

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of THE NEW YORK STATE HEALTH FACILITIES ASSOCIATION, INC., ABSOLUT CENTER FOR NURSING AND REHABILITATION AT AURORA PARK, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT ENDICOTT, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT GASPORT, ACADIA CENTER FOR NURSING AND REHABILITATION, ADIRA AT RIVERSIDE REHABILITATION AND NURSING, AMSTERDAM NURSING HOME, AUTUMN VIEW HEALTH CARE FACILITY, BAINBRIDGE NURSING AND REHABILITATION CENTER, BEACH TERRACE CARE CENTER, BEDFORD CENTER FOR NURSING AND REHABILITATION, BELAIR CARE CENTER, BELLHAVEN CENTER FOR REHABILITATION AND NURSING CARE, BENSONHURST CENTER FOR REHABILITATION AND HEALTHCARE, BERKSHIRE NURSING AND REHABILITATION CENTER, BETH ABRAHAM CENTER FOR REHABILITATION AND NURSING, BEZALEL REHABILITATION AND NURSING CENTER, BORO PARK CENTER FOR REHABILITATION AND HEALTHCARE, BRIDGE VIEW NURSING HOME, BRIDGEWATER CENTER FOR REHABILITATION AND NURSING, BRONX CENTER FOR REHABILITATION AND HEALTHCARE, BRONX GARDENS REHABILITATION AND NURSING CENTER, BROOKLYN - QUEENS NURSING HOME, BROOKLYN CENTER FOR REHABILITATION AND RESIDENTIAL HEALTH CARE, CAPSTONE CENTER FOR REHABILITATION AND NURSING, CARILLON NURSING AND REHABILITATION CENTER, CARTHAGE CENTER FOR REHABILITATION AND NURSING, CEDAR MANOR NURSING & REHABILITATION CENTER, CENTRAL ISLAND HEALTHCARE, CENTRAL PARK REHABILITATION AND NURSING CENTER, CENTRAL QUEENS REHABILITATION AND NURSING CENTER, CHAPIN HOME FOR THE AGING, CHAUTAUQUA NURSING AND REHABILITATION CENTER, CHESTNUT PARK REHABILITATION AND

VERIFIED PETITION

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Petitioners,

-against-

JAMES McDONALD, M.D., as Commissioner of Health of the State of New York,

Respondent,

For a Judgment Pursuant to Article 78 of the CPLR.

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF
ALBANY:

Petitioners, by their attorneys, O'Connell and Aronowitz, allege as follows:

NATURE OF THIS CASE

1. In this Article 78 proceeding, the Petitioners are a group of residential health care facilities, also known as nursing homes, and a trade association, The New York State Health Facilities Association (“NYSHFA”), that represents them as members. Petitioners are challenging the validity of the Medicaid reimbursement rates for those facilities that were recently promulgated by the Respondent Commissioner of Health covering the period from January 1, 2024 through March 31, 2024, as set forth in a letter from the New York State Department of Health dated June 20, 2024. Petitioners contend that the Respondents illegally failed to make a case-mix adjustment to those rates as required by law (Public Health Law § 2808[2-b][b][ii][A]), regulations (10 N.Y.C.R.R. §§ 86-2.37 and 86-2.40[m][6][i]), and New York’s Medicaid State Plan, including, in particular, Medicaid State Plan Amendment #21-0050, as approved by the federal government on August 21, 2023. Petitioners are, therefore, seeking a judgment that (a) annuls the rates as set forth in the June 20, 2024 letter; (b) directs the Respondent Commissioner of Health to recompute said rates in accordance with the aforesaid law, regulations and Medicaid State Plan; (c) orders Respondent to pay to Petitioners forthwith the increases in such rates that result from the recomputation; and (d) grants Petitioners such other further and different relief as the Court deems just and appropriate, including the costs and disbursements of this action.

PARTIES**A. Petitioners**

2. Petitioner NEW YORK STATE HEALTH FACILITIES ASSOCIATION, INC. (“NYSHFA”) is a not-for-profit corporation founded in 1949 and organized under the laws of the State of New York with its headquarters located in the City and County of Albany. NYSHFA is

a trade association that represents facilities throughout the State of New York that provide long-term services to its member assisted living facilities, adult homes, and nursing homes, including all the nursing homes that are Petitioners in this action. NYSHFA provides education, training, advocacy, and legal services to its members and from time, as is the case in this proceeding, it has participated in lawsuits to assert and to protect their rights and interests. *See, e.g., Aaron Manor Rehabilitation and Nursing Center v. Zucker*, 41 N.Y.3d 925 (2024).

3. At all times relevant hereto, the Petitioners named in paragraphs “4” through “209” of this Petition were and are “residential health care facilities,” also known as “nursing homes,” that have been issued certificates by the Respondent Commissioner of Health to operate as such and at all times relevant hereto they have participated in New York State’s Medical Assistance Program (“Medicaid”) established pursuant to Title XIX of the federal Social Security Act and Article 5, Title 11 of the New York State Social Services Law.

4. Petitioner, Absolut Center for Nursing and Rehabilitation at Aurora Park, located at 292 Main Street, East Aurora, NY, 14052, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

5. Petitioner, Absolut Center for Nursing and Rehabilitation at Endicott, located at 301 Nantucket Drive, Endicott, NY, 13760-2799, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

6. Petitioner, Absolut Center for Nursing and Rehabilitation at Gasport, located at 4540 Lincoln Drive, Gasport, NY, 14067, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

7. Petitioner, Acadia Center for Nursing and Rehabilitation, located at 1146 Woodcrest Avenue, Riverhead, NY, 11901-2016, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

8. Petitioner, Adira at Riverside Rehabilitation and Nursing, located at 120 Odell Avenue, Yonkers, NY, 10701, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

9. Petitioner, Amsterdam Nursing Home, located at 1060 Amsterdam Avenue, New York, NY, 10025, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

10. Petitioner, Autumn View Health Care Facility, located at S-4650 Southwestern Boulevard, Hamburg, NY, 14075-1939, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

11. Petitioner, Bainbridge Nursing and Rehabilitation Center, located at 3518 Bainbridge Avenue, Bronx, NY, 10467-1402, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

12. Petitioner, Beach Terrace Care Center, located at 640 West Broadway, Long Beach, NY, 11561-2901, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

13. Petitioner, Bedford Center for Nursing and Rehabilitation, located at 40 Heyward Street, Brooklyn, NY, 11249, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

14. Petitioner, Belair Care Center, located at 2478 Jerusalem Avenue, North Bellmore, NY, 11710-1827, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

15. Petitioner, Bellhaven Center for Rehabilitation and Nursing Care, located at 110 Beaver Dam Road, Brookhaven, NY, 11719-9755, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

16. Petitioner, Bensonhurst Center for Rehabilitation and Healthcare, located at 1740 84th Street, Brooklyn, NY, 11214-2825, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

17. Petitioner, Berkshire Nursing and Rehabilitation Center, located at 10 Berkshire Road, West Babylon, NY, 11704, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

18. Petitioner, Beth Abraham Center for Rehabilitation and Nursing, located at 612 Allerton Avenue, Bronx, NY, 10467-7495, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

19. Petitioner, Bezalel Rehabilitation and Nursing Center, located at 29-38 Far Rockaway Boulevard, Far Rockaway, NY, 11691, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

20. Petitioner, Boro Park Center for Rehabilitation and Healthcare, located at 4915 10th Avenue, Brooklyn, NY, 11219-3301, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

21. Petitioner, Bridge View Nursing Home, located at 143-10 20th Avenue, Queens, NY, 11357, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

22. Petitioner, Bridgewater Center For Rehabilitation and Nursing, located at 159-163 Front Street, Binghamton, NY, 13905-3103, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

23. Petitioner, Bronx Center for Rehabilitation and Healthcare, located at 1010 Underhill Avenue, Bronx, NY, 10472-6012, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

24. Petitioner, Bronx Gardens Rehabilitation and Nursing Center, located at 2175 Quarry Road, Bronx, NY, 10457, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

25. Petitioner, Brooklyn - Queens Nursing Home, located at 2749 Linden Boulevard, Brooklyn, NY, 11208-5110, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

26. Petitioner, Brooklyn Center for Rehabilitation and Residential Health Care, located at 170 Buffalo Avenue, Brooklyn, NY, 11213, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

27. Petitioner, Capstone Center for Rehabilitation and Nursing, located at 302 Swart Hill Road, Amsterdam, NY, 12010-7081, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

28. Petitioner, Carillon Nursing and Rehabilitation Center, located at 830 Park Avenue, Huntington, NY, 11743-4599, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

29. Petitioner, Carthage Center for Rehabilitation and Nursing, located at 1045 West Street, Carthage, NY, 13619-9790, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

30. Petitioner, Cedar Manor Nursing & Rehabilitation Center, located at 32 Cedar Lane, Ossining, NY, 10562, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

31. Petitioner, Central Island Healthcare, located at 825 Old Country Road, Plainview, NY, 11803-4913, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

32. Petitioner, Central Park Rehabilitation and Nursing Center, located at 116 Martin Luther King East, Syracuse, NY, 13205, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

33. Petitioner, Central Queens Rehabilitation and Nursing Center, located at 6995 Queens Midtown Expressway, Maspeth, NY, 11378, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

34. Petitioner, Chapin Home For The Aging, located at 165-01 Chapin Parkway, Jamaica Hills, NY, 11432, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

35. Petitioner, Chautauqua Nursing and Rehabilitation Center, located at 10836 Temple Road, Dunkirk, NY, 14048-9611, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

36. Petitioner, Chestnut Park Rehabilitation and Nursing Center, located at 330 Chestnut Street, Oneonta, NY, 13820-1212, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

37. Petitioner, Clove Lakes Health Care and Rehabilitation Center, located at 25 Fanning Street, Staten Island, NY, 10314-5307, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

38. Petitioner, Collar City Nursing & Rehabilitation Center, located at 100 New Turnpike Road, Troy, NY, 12182-1412, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

39. Petitioner, Colonial Park Rehabilitation and Nursing Center, located at 950 Floyd Avenue, Rome, NY, 13440-4535, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

40. Petitioner, Concord Nursing Home, located at 300 Madison Avenue, Brooklyn, NY, 11216-1597, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

41. Petitioner, Corning Center for Rehabilitation and Healthcare, located at 205 E. First Street, Corning, NY, 14830-2809, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

42. Petitioner, Cortland Park Rehabilitation and Nursing Center, located at 193 Clinton Avenue, Cortland, NY, 13045-1420, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

43. Petitioner, Cortlandt Healthcare, located at 110 Oregon Road, Cortlandt Manor, NY, 10567-1232, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

44. Petitioner, Crest Manor Living and Rehabilitation Center, located at 6745 Pittsford-Palmyra Road, Fairport, NY, 14450-3343, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

45. Petitioner, Crown Heights Center for Nursing and Rehabilitation, located at 810 St Marks Avenue, Brooklyn, NY, 11213, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

46. Petitioner, Crown Park Rehabilitation and Nursing Center, located at 28 Kellogg Road, Cortland, NY, 13045, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

47. Petitioner, Cypress Garden Center for Nursing and Rehabilitation, located at 139-66 35th Avenue, Flushing, NY, 11354, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

48. Petitioner, Daleview Care Center, located at 574 Fulton Street, Farmingdale, NY, 11735-7401, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

49. Petitioner, Delmar Center for Rehabilitation and Nursing, located at 125 Rockefeller Road, Delmar, NY, 12054-2221, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

50. Petitioner, Downtown Brooklyn Nursing and Rehabilitation Center, located at 520 Prospect Place, Brooklyn, NY, 11238, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

51. Petitioner, Dry Harbor Nursing Home, located at 61-35 Dry Harbor Road, Middle Village, NY, 11379-1599, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

52. Petitioner, East Haven Nursing and Rehabilitation Center, located at 2323 Eastchester Road, Bronx, NY, 10469-5910, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

53. Petitioner, East Neck Nursing and Rehabilitation Center, located at 134 Great East Neck Road, West Babylon, NY, 11704-8027, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

54. Petitioner, Ellicott Center for Rehabilitation and Nursing, located at 200 7th Street, Buffalo, NY, 14201-2161, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

55. Petitioner, Elmhurst Care Center, located at 100-17 23rd Avenue, East Elmhurst, NY, 11369-1305, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

56. Petitioner, EPIC Rehabilitation and Nursing at White Plains, located at 120 Church Street, White Plains, NY, 10601, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

57. Petitioner, Essex Center for Rehabilitation and Healthcare, located at 81 Park Street, Elizabethtown, NY, 12932, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

58. Petitioner, Evergreen Commons Rehabilitation and Nursing Center, located at 1070 Luther Road, East Greenbush, NY, 12061-4020, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

59. Petitioner, Fairview Nursing Care Center, located at 6970 Grand Central Parkway, Forest Hills, NY, 11375, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

60. Petitioner, Far Rockaway Center for Rehabilitation and Nursing, located at 13-11 Virginia Street, Far Rockaway, NY, 11691-4655, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

61. Petitioner, Foltsbrook Center Nursing and Rehabilitation, located at 140 N. Washington Street, Herkimer, NY, 13350, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

62. Petitioner, Fordham Nursing and Rehabilitation Center, located at 2678 Kingsbridge Terrace, Bronx, NY, 10463-7471, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

63. Petitioner, Forest View Center for Rehabilitation & Nursing, located at 71-20 110th Street, Forest Hills, NY, 11375-4844, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

64. Petitioner, Four Seasons Nursing and Rehabilitation Center, located at 1555 Rockaway Parkway, Brooklyn, NY, 11236-4098, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

65. Petitioner, Fulton Center for Rehabilitation and Healthcare, located at 847 County Highway 122, Gloversville, NY, 12078-6413, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

66. Petitioner, Fulton Commons Care Center, located at 60 Merrick Avenue, East Meadow, NY, 11554, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

67. Petitioner, Glengariff Rehabilitation and Healthcare Center, located at 141 Dosoris Lane, Glen Cove, NY, 11542-0071, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

68. Petitioner, Glens Falls Center for Rehabilitation and Nursing, located at 152 Upper Sherman Avenue, Glens Falls, NY, 12801, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

69. Petitioner, Golden Hill Nursing and Rehabilitation Center, located at 99 Golden Hill Drive, Kingston, NY, 12401-6442, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

70. Petitioner, Grand Manor Nursing & Rehabilitation Center, located at 700 White Plains Road, Bronx, NY, 10473-2696, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

71. Petitioner, Grandell Rehabilitation and Nursing Center, located at 645 West Broadway, Long Beach, NY, 11561-2920, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

72. Petitioner, Granville Center for Rehabilitation and Nursing, located at 17 Madison Street, Granville, NY, 12832-1221, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

73. Petitioner, Gurwin Jewish Nursing and Rehabilitation Center, located at 68 Hauppauge Road, Commack, NY, 11725-4431, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

74. Petitioner, Hamilton Manor Nursing Home, located at 1172 Long Pond Road, Rochester, NY, 14626-1195, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

75. Petitioner, Hamilton Park Nursing and Rehabilitation Center, located at 691 92nd Street, Brooklyn, NY, 11228, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

76. Petitioner, Harris Hill Nursing Facility, located at 2699 Wehrle Drive, Williamsville, NY, 14221-7332, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

77. Petitioner, Hillside Manor Rehabilitation and Extended Care Center, located at 182-15 Hillside Avenue, Jamaica Estates, NY, 11432-4853, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

78. Petitioner, Holliswood Center for Rehabilitation and Healthcare, located at 195-44 Woodhull Avenue, Jamaica, NY, 11423, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

79. Petitioner, Hopkins Center for Rehabilitation and Healthcare, located at 155 Dean Street, Brooklyn, NY, 11217-2213, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

80. Petitioner, Hudson Hill Center for Rehabilitation and Nursing, located at 65 Ashburton Avenue, Yonkers, NY, 10701, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

81. Petitioner, Hudson Park Rehabilitation and Nursing Center, located at 325 Northern Boulevard, Albany, NY, 12204-1001, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

82. Petitioner, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, located at 3220 Henry Hudson Parkway, Bronx, NY, 10463-3211, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

83. Petitioner, Hudson Valley Rehabilitation and Extended Care Center, located at 260 Vineyard Avenue, Highland, NY, 12528-2343, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

84. Petitioner, Huntington Hills Center for Health and Rehabilitation, located at 400 South Service Road, Melville, NY, 11747-3229, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

85. Petitioner, Island Nursing and Rehab Center, located at 5537 Express Drive North, Holtsville, NY, 11742, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

86. Petitioner, King David Center for Nursing and Rehabilitation, located at 2266 Cropsey Avenue, Brooklyn, NY, 11214-5706, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

87. Petitioner, Kings Harbor Multicare Center, located at 2000 E. Gun Hill Road, Bronx, NY, 10469-6016, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

88. Petitioner, Kingsway Arms Nursing Center, located at 323 Kings Road, Schenectady, NY, 12304-3645, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

89. Petitioner, Latta Road Nursing Home East, located at 2102 Latta Road, Rochester, NY, 14612-3795, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

90. Petitioner, Linden Center for Nursing and Rehabilitation, located at 2237 Linden Boulevard, Brooklyn, NY, 11207-7527, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

91. Petitioner, Livingston Hills Nursing and Rehabilitation Center, located at 2781 US-9, Livingston, NY, 12541, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

92. Petitioner, Long Beach Nursing and Rehabilitation Center, located at 375 East Bay Drive, Long Beach, NY, 11561-2350, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

93. Petitioner, Luxor Nursing and Rehabilitation at Mills Pond, located at 273 Moriches Road, St. James, NY, 11780-2117, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

94. Petitioner, Luxor Nursing and Rehabilitation at Sayville, located at 300 Broadway Avenue, Sayville, NY, 11782-1628, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

95. Petitioner, Maple City Rehabilitation and Nursing, located at 434 Monroe Avenue, Hornell, NY, 14843, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

96. Petitioner, Martine Center for Rehabilitation and Nursing, located at 12 Tibbits Avenue, White Plains, NY, 10606-2438, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

97. Petitioner, Massapequa Center Rehabilitation & Nursing, located at 101 Louden Avenue, Amityville, NY, 11701, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

98. Petitioner, Mayfair Care Center, located at 100 Baldwin Road, Hempstead, NY, 11550, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

99. Petitioner, Meadow Park Rehabilitation and Health Care Center, located at 78-10 164th Street, Fresh Meadows, NY, 11366, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

100. Petitioner, Meadowbrook Care Center, located at 320 W. Merrick Road, Freeport, NY, 11520-3248, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

101. Petitioner, Meadowbrook Healthcare, located at 154 Prospect Avenue, Plattsburgh, NY, 12901-1302, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

102. Petitioner, Middletown Park Rehabilitation & Health Care Center, located at 121 Dunning Road, Middletown, NY, 10940-2243, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

103. Petitioner, Morningside Nursing and Rehabilitation Center, located at 1000 Pelham Parkway South, Bronx, NY, 10461-1003, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

104. Petitioner, Morris Park Rehabilitation and Nursing Center, located at 1235 Pelham Parkway North, Bronx, NY, 10469-5899, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

105. Petitioner, Moshulu Parkway Nursing & Rehabilitation Center, located at 3356 Perry Avenue, Bronx, NY, 10467-3204, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

106. Petitioner, New Paltz Center for Rehabilitation and Nursing, located at 1 Jansen Road, New Paltz, NY, 12561-3811, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

107. Petitioner, New Riverdale Rehab and Nursing, located at 641 W. 230th Street, Bronx, NY, 10463-3399, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

108. Petitioner, New Vanderbilt Rehabilitation and Care Ctr, located at 135 Vanderbilt Avenue, Staten Island, NY, 10304-2697, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

109. Petitioner, New York Center for Rehabilitation & Nursing, located at 2613-21st Street, Astoria, NY, 11102, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

110. Petitioner, New York Congregational Nursing Center, located at 135 Linden Boulevard, Brooklyn, NY, 11226, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

111. Petitioner, Newark Manor Nursing Home, located at 222 W. Pearl Street, Newark, NY, 14513-1099, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

112. Petitioner, Niagara Rehabilitation and Nursing Center, located at 822 Cedar Avenue, Niagara Falls, NY, 14301-1136, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

113. Petitioner, Northeast Center for Rehabilitation and Brain Injury, located at 300 Grant Avenue, Lake Katrine, NY, 12449, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

114. Petitioner, Northern Manor Geriatric Center, located at 199 N Middletown Road, Nanuet, NY, 10954-1317, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

115. Petitioner, Northern Metropolitan Residential Health Care Facility, located at 225 Maple Avenue, Monsey, NY, 10952-2715, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

116. Petitioner, Northern Riverview Health Care Center, located at 87 S Route 9W, Haverstraw, NY, 10927-1700, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

117. Petitioner, Norwegian Christian Home and Health Center, located at 1250 67th Street, Brooklyn, NY, 11219-5921, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

118. Petitioner, Ocean Gardens Care Center, located at 64-11 Beach Channel Drive, Arverne, NY, 11692-1412, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

119. Petitioner, Oceanside Care Center, located at 2914 Lincoln Avenue, Oceanside, NY, 11572, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

120. Petitioner, Oneida Health Rehabilitation and Extended Care, located at 323 Genesee Street, Oneida, NY, 13421, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

121. Petitioner, Onondaga Center for Rehabilitation and Nursing, located at 217 East Avenue, Minoa, NY, 13116-1299, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

122. Petitioner, Palatine Nursing Home, located at 154 Lafayette Street, Palatine Bridge, NY, 13428-9715, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

123. Petitioner, Palm Gardens Center for Nursing and Rehabilitation, located at 615 Avenue C, Brooklyn, NY, 11218-4101, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

124. Petitioner, Park Avenue Extended Care Facility, located at 425 National Boulevard, Long Beach, NY, 11561-2031, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

125. Petitioner, Parker Jewish Institute for Health Care & Rehab., located at 271-11 76th Avenue, New Hyde Park, NY, 11040-1436, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

126. Petitioner, Peninsula Nursing and Rehabilitation Center, located at 50-15 Beach Channel Drive, Far Rockaway, NY, 11691, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

127. Petitioner, Pine Valley Center for Rehabilitation and Nursing, located at 661 North Main Street, Spring Valley, NY, 10977, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

128. Petitioner, Putnam Ridge, located at 46 Mt. Ebo Road North, Brewster, NY, 10509-3600, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

129. Petitioner, Queens Boulevard Extended Care Facility, located at 61-11 Queens Boulevard, Woodside, NY, 11377-4965, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

130. Petitioner, Regeis Care Center, located at 3200 Baychester Avenue, Bronx, NY, 10475-1513, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

131. Petitioner, Rego Park Nursing Home, located at 111-26 Corona Avenue, Flushing, NY, 11368-4027, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

132. Petitioner, Renaissance Rehabilitation and Nursing Care Center, located at 4975 Albany Post Road, Staatsburg, NY, 12580-6049, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

133. Petitioner, Resort Nursing Home, located at 430 Beach 68th Street, Arverne, NY, 11692-1488, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

134. Petitioner, Richmond Center for Rehabilitation and Specialty Healthcare, located at 91 Tompkins Avenue, Staten Island, NY, 10304-2601, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

135. Petitioner, Riverside Center for Rehabilitation and Nursing, located at 90 No. Main Street, Castleton-on-Hudson, NY, 12033-1098, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

136. Petitioner, Robinson Terrace Rehabilitation and Nursing Center, located at 28652 NY-23, Stamford, NY, 12167, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

137. Petitioner, Rochester Center for Rehabilitation and Nursing, located at 525 Beahan Road, Rochester, NY, 14624, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

138. Petitioner, Rochester Community Nursing and Rehabilitation Center, located at 898 Blossom Road, Rochester, NY, 14610, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

139. Petitioner, Rockville Skilled Nursing and Rehabilitation Center, located at 50 Maine Avenue, Rockville Centre, NY, 11570, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

140. Petitioner, Salem Hills Rehabilitation and Nursing Center, located at 539 Rte 22, Purdys, NY, 10578-0539, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

141. Petitioner, Sands Point Center for Health and Rehabilitation, located at 1440 Port Washington Boulevard, Port Washington, NY, 11050, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

142. Petitioner, Sans Souci Rehabilitation and Nursing Center, located at 115 Park Avenue, Yonkers, NY, 10703-2903, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

143. Petitioner, Schenectady Center for Rehabilitation and Nursing, located at 526 Altamont Avenue, Schenectady, NY, 12303-1039, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

144. Petitioner, Sea Crest Health Care Center, located at 3035 West 24th Street, Brooklyn, NY, 11224-2197, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

145. Petitioner, Seagate Rehabilitation and Nursing Center, located at 3015 W 29 Street, Brooklyn, NY, 11224, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

146. Petitioner, Seneca Health Care Center, located at 2987 Seneca Street, West Seneca, NY, 14224-2648, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

147. Petitioner, Seneca Nursing and Rehabilitation Center, located at 200 Douglas Drive, Waterloo, NY, 13165-1645, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

148. Petitioner, Shore View Nursing and Rehabilitation Center, located at 2865 Brighton 3rd Street, Brooklyn, NY, 11235, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

149. Petitioner, Sky View Rehabilitation and Health Care Center, located at 1280 Albany Post Road, Croton-on-Hudson, NY, 10520-9809, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

150. Petitioner, Slate Valley Center for Rehabilitation and Nursing, located at 10421 State Rte 40, Granville, NY, 12832-5713, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

151. Petitioner, Smithtown Center for Rehabilitation & Nursing Care, located at 391 North Country Road, Smithtown, NY, 11787-2069, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

152. Petitioner, Sprain Brook Manor, located at 77 Jackson Avenue, Scarsdale, NY, 10583-3140, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

