**DATE:** April 23, 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

 Barbara Rancourt, Management Analyst, DLRS

**SUBJECT:** Acquisition of Control of Freeport Nursing Home, Inc.

**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:**

Freeport Nursing Home is a 61 bed licensed nursing care facility located on East Street in Freeport, Maine.

The owners of Freeport Nursing Home, Inc., the entity that owns both the real estate and operations of Freeport Nursing Home, wish to transfer the operations of the facility to Freeport Nursing and Rehabilitation Center, Inc., