Center	05/2003 to present
Bay Park Center for Nursing and Rehabilitation	07/2007 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	04/2003 to present
Eastchester Rehabilitation and Health Care Center	09/2002 to present
Fort Tryon Center for Rehabilitation & Nursing	11/2002 to 1/2009
Golden Gate Rehabilitation and Health Care Center	06/2002 to present
Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Nassau Extended Care Facility	07/2004 to present
Nathan Miller Center for Nursing (closed)	11/2004 to 12/2009
Franklin Center for Rehabilitation & Nursing	11/2002 to 12/2009
Park Avenue Extended Care Facility	07/2004 to present
Split Rock Rehabilitation and Health Care Center	09/2002 to 01/2009
Susquehanna Nursing & Rehabilitation	02/2005 to present
The Hamptons Center for Rehabilitation and Nursing	09/2007 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	11/2004 to present

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

Martin Farbenblum is a New York State licensed Physician Assistant, and is considered to be in good standing. He is employed as a Managing Partner of Magna Enterprises, LLC since 1999. Mr. Farbenblum was involved in a civil suit in 2012, in regards to a non-healthcare business investment, which was settled in August 2012 with minimal considerations. Martin Farbenblum discloses the following ownership interests in health facilities:

Avalon Gardens Rehabilitation & HCC	2003 to present
Bay Park Center for Nursing and Rehabilitation	01/2005 to present
South Point Plaza Nursing and Rehabilitation Center (formerly Bayview Nursing and Rehabilitation Center)	2003 to present
Eastchester Rehabilitation and Health Care Center	1997 to present
Fort Tryon Center for Rehabilitation & Nursing	2003 to 01/2009
Golden Gate Rehabilitation and Health Care Center	2001 to present
Golden Hill Nursing and Rehabilitation Center	01/2013 to present
Nassau Extended Care Facility	01/2004 to present
Nathan Miller Center for Nursing (closed)	01/2004 to 12/2009
Franklin Center for Rehabilitation & Nursing	01/2003 to 12/2009
Park Avenue Extended Care Facility	01/2004 to present
Split Rock Rehabilitation and Health Care Center	2002 to 12/2009
Susquehanna Nursing & Rehabilitation	01/2005 to present
Throgs Neck Extended Care Facility	01/2004 to present
Townhouse Extended Care Center	01/2004 to present
White Plains Center for Nursing	01/2004 to present
Spring Creek Rehabilitation and Nursing Care Center	01/2009 to present
Woodmere Rehab and Health Care Center, Inc.	1996 to present
Woodmere Dialysis, LLC	1996 to present

Shannon Cayea is a licensed nursing home administrator in New York State and is considered to be in good standing. She lists her employment as the Administrator of Record at the Susquehanna Nursing and Rehabilitation Center. Ms. Cayea discloses no ownership interests in health facilities.

Bernadette Brinsko lists her employment as the controller at the Susquehanna Nursing and Rehabilitation Center. Ms. Brinsko discloses no ownership interests in health facilities.

Character and Competence – Analysis

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

A review of **Avalon Gardens Rehabilitation and Health Care Center** for the time period indicated above reveals:

- the facility was fined \$2,000 pursuant to a Stipulation and Order 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 also fined \$4,000 pursuant to a Stipulation and Order issued July 16, 2012 for surveillance findings on July 29, 2011. Multiple deficiencies were found under 10 NYCRR 415.12 - Quality of Care: Practical Potential and 10 NYCRR 415.26 - Administration.

A review of operations for the Avalon Gardens Rehabilitation and Health Care Center 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 **Bay Park Center for Nursing and Rehabilitation** for the time period indicated above reveals:

- the facility was fined \$4,000 pursuant to a Stipulation and Order 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 also fined \$18,000 pursuant to a Stipulation and Order 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 detailed review of the enforcements listed above for Bay Park Center for Nursing and Rehabilitation leads to a determination that there was no incident of repeat enforcements. Thus, a review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **South Point Plaza Nursing and Rehabilitation Center** formerly known as Bayview Nursing and Rehabilitation for the time period indicated above reveals:

- the facility was fined \$7,000 pursuant to a Stipulation and Order 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 also fined \$2,000 pursuant to a Stipulation and Order 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 also fined \$10,000 pursuant to a Stipulation and Order 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 detailed review of the enforcements listed above for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation led to a determination that there was no incident of repeat enforcements. Thus, a review of operations for South Point Plaza Nursing and Rehabilitation Center formerly known as Bayview Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care.

A review of **Eastchester Rehabilitation and Health Care Center** for the time period indicated above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents.

A detailed review of the enforcements listed above for Eastchester Rehabilitation and Health Care Center leads to a determination that there were no repeat enforcements.

A review of **Golden Gate Rehabilitation and Health Care Center** for the time period indicated above reveals:

- the facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents and 10 NYCRR 415.26 - Organization and Administration.
- the facility was also fined \$10,000 pursuant to a Stipulation and Order issued December 16, 2011 for surveillance findings on November 22, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of operations for Golden Gate Rehabilitation and Health Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for **Nassau Extended Care Facility** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued August 29, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 415.5(a) Dignity and 415.26 Administration.

A review of **Split Rock Rehabilitation and Health Care Center** for the time period indicated above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order issued March 19, 2007 for surveillance findings on December 5, 2005. Deficiencies were found under 10 NYCRR 415.4(b) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.11(c) - Resident Assessment and Care Planning: Comprehensive Care Plans, and 10 NYCRR 415.12(k)(6) - Quality of Care: Special Needs.

A review of operations for Split Rock Rehabilitation and Health Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **Susquehanna Rehabilitation and Health Care Center, LLC** for the time period indicated above reveals that the facility was fined \$1,500 pursuant to a Stipulation and Order issued February 13, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents.

A review of operations for Susquehanna Rehabilitation and Health Care Center, LLC results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of **The Hamptons Center for Rehabilitation and Nursing** for the time period indicated above reveals:

- the facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care, 415.12(a)(2) - Quality of Care: Activities of Daily Living and 415.12(j) - Quality of Care: Hydration.
- the facility was also fined \$8,000 pursuant to a Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) – Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12 - Quality of Care, 415.12(h)(2) - Quality of Care: Accidents, and 415.26 - Organization and Administration.
- the facility was also fined \$4,000 pursuant to a Stipulation and Order 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 also fined \$10,000 pursuant to a Stipulation and Order 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 Hamptons Center for Rehabilitation and Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of the operations of **Nathan Miller Center for Nursing** for the time period indicated above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

A review of operations for Nathan Miller Center for Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of operations for Golden Hill Nursing and Rehabilitation Center, Fort Tryon Center for Rehabilitation & Nursing, Franklin Center for Rehabilitation and Nursing, Spring Creek Rehabilitation and Nursing Care Center, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, White Plains Center for Nursing, Woodmere Rehab and Health Care Center, Inc., and Townhouse Extended Care Center 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 Privilege Care Diagnostic and Treatment Center for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Woodmere Dialysis LLC for the time period indicated 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.

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 change in ownership will be effectuated in accordance with an executed asset purchase agreement for the real property and operating interest, the terms of which are summarized below:

Date:	January 29, 2014
Seller:	Chautauqua County, aka Chautauqua County Nursing Home
Purchaser:	Dunkirk Realty Holdings, LLC
New Operator:	Dunkirk Operating, LLC
Purchased Assets:	Transfer, assign, convey and deliver the Real Property which consists of: Land, Improvements, FF&E, and all other structures and improvements on the land. Transfer, assign, convey and deliver the Personal Property, Intangible Property, and Accounts Receivable to the New Operator.
Excluded Assets:	Cash, short-term investments and third party settlements, except accounts receivables.
Purchase Price:	\$16,000,000
Payment of Purchase Price:	\$ 1,600,000 deposit on signing agreement; 14,400,000 due at closing

The purchase price is proposed to be satisfied as follows:

Equity – Dunkirk Operating, LLC	\$3,199,713
Equity – Dunkirk Realty Holdings, LLC	2,300,287
Loan- 5.5%, self-amortizing 5 year term	<u>10,500,000</u>
Total	\$16,000,000

A letter of interest has been provided by First Niagara Bank. BFA Attachments B and C are the proposed members' net worth summaries for Dunkirk Operating, LLC and Dunkirk Realty Holdings, LLC, respectively, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Anthony Bacchi, Edward Farbenblum, Martin Farbenblum and Benjamin Landa have provided affidavits stating that they are willing to contribute resources disproportionate to their 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. There no outstanding Medicaid and Assessment liabilities as of September 10, 2014.

Lease Agreement

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

Premises:	216-bed RHCF located at 10836 Temple Road, Dunkirk, NY 14048
Owner/Landlord:	Dunkirk Realty Holdings, LLC
Lessee:	Dunkirk Operating, LLC
Term:	Twenty-six years – with a 10-year renewal option
Rent:	\$600,000 per year (\$50,000 per month) plus landlords debt service payment bring the total rent to \$1,600,000 per year
Provisions:	Taxes, utilities, insurance, 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 the operating entity.