153. Petitioner, Spring Creek Rehabilitation & Nursing Care Center, located at 660 Louisiana Avenue, Brooklyn, NY, 11239-1526, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

154. Petitioner, St. James Rehabilitation & Healthcare Center, located at 275 Moriches Road, St. James, NY, 11780, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

155. Petitioner, St. Patrick's Home, located at 66 Van Cortlandt Park South, Bronx, NY, 10463-3102, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

156. Petitioner, Steuben Center for Rehabilitation and Healthcare, located at 7009 Rumsey Street Ext, Bath, NY, 14810, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

157. Petitioner, Sunset Nursing and Rehabilitation Center, located at 232 Academy Street, Boonville, NY, 13309-1394, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

158. Petitioner, Susquehanna Nursing & Rehabilitation Center, located at 282 Riverside Drive, Johnson City, NY, 13790-2774, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

159. Petitioner, Swan Lake Nursing & Rehabilitation, located at 25 Schoenfeld Boulevard, Patchogue, NY, 11772-2999, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

160. Petitioner, Taconic Rehabilitation and Nursing at Beacon, located at 10 Hastings Drive, Beacon, NY, 12508, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

161. Petitioner, Taconic Rehabilitation and Nursing at Hopewell, located at 3 Summit Ct, Fishkill, NY, 12524-1334, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

162. Petitioner, Taconic Rehabilitation and Nursing at Ulster, located at 1 Wingate Way, Highland, NY, 12528-2143, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

163. Petitioner, Ten Broeck Center for Rehabilitation & Nursing, located at One Commons Drive, Lake Katrine, NY, 12449-5149, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

164. Petitioner, The Brightonian, located at 1919 Elmwood Avenue, Rochester, NY, 14620-3398, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

165. Petitioner, The Chateau At Brooklyn Rehabilitation and Nursing Center, located at 3457 Nostrand Avenue, Brooklyn, NY, 11229-5194, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

166. Petitioner, The Eleanor Nursing Care Center, located at 419 North Quaker Lane, Hyde Park, NY, 12538, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

167. Petitioner, The Emerald Peek Rehabilitation and Nursing Center, located at 2000 East Main Street, Peekskill, NY, 10566-2599, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

168. Petitioner, The Grand Healthcare Rehabilitation and Nursing at Barnwell, located at 3230 Church Street, Valatie, NY, 12184-2303, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

169. Petitioner, The Grand Rehabilitation and Nursing at Batavia, located at 257 State Street, Batavia, NY, 14020, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

170. Petitioner, The Grand Rehabilitation and Nursing at Chittenango, located at 331 Russell Street, Chittenango, NY, 13037-1201, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

171. Petitioner, The Grand Rehabilitation and Nursing at Delaware Park, located at 1205 Delaware Avenue, Buffalo, NY, 14209, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

172. Petitioner, The Grand Rehabilitation and Nursing at Great Neck, located at 15 St Paul's Place, Great Neck, NY, 11021-2636, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

173. Petitioner, The Grand Rehabilitation and Nursing at Guilderland, located at 428 State Route 146, Altamont, NY, 12009-4409, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

174. Petitioner, The Grand Rehabilitation and Nursing at Mohawk Valley, located at 9 Sixth Avenue, Ilion, NY, 13357, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

175. Petitioner, The Grand Rehabilitation and Nursing at Pawling, located at 9 Reservoir Road, Pawling, NY, 12564-1715, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

176. Petitioner, The Grand Rehabilitation and Nursing at Queens, located at 157-15 19th Avenue, Whitestone, NY, 11357, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

177. Petitioner, The Grand Rehabilitation and Nursing at River Valley, located at 140 Main Street, Poughkeepsie, NY, 12601, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

178. Petitioner, The Grand Rehabilitation and Nursing at Rome, located at 801 N. James Street, Rome, NY, 13440-3524, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

179. Petitioner, The Grand Rehabilitation and Nursing at South Point, located at 1 Long Beach Road, Island Park, NY, 11558, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

180. Petitioner, The Grand Rehabilitation and Nursing at Utica, located at 1657 Sunset Avenue, Utica, NY, 13502-5415, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

181. Petitioner, The Grove at Valhalla Rehabilitation and Nursing Center, located at 61 Grasslands Road, Valhalla, NY, 10595-1609, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

182. Petitioner, The Heritage Rehabilitation and Health Care Center, located at 5606 15th Avenue, Brooklyn, NY, 11219-4708, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

183. Petitioner, The Paramount at Somers Rehabilitation and Nursing Center, located at 189 Route 100, Somers, NY, 10589, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

184. Petitioner, The Pavilion at Queens for Rehabilitation & Nursing, located at 36-17 Parsons Boulevard, Flushing, NY, 11354-5931, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

185. Petitioner, The Pearl Nursing Center of Rochester, located at 1335 Portland Avenue, Rochester, NY, 14621, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

186. Petitioner, The Pines at Catskill Center for Nursing & Rehabilitation, located at 154 Jefferson Heights, Catskill, NY, 12414-1215, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

187. Petitioner, The Pines at Glens Falls Center for Nursing & Rehabilitation, located at 170 Warren Street, Glens Falls, NY, 12801-4525, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

188. Petitioner, The Pines at Poughkeepsie Center for Nursing & Rehabilitation, located at 100 Franklin Street, Poughkeepsie, NY, 12601-4341, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

189. Petitioner, The Pines at Utica Center for Nursing & Rehabilitation, located at 1800 Butterfield Avenue, Utica, NY, 13501-5610, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

190. Petitioner, The Plaza Rehabilitation and Nursing Center, located at 100 West Kingsbridge Road, Bronx, NY, 10468, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

191. Petitioner, The Riverside Premier Rehabilitation & Healing Center, located at 150 Riverside Drive, New York, NY, 10024, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

192. Petitioner, Tolstoy Foundation Rehabilitation and Nursing Ctr, located at 100 Lake Road, Valley Cottage, NY, 10989, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

193. Petitioner, Townhouse Center for Rehabilitation and Nursing, located at 755 Hempstead Turnpike, Uniondale, NY, 11553-1100, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

194. Petitioner, Troy Center for Rehabilitation and Nursing, located at 49 Marvin Avenue, Troy, NY, 12180-6499, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

195. Petitioner, Union Plaza Care Center, located at 33-23 Union Street, Flushing, NY, 11354-3050, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

196. Petitioner, University Center for Rehabilitation and Nursing, located at 2505 Grand Avenue, Bronx, NY, 10468-4297, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

