**DATE:** February 18, 2014

**TO:** Mary C. Mayhew, Commissioner, DHHS

**THROUGH:** Kenneth Albert, R.N., Esq., Director, DLRS

**FROM:** Larry D. Carbonneau, Manager, Health Care Oversight, DLRS

 Richard S. Lawrence, Senior Health Care Financial Analyst, DLRS

**SUBJECT:** John Orestis, North Country Associates – Acquisition of Market Square Health Care Center

**ISSUE ACTIVATED BY:** The referenced proposal requires Certificate of Need (CON) approval as defined in "The Maine Certificate of Need Act of 2002," 22 MRSA § 326 et seq., as amended.

**REGISTERED AFFECTED PARTIES:** No applicants

**I. BACKGROUND:**

The seller is a Maine corporation controlled by Western Maine Health Corporation (Stephens Memorial Hospital) which is a subsidiary of MaineHealth. The facility is a 98 bed long term care facility located in South Paris. It has 76 dual certified nursing beds and 22 residential care beds. It also has 9 independent living apartments attached to the facility. It’s a participating provider in both the MaineCare and Federal Medicare programs. The facility has been in operation for many years. The facility reported that its’ primary historical service area comprises an approximately 25 mile area surrounding South Paris, Maine.

Mr. Orestis (the applicant) and his company North Country Associates (NCA) have operated similar facilities for many years, and the applicant intends to utilize consulting services from NCA. No operating changes are anticipated other than the ordinary change of staff, the intention to increase the provision of skilled services and perfunctory adjustments to meet regulatory guidelines.

Several significant capital improvements are anticipated after completion of the transaction. The applicant has identified that the facility has not made many needed capital improvements for several years, due to the financial constraints of the present ownership. The scopes of the capital improvements are as yet undetermined. It is anticipated that a minimum of $500,000 will be invested in the physical plant in the first two years of operations under Mr. Orestis’s control.

**II. PROJECT DESCRIPTION:**

Mr. Orestis has contracted with the owners of Market Square Health Care Center to purchase the facility for $1. The facility, located in South Paris, Maine has 76 nursing beds and 22 residential care beds.

**III. HIGHLIGHTS:**

Letter of Intent dated: August 14, 2013

Technical Assistance meeting held: Waived by Applicant

CON application filed: October 3, 2013

CON application certified complete: October 3, 2013

Public Informational Meeting held: October 23, 2013

Public Hearing: October 23, 2013

Close of Record: November 22, 2013

Preliminary Analysis released: January 17, 2014

Record Closed: February 10, 2014

**IV. PUBLIC COMMENTS RECEIVED IN RESPONSE TO THE PRELIMINARY ANALYSIS:**

Following release of the Preliminary Analysis, no public comments were received.

**V. CONU ANALYSIS/APPLICANTS COMMENTS:**

1. **Fit, Willing and Able:**

The applicant and North Country Associates have a long history of owning/operating health care facilities in the State of Maine. Currently North Country Associates owns and/or operates 22 facilities in the State. Please see table below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| North Country Associates | Maine | SNF/NF | Level IV | ICF/DD |
| Maine owned/operated facilities | **Municipality** | **Beds** | **Beds** |  |
| Borderview Rehab and Living Center | Van Buren | 55 | 53 | 0 |
| Country Manor | Coopers Mills | 30 | 22 | 0 |
| Courtland Rehab and Living Center | Ellsworth | 54 | 20 | 0 |
| Edgewood Rehab and Living Center | Farmington | 33 | 22 | 0 |
| Evergreen Manor | Saco | 42 | 0 | 0 |
| Fallbrook Woods | Portland | 0 | 56 | 0 |
| Gardiner Health Care Facility | Houlton | 45 | 10 | 0 |
| Harris House | Livermore Falls | 0 | 0 | 13 |
| Heritage Rehab and Living Center | Winthrop | 28 | 24 | 0 |
| Maplecrest Rehab and Living Center | Madison | 58 | 0 | 0 |
| Klearview Manor | Fairfield | 0 | 0 | 16 |
| Mountain Heights | Patten | 25 | 0 | 0 |
| Narraguagus Bay | Millbridge | 35 | 23 | 0 |
| Northland Living Center | Jackman | 0 | 0 | 14 |
| Orchard Park | Farmington | 38 | 0 | 0 |
| Rumford Community Home | Rumford | 32 | 53 | 0 |
| Russell Park Rehab and Living Center | Lewiston | 50 | 53 | 0 |
| Sanfield Rehab and Living Center | Hartland | 23 | 12 | 0 |
| Somerset Rehab and Living Center | Bingham | 21 | 13 | 0 |
| Sonogee Rehab and Living Center | Bar Harbor | 35 | 40 | 0 |
| Southridge Rehab and Living Center | Biddeford | 65 | 46 | 0 |
| The Commons at Tallpines | Belfast | 69 | 0 | 0 |
| TOTAL BEDS |  | **738** | **447** | **43** |

*Source: Facility licenses, Aspen database and* [www.northcountryassociates.com](http://www.northcountryassociates.com).

The applicant has implemented a Peer Review process and Quality Improvement/Performance Improvement initiative to reduce the overall number of deficiencies as well as the scope and severity of deficiencies. CONU used the Medicare.gov website to summarize health inspection and quality inspection data for North Country facilities.

The table below summarizes the results of health inspections:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Facility | Inspection | # Health | Level of | Residents | Plan of |
| **Date** | **Deficiencies** | **Harm** | **Affected** | **Correction** |
| Borderview | 01/10/2013 | 5 | M | Some | Yes |
| Country | 03/22/2013 | 1 | M | Few | Yes |
| Courtland | 06/20/2013 | 1 | M | Some | Yes |
| Edgewood | 09/07/2012 | 1 | M | Some | Yes |
| Evergreen | 03/14/2013 | 2 | M | Few | Yes |
| Gardiner | 05/08/2012 | 9 | M | Some | Yes |
| Heritage | 03/14/2013 | 0 | M | N/A | Yes |
| Maplecrest | 11/09/2012 | 1 | M | Few | Yes |
| Mountain | 02/13/2013 | 2 | M | Few | Yes |
| Narraguagus | 06/06/2013 | 6 | M | Some | Yes |
| Orchard | 10/05/2012 | 5 | M | Some | Yes |
| Rumford | 03/28/2013 | 2 | M | Few | Yes |
| Russell | 01/23/2013 | 2 | M | Few | Yes |
| Sanfield | 04/04/2013 | 4 | M | Few | Yes |
| Somerset | 08/30/2012 | 0 | M | N/A | Yes |
| Sonogee | 08/30/2012 | 12 | M | Some | Yes |
| Southridge | 06/28/2012 | 3 | M | Some | Yes |
| Tallpines | 06/21/2013 | 2 | M | Few | Yes |

The average number of deficiencies at North Country facilities is 3.2 which are lower than the Maine average of 4.1 and the U.S. average of 6.8. The level of harm never exceeded M, which stands for Minimal harm or potential for actual harm. A plan of correction was submitted to correct all deficiencies.

The Commissioner can rely on data available to the department regarding the quality of health care provided by the applicant as allowed at M.R.S. 22 §337 (3).

As provided for at 22 M.R.S. § 335 (7)(A), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards.

As stated above the applicant and North Country Associates have been providers of Residential Care and SNF/NF services in the State of Maine since 1981 and 1984 respectively. The services provided by the applicant are consistent with applicable licensing and certification standards.

1. **Economic Feasibility**:

The sale of Market Square Health Care Center (MHSCC) will be structured as an asset purchase, (The Asset Purchase Agreement is on file at CONU). Two new LLC’s will be formed. South Paris Real Estate

Holdings, LLC will own the land and buildings. Market Square Health Care Center, LLC will be the operator who will hold the license and provider agreements and lease the property from the real estate LLC. The applicant will purchase the facility for $1. As of September 30, 2012 the book value of MHSCC’s depreciable assets is $899,541. The September 30, 2012 audited cost report, reports depreciation expense of $241,129. The Asset Purchase agreement specifies that the applicant will invest $500,000 in capital improvements and assets during the first two years after closing. The pro forma cost report is projecting annual depreciation expense of $30,000 associated with these capital improvements. In addition operating efficiencies will be achieved by bringing therapy services in-house as opposed to utilizing contracted labor. Wages and benefits will be adjusted to be consistent with NCA standards. Due to these projected cost reductions this project achieves MaineCare neutrality.

As provided for at 22 M.R.S. § 335 (7)(B), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this standard if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards.

The applicant has owned and operated (in conjunction with North Country Associates) numerous nursing homes and residential care facilities in the State of Maine. The operations of MSHCC are of a similar size and scope.

1. **Public Need:**

CONU researched data contained in Older Adults and Adults with Physical Disabilities: Population and Service Use Trends in Maine 2012 Edition prepared by the Muskie School of Public Service, University of Southern Maine. CONU also utilized the U.S. Census Bureau’s website located at <http://quickfacts.census.gov>

Oxford County Maine has a population of 57,481 as of 2012. The forecasted change in Oxford County’s older population is lower than the Maine average with a 56% increase in 65-74 year olds, a 34% increase in 75 – 84 year olds and a 1.0% decrease in the 85+ age category between 2012 and 2022. The 65+ population in Maine continues to grow at a faster rate than New England or the United States. People of all ages use nursing facilities far less than they did back in 2000 and the average length of stay has declined. The steepest decline occurred between 2000 and 2008 and has since leveled off. Even with an array of services available in less restrictive settings, a certain percentage of the over 65 population will require nursing facility services. The Muskie report estimates this percentage as .8% for the 65-74 year old group. 3.6% for the 75-84 year old group and 11.5% for the 85+ age group. In contrast the use of residential care facilities increased by 30% between 2000 and 2010. Approximately 6.3% of Maine’s over 85 year old population lived in residential care facilities in 2010. 1.8% of Maine’s 75-84 year old population lived in residential facilities. This has been consistent since 2004.