Operating Budget

The applicant has provided an operating budget, in 2014 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

<u>Revenues:</u>	
Medicaid	\$10,273,370
Medicare	2,422,814
Private Pay	4,940,637
Assessment Revenue	677,524
Medicare Part B	410,000
Ancillary Revenue-Pharmacy	<u>994,000</u>
Total Revenues:	\$19,718,345
<u>Expenses:</u>	
Operating	\$17,386,028
Capital	<u>1,600,000</u>
Total Expenses:	\$18,986,028
Net Income:	<u>\$732,317</u>
RHFC Utilization (patient days)	76,859
RHFC Occupancy	97.5%

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

- Medicaid capital component includes lease rental payment.
- Medicaid rates are based on 2014 Medicaid pricing rates.
- Medicare and private pay revenues are based on current payment rates.
- RHCF projected utilization is 97.5%. Utilization for 2013 was 96.4%, while the average utilization from 2006 through 2012 was 97.8%. On April 9, 2014 and June 25, 2014 occupancy was 99.5% and 98.6%, respectively.
- Breakeven utilization is projected at 94%.
- RHCF utilization by payor source is anticipated as follows:

Medicaid	74.20%
Medicare	8.34%
Private	17.46%

Capability and Feasibility

There are no project costs associated with this application. The aggregate purchase price for the real property and operating assets is \$16,000,000, which is being allocated to the real property. Project funding will be as follows: Dunkirk Operating, LLC, members who are subject to the subscription agreement will provide \$3,199,713 in equity, and Dunkirk Realty Holdings, LLC members will provide \$2,300,287 in equity, of which \$1,600,000 has already been paid. The \$10,500,000 balance will be funded through a five year self-amortizing loan at 5.5%. A letter of interest for the loan has been provided by First Niagara Bank. A review of BFA Attachments B and C, the net worth summaries for the proposed members' of Dunkirk Operating, LLC and Dunkirk Realty Holdings, LLC, respectively, reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Anthony Bacchi, Edward Farbenblum, Martin Farbenblum and Benjamin Landa have provided affidavits stating that they are willing to contribute resources disproportionate to their membership.

The working capital requirement is estimated at \$3,164,338 and is based on two months of the first year operating expenses. In accordance with the purchase agreement, Dunkirk Operating, LLC will receive approximately \$3,474,468 in net accounts receivables which will be used to satisfy the working capital needs. DOH staff notes that, as of 2013, the net cash plus accounts receivable minus accounts payable exceeds the working capital requirements. BFA Attachment C, Dunkirk Operating, LLC pro-forma balance sheet, indicates that the entity will start off with \$3,474,468 in equity.

The submitted budget indicates that a net income of \$732,317 would be maintained during the first year following change in ownership. As of June, 2014, the facility has an occupancy level of 99.5%. DOH staff reviewed the difference between the current 2013 net operating loss of \$231,614, as shown on BFA Attachment E, and the first year budgeted net income of \$732,317. DOH has concluded that the difference is mainly due to the reduction in employee fringe benefits of \$3,394,882 and \$446,671 in administrative expenses without interruption of patient care. The facility will no longer participate in the County benefit plan. 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

As shown on BFA Attachment E, the facility maintained positive working capital, net assets and a net loss of \$231,614 for 2013. It is noted that this 2013 net loss would have been increased if the RHCF had not received a \$3,609,939 intergovernmental transfer subsidy. The county indicates it cannot maintain its current operation due to recurring losses from year-to-year and has, therefore, decided to sell the facility to a new operator who is an experienced team of nursing home providers.

BFA Attachment F, Financial Summary of the proposed members' affiliated RHCs, shows the facilities have currently maintained positive income from operations for the periods shown with the exception of: Bayview Nursing Home, which had an operational loss due to Hurricane Sandy; Golden Gate Rehabilitation, which was due to a one-time Medicaid rate adjustment; Nassau Extended Care and Willoughby Rehabilitation, which had net losses due to operational inefficiencies which are being corrected by management to reach positive margins; and Woodmere Rehabilitation, whose net operational loss in 2012 has been corrected by management in 2013.

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	Proposed Members of Dunkirk Realty Holdings, LLC
BFA Attachment B	Net Worth of Proposed Members, Dunkirk Operating, LLC
BFA Attachment C	Net Worth of Proposed Members, Dunkirk Realty Holdings, LLC
BFA Attachment D	Pro-forma Balance Sheet, Dunkirk Operating, LLC
BFA Attachment E	Financial Summary, Chautauqua County Home
BFA Attachment F	Financial Summary, Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Reports

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of October, 2014, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Dunkirk Operating, LLC to be established as the new operator of Chautauqua County Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

141215 E

Dunkirk Operating, LLC d/b/a Chautauqua
Nursing and Rehabilitation Center

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 commitment for a real property loan acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of the executed Amended and Restated Articles of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
6. Submission of the amended Operating Agreement of Dunkirk Operating, LLC, acceptable to the Department. [CSL]
7. Submission of an executed lease agreement between Dunkirk Realty Holdings, LLC and the applicant, 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. Certification that the facility is in full compliance with the CMS 2013 sprinkler mandate at the time of closing. [LTC]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237