197. Petitioner, Upper East Side Rehabilitation and Nursing Center, located at 211 East 79th Street, New York, NY, 10075, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

198. Petitioner, Van Duyn Center for Rehabilitation and Nursing, located at 5075 West Seneca Turnpike, Syracuse, NY, 13215, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

199. Petitioner, Verrazano Nursing and Post-Acute Center, located at 100 Castleton Avenue, Staten Island, NY, 10301-3004, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

200. Petitioner, Vestal Park Rehabilitation and Nursing Center, located at 105 West Sheedy Road, Vestal, NY, 13850-5904, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

201. Petitioner, Warren Center for Rehabilitation and Nursing, located at 42 Gurney Lane, Queensbury, NY, 12804-8250, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

202. Petitioner, Washington Center for Rehabilitation and Healthcare, located at 4573 State Route 40, Argyle, NY, 12809, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

203. Petitioner, Waters Edge Rehab & Nursing Center at Port Jefferson, located at 150 Dark Hollow Road, Port Jefferson, NY, 11777-2048, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

204. Petitioner, Waterview Heights Rehabilitation and Nursing Center, located at 425 Beach Avenue, Rochester, NY, 14612, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

205. Petitioner, Waterview Hills Rehabilitation and Nursing Center, located at 537 Route 22, Purdys, NY, 10578-2900, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

206. Petitioner, Waterview Nursing Care Center, located at 119-15 27th Avenue, Flushing, NY, 11354-1094, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

207. Petitioner, Wayne Center for Nursing & Rehabilitation, located at 3530 Wayne Avenue, Bronx, NY, 10467-1511, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

208. Petitioner, Westhampton Care Center, located at 78 Old Country Road, Westhampton, NY, 11977-1219, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

209. Petitioner, Woodcrest Rehabilitation & Residential Health Care Center, located at 119-09 26th Avenue, Flushing, NY, 11354-1099, is a residential health care facility, also known as a nursing home, as defined in Public Health Law § 2801(2), (3).

HERE ADD ALL OTHER PETITIONERS**B. Respondent**

210. Respondent, James McDonald, is the Commissioner of Health of the State of New York with his principal offices located in the City and County of Albany, and as such, he is responsible for carrying out the duties assigned by law to him and to the New York State Department of Health (“DOH”).

BACKGROUND**A. The Medicaid Program**

211. The Medicaid program is a joint federal / state program established pursuant to Title XIX of the Federal Social Security Act to provide and pay for certain health care services to persons whose income and/or resources fall below designated levels or whose medical bills exceed those levels.

212. States, such as New York, that participate in the program, must submit a Medicaid State Plan that complies with federal requirements and is approved by the U.S. Department of Health and Human Services (“HHS”) and the Centers for Medicare and Medicaid Services (“CMS”) within HHS.

213. States, such as New York, that have elected to participate in the Medicaid program and whose Medicaid State Plans are approved by CMS, are reimbursed by the federal government for a percentage (the Federal Matching Share or Federal Financial Participation) of the money the states expend in providing Medicaid care and services to eligible Medicaid recipients.

214. If a state seeks to amend its Medicaid State Plan, it must receive the approval of CMS. 42 C.F.R. §§ 430.10 and 430.12.

215. Under federal regulations, each state participating in the Medicaid program must designate a “single state agency” to administer or supervise that program within its borders. 42 C.F.R. § 431.10(b). In New York State, that “single state agency” is the New York State Department of Health, as set forth in N.Y. Social Services Law § 363-a(1), which requires the Department of Health to obtain and maintain federal approval of the State’s Medicaid Plan and operate it in accordance with federal law.

B. Medicaid Reimbursement

216. In New York State, all nursing homes which enroll as providers in the Medicaid program, including the Petitioners in this proceeding, are reimbursed by the New York State Department of Health at rates established by the Commissioner of Health and certified by the Director of Budget for the costs of services they provide to Medicaid-eligible recipients.

217. The methodology for reimbursing nursing homes in New York State that participate in the Medicaid program is set forth in various provisions of Article 28 of the Public Health Law and regulations adopted by the Commissioner of Health and the New York State Department of Health which are set forth in Subpart 86-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 N.Y.C.R.R. 86-2.1 *et seq.*).

218. Any change in a state’s methodology affecting the payment of Medicaid rates to nursing homes must be approved by CMS via a State Plan Amendment (“SPA”) submitted by the State to CMS. 42 C.F.R. § 447.204(b).

219. Any change in a state’s reimbursement methodology pursuant to a SPA approved by CMS may take effect no earlier than the first day of the calendar quarter in which the SPA was submitted to CMS. 42 C.F.R. §§ 430.20 and 447.256(c).

C. Case Mix Reimbursement

220. One of the aspects of New York State's Medicaid reimbursement methodology is the so-called "case-mix adjustment" whereby the Medicaid rate to nursing home operators is periodically adjusted by a facility-specific case-mix adjustment to reflect changes in the intensity or acuity level of the Medicaid patients they care for over time and changes in the cost of providing services to these patients.

221. The purpose of the case-mix adjustment is to encourage facilities to admit higher-care patients so that those patients are not backed up in hospitals when they can be cared for in a less expensive nursing home setting. At all times relevant herein, Petitioners made their decisions with respect to admitting patients on the basis of and in reliance on that reimbursement policy.

222. A nursing home's facility-specific case-mix adjustment affects its case-mix index ("CMI") which is the average of all the case-mix scores for each individual Medicaid patient residing in the facility – the higher the CMI, the greater the reimbursement.

223. The case-mix methodology is required by both statute (Public Health Law § 2808[2-b][b][ii]) and regulation (10 N.Y.C.R.R. §§ 86-2.37 and 86-2.40[m][6][i]) and until April 1, 2024 case-mix adjustments to a facility's case-mix index were to be recalculated and applied to each facility's Medicaid rate every six months in January and July of each calendar year.

224. Regulations adopted by the Department of Health require each facility to submit Minimum Data Set ("MDS") assessments to the Commissioner of Health (10 N.Y.C.R.R. § 86-2.37) and the case-mix adjustment and case-mix index based on those assessments are thereafter calculated to be effective on January 1 and July 1 of each calendar year. The MDS is a comprehensive standardized assessment tool that measures the health status of each nursing

home resident. *See* 10 N.Y.C.R.R. 86-2.40(m)(6)(i). A copy of the MDS Resident Assessment and Care Screening form is annexed hereto as Exhibit "A".

225. Each year, the facility-specific January 1 case-mix adjustment is recalculated based on the MDS submissions made by a nursing home during the immediately preceding six month period of April through September, and the July 1 case-mix adjustment is recalculated based on the MDS submissions made by a facility for the immediately preceding six-month period of October through March. *See* 10 N.Y.C.R.R. 86-2.40(m)(6)(i).