Oxford County has 38 nursing home beds per 1,000 persons age 65 and above which is higher than the State average of 33 beds per 1,000. Oxford County has 27 residential care beds per 1,000 persons age 65 and above which is above the state average of 20 beds per 1,000. CONU reviewed occupancy levels of nursing homes and residential care facilities located in Oxford County.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Location | Nursing Home Facility | Full Capacity | Actual Occupancy | Occupancy 07/15/2013 | Annual Avg. Occupancy |
| Fryeburg | Fryeburg Health Care Center | 30 | 27 | 90% | 94% |
| West Paris | Ledgeview Living Center | 81 | 69 | 85% | 80% |
| South Paris | MVH - South Paris | 62 | 59 | 95% | 95% |
| **South Paris** | **Market Square** | **76** | **62** | **82%** | **85%** |
| Norway | Norway Center for Health & Rehab. | 42 | 36 | 86% | 87% |
| Rumford | Rumford Community Home | 32 | 32 | 100% | 98% |
| Canton | Victorian Villa Rehab. | 47 | 46 | 98% | 94% |
| **TOTAL OXFORD COUNTY AVERAGE** | **370** | **331** | **89.46%** | **88.92%** |

*Subject Facility in* ***Bold*** *Most recent occupancy data 07/15/2013*

1. **Orderly and Economic Development:**

This transaction involves changing ownership of an existing facility. No major changes to services or to bed licenses are anticipated. There will be $500,000 in capital improvements over the next two years. This increased expense will be offset by the sale of the facility at a reduced cost basis (purchase price $1). Further adjustments to wages and benefits will result in cost savings.

MaineCare reimbursement rates for fixed costs will decrease. Direct care and routine costs are subject to existing peer group cost caps for reimbursement.

Current Maine Care Nursing Facility (NF) Rate under present ownership $186

Proposed Maine Care NF rate estimated under new ownership per proforma $178

Proposed NF patient days utilization per analysis $14,168

Estimated Reduction/Savings in Maine Care costs for NF Services $113,344

Current Maine Care Residential Care Facility (RCF) Rate under present ownership $86

Proposed Maine Care RCF rate estimated under new ownership $91

Proposed RCF patient days utilization per analysis $6,942

Estimated Increase in Maine Care costs for RCF Services $34,710

**Total estimated Maine Care Savings Combined $78,634**

This transaction involves an existing facility providing necessary services in the Oxford County area. It is unlikely that a more effective, more accessible or less costly alternative technologies or methods of service delivery will become available.

1. **Outcomes and Community Impact:**

Market Square Health Care will be affiliated with a network of skilled nursing facilities located throughout Maine. Through its division of professional services, North Country Associates provides program enhancement, policy development, care audits and inspection, clinical nurse consultants, and compliance monitoring with Federal and State regulations. These services along with on-site professional staff training have aided in the development of policies and procedures that are designed to produce positive health outcomes. These program enhancements and procedures are shared with the other facilities allowing for continuous feedback and education of the staff. This enables each facility to develop new knowledge bases and put new treatment strategies into practice for improving health outcomes. Through ongoing involvement in the Advancing Excellence Campaign, the applicants’ goal would be for the facility to continue to improve in areas such as consistent assignments, reducing hospitalizations or reducing antipsychotic medication.

The applicant is assuming control of an existing facility. Continuing necessary services in the current geographic area will have a positive impact on the quality of care. The existing scope of services will not be changed. Implementation of NCA programs and quality improvement initiatives will ensure high-quality outcomes. Since there will be no change in either services or the number of licensed beds existing service providers will not be negatively impacted.

**vi.** **Service Utilization:**

Inappropriate admissions, services and testing are a potential problem in all healthcare delivery settings.

The applicant has identified a combination of ways inappropriate NF and residential care utilization is mitigated. Consumers seeking NF admission who will rely on MaineCare to pay for their care must have a physician’s order, meet the strident medical eligibility standards of DHHS and qualify based on an assessment of their income and assets. Individuals must also receive a Goold assessment that documents that NF level of care is needed based on DHHS medical eligibility standards. MaineCare consumers who seek NF admission must have a three ADL loss or have cognition challenges which qualify them under Maine’s eligibility standards. The assessments are revaluated on a set schedule to assure continuing need for NF level of services. Medicare also establishes medical necessity standards for skilled care thus insuring only appropriate cases are served. Prior to the expansion of skilled care in nursing facilities most cases were treated in hospitals at significantly higher cost.

North Country Associates has written a corporate compliance policy requiring all employees follow State and Federal laws governing the provision of nursing facility and residential care services. North Country offers employees a compliance hot line where they can anonymously contact their corporate compliance officer, who follows up on all reports. The applicant states that the hot line is a vital component for learning and stopping inappropriate practices that do not comply with laws and regulations.

 **VI. CONCLUSION:**

For all the reasons set forth in the Preliminary Analysis and in the record, CONU concludes that the review criteria have been satisfied. CONU recommends the approval of the CON.

**VII. RECOMMENDATION:**

CONU recommends this application be **Approved.**