226. The requirement that the case mix adjustment for January 1 of each year must be based on MDS submissions for the preceding six month period of April through September was added to New York's Medicaid State Plan via a State Plan Amendment which was submitted to CMS by the New York State Department of Health on September 30, 2021 (annexed hereto as Exhibit "B") and approved by CMS on August 21, 2023 with an effective date of July 1, 2021 (annexed hereto as Exhibit "C"). As amended, the State Plan reads as follows:

The case mix adjustment to the direct component of the price for rate periods effective July 1, 2021 and thereafter will be made in January and July of each calendar year and will use all Medicaid-only case mix data submitted to CMS applicable to the previous six-month period (e.g., April-September for the January case mix adjustment; October-March for the July case mix adjustment. (Exhibit "C" at 3).

227. All the Petitioner nursing homes in this case timely submitted to the Department of Health and CMS their MDS submissions for the six month period covering April through September 2023 as required by 10 N.Y.C.R.R. §§ 86-2.37 and 86-2.40(m)(6).

228. After 10 N.Y.C.R.R. 86-2.40(m)(6)(i) was amended effective June 2, 2021 to provide that the case-mix adjustment applicable to January 1 of each year was to be based on six months submissions for the preceding April-September period, the New York State Department

of Health took until July 7, 2022 to calculate and pay the January 1, 2022 case-mix adjustment retroactive to January 1, 2022. *See* Department of Health “Dear Administrator” letter dated July 7, 2022 and annexed hereto as Exhibit “D”.

229. In 2023, the New York State Department of Health calculated a case-mix adjustment retroactive to January 1, 2023 on March 8, 2023 and implemented retroactive payments as of March 29, 2023. *See* Department of Health “Dear Administrator” letter dated March 8, 2023 and annexed hereto as Exhibit “E”.

D. Respondent Fails to Make a Case-Mix Adjustment Effective January 1, 2024

230. This year (2024), however, the Respondent and the Department of Health made no case-mix adjustment applicable to rates effective January 1, 2024 and thereafter.

231. On March 27, 2024, the Department of Health published a notice in the *New York State Register* indicating its intention to file with the federal CMS a proposed Medicaid State Plan Amendment which notice, in pertinent part, provided as follows:

Long-Term Case Services. Effective on and after April 1, 2024, the case-mix adjustment from the operating component of the rates for skilled nursing facilities shall remain unchanged from the July 2023 rates during the development and full implementation of a new case-mix methodology in accordance with federal acuity data. There is no estimated change to gross Medicaid expenditures as a result of this proposed Amendment (emphasis supplied).

A copy of the relevant page of the March 27, 2024 *State Register* is annexed hereto as Exhibit “F”.

232. Upon information and belief, the estimate that there would be no change in expenditures was due to the fact that while some facilities’ case-mix adjustments would result in positive increases, other facilities would experience a negative adjustment.

233. The March 27, 2024 notice in the *State Register* clearly stated that proposed change in the way the case-mix adjustment was to be calculated would be effective on and after April 1, 2024, but made no mention of the case-mix adjustment that had to be made as of January 1, 2024.

234. Thereafter, the New York State Legislature enacted Chapter 57 of the Laws of 2024 which Governor Hochul signed into law on April 20, 2024.

235. Section 1 of Part E of Chapter 57 of the Laws of 2024 amended subparagraph (ii) of paragraph (b) of subdivision 2-b of Public Health Law § 2808 by creating a new sub-subparagraph (A) that simply left intact the existing language in subparagraph (ii) requiring that case-mix adjustments be made every January and July of each calendar year.

236. Section 1 of Part E of Chapter 57 of the Laws of 2024 then also added a new subparagraph (B) to paragraph (ii) to read as follows:

“Effective April 1, 2024, the case-mix adjustment from the operating component of the rates for skilled nursing facilities shall remain unchanged from the July 2023 rates during the development and implementation of a case-mix methodology using the Patient-Driven Payment Model” (emphasis supplied).

237. Section 4 of Part E of Chapter 57 stated that Part E shall be deemed “to have been in full force and effect on and after April 1, 2024.”

238. On June 28, 2024, the New York State Department of Health submitted proposed State Plan Amendment #24-0043 (annexed to this Petition as Exhibit “G”) to the federal Centers for Medicare and Medicaid Services, with a proposed effective date of April 1, 2024 (Exhibit “G” at page 2) in accordance with federal regulations that no State Plan Amendment can be effective any earlier than the first day of a calendar quarter in which it submits such a Plan. 42 C.F.R. §§ 430.20 and 447.256(c).

239. However, inside the document where the actual wording of the proposed Plan Amendment appears (Exhibit "G" at page 4), the wording of the Amendment was as follows:

The case mix adjustment to the direct component of the price for the rate periods effective January 1, 2024 and thereafter will not be calculated or applied. The case mix adjustment for the prior rate period (effective July 1, 2023) will remain in effect until such time as the case mix adjustment methodology can be revised in statute, regulation, and the State Plan, to leverage acuity from the Patient Driven Acuity Model (PDPM) (emphasis supplied).

240. The submission of State Plan Amendment to CMS by Respondent and the Department of Health was both misleading and inaccurate. While it purported to have an effective date of April 1, 2024 (Exhibit "G" at p. 2), in reality it proposed to make changes to the State's Medicaid reimbursement methodology retroactive to January 1, 2024.

241. In the meantime, neither the Respondent Commissioner of Health nor the Department of Health has made any case-mix adjustments to Petitioners' Medicaid rates for the period commencing on and after January 1, 2024 through March 31, 2024 which preceded the effective date of Part E of Chapter 57 of the Laws of 2024, and during which time the applicable law (Public Health Law § 2808[2-b][b][ii]), regulation (10 N.Y.C.R.R. 86-2.40[m][6][i]) and Medicaid State Plan all required the Respondent Commissioner of Health to make such adjustment.

242. Because the Respondent and the Department of Health failed to make the case-mix adjustment due on January 1, 2024, Stephen Hanse, President and Chief Executive Officer of the New York State Health Facilities Association (NYSHFA), a trade association which is a Petitioner herein and which represents not-for-profit, for-profit, and public county-run nursing homes throughout the State of New York, sent letters by email and certified mail, return receipt requested dated April 30, 2024 (Exhibit "H") and June 3, 2024 (Exhibit "I"), respectively,

requesting that the Respondent Commissioner of Health calculate and pay the case-mix adjustments applicable to the January 1, 2024 through March 31, 2024 Medicaid rates for nursing homes as required by both law and regulation. The letters also identified members of NYSHFA which had requested such action (*See annexed Exhibit "J"*). Attached hereto as Exhibits "K" and "L" are the signed return receipts indicating that the letters were received.

243. Before the Commissioner of Health responded to either letter, by letter dated June 20, 2024, annexed hereto as Exhibit "M", the New York State Department of Health advised Petitioners of their rates retroactive to January 1, 2024 but made no reference to a case-mix adjustment and instead kept in place the pre-existing case-mix adjustment.

244. Finally, by letter dated June 28, 2024, annexed to the Petition as Exhibit "N", the Department of Health replied to Mr. Hanse's two previous letters dated April 30, 2024 and June 3, 2024 acknowledging that it (DOH) "froze" the case-mix adjustments effective as of January 1, 2024 at case-mix adjustment in effect on July 1, 2023 period claiming that "[T]his freeze was enacted by the Legislature and signed into law by the Governor."

245. The reliance by the Department of Health on the legislative enactment of Section 1 of Part E of Chapter 57 of the Laws of 2024 was misplaced as that law had an effective date of April 1, 2024 and said nothing about changing rates retroactive to January 1, 2024.

246. Petitioners in this case are all facilities whose rates would have increased but for the failure of the Respondent Commissioner of Health to make the facility-specific case-mix adjustments effective January 1, 2024 through March 31, 2024 as required by the law and regulations set forth above.

247. As a result of the Respondent Commissioner's actions, Petitioners have received no reimbursement for the changes in the acuity level of patients they cared for in the period

commencing January 1, 2024 and ending March 31, 2024 because the case-mix adjustments were effectively and illegally frozen at the July 2023 levels that were based on MDS assessments of Medicaid patient conditions in the facility between October 2022 and March 2023. Those assessments were created as much as 15 months before the January 1, 2024 rate period even started, but were nevertheless applied by DOH to the January 1, 2024 rates despite the fact that they were based on the conditions of patients whose acuity may have changed or patients who may no longer reside in the facility.

248. The decision by the Department of Health to use the case-mix adjustments as of July 1, 2023 for the rate period commencing January 1, 2024 is not only contrary to the provisions of Part E of Chapter 57 of the Laws of 2024 which provide for an April 1, 2024 effective date, but also directly contradicts a Department of Health letter dated September 20, 2023 to nursing homes informing them that “rates effective January 1, 2024 will use the final available RUG¹ acuity data from the MDS” (emphasis supplied). The final available RUG audit data referred to were the data contained in the MDS assessments for the period April-September 2023, which Petitioners had completed and submitted, but which were not, in fact, used by Respondent to calculate the rates effective January 1, 2024 as required by law and DOH’s own regulations. A copy of the September 20, 2023 letter is annexed hereto as Exhibit “O”.

249. The Respondent Commissioner of Health has acted illegally, arbitrarily, capriciously, and in violation of law and regulations by failing to calculate and pay the case-mix adjustment for Medicaid reimbursement rates due to Petitioners for the period January 1, 2024 through March 31, 2024 because:

¹ RUG is an acronym standing for Resource Utilization Group, a term used in Medicaid parlance which is determined by the coding of specific items contained in a MDS submission that relate to the amount of assistance a patient needs with respect to the activities of daily living as a means of determining part of the cost of caring for that patient.

a) Respondent was required to do so by applicable law and regulation in effect during said period;

b) The amendment to Public Health Law § 2808(2-b)(b)(ii) made pursuant to Section 1 of Part E of Chapter 57 of the Laws of 2024 was not effective until April 1, 2024 and by its express terms was applicable only to rate periods on and after April 1, 2024; and any attempt to apply the amendment retroactively to rate periods on or before April 1, 2024 would violate the prohibitions against retroactive rate-making and Petitioners' rights to due process of law;

c) Respondent failed to adhere to the State's Medicaid Plan and, in particular, State Plan Amendment #21-0050 approved by the federal government on August 21, 2023 despite the fact that participation by a State in the Medicaid Program requires it to conform to federal statutory and regulatory provisions. *Seittelman v. Sobol*, 91 N.Y.2d 618, 626 (1998); and

d) The Respondent Commissioner of Health failed to adhere to the State Administrative Procedure Act by failing to give notice if it intended to repeal or suspend the provisions of 10 N.Y.C.R.R. § 86-2.40(m)(6)(i) as of January 1, 2024.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter judgment as follows:

(a) Mandating the Respondent Commissioner of Health to immediately calculate the case-mix adjustments to Petitioner's Medicaid reimbursement rates for the rate period commencing on January 1, 2024 and ending on March 31, 2024 in accordance with Public Health Law 2808(2-b)(b)(ii), 10 N.Y.C.R.R. 86-2.40(m)(6)(i), and New York State's Medicaid

State Plan, and pay forthwith any increases due to the Petitioners as a result of such case-mix adjustments; and

(b) Awarding Petitioners such other, further and different relief which this Court deems just and appropriate, including the costs and disbursements of this action.

DATED: July 18, 2024

Yours, etc.

NEW YORK STATE HEALTH FACILITIES
ASSOCIATION, INC.

By:


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President and Chief Executive Officer
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HON. LETITIA JAMES
Attorney General of the State of New York
New York State Capitol
Albany NY 12224

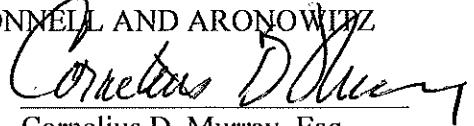
DATED: July 18, 2024

Yours, etc.

NEW YORK STATE HEALTH FACILITIES
ASSOCIATION, INC.

By:

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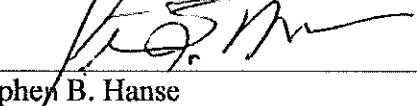
TO: HON. JAMES McDONALD
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Attorney General of the State of New York
New York State Capitol
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

STEPHEN B. HANSE, being duly sworn, deposes and says that he is the President and Chief Executive Officer of the New York State Health Facilities Association, Inc., one of the Petitioners in this case, that he has read the foregoing Petition and the facts stated therein are true, except as to those matters stated upon information and belief, and as to those matters, he believes them to be true based upon applicable law and regulations and his familiarity with the documents and communications with the Department of Health.



Stephen B. Hanse

Sworn to before me this
18 day of July, 2024.



Notary Public, State of New York

LAURIE ROBERTSON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01RO5073586
Qualified in Columbia County
Commission Expires February 24, 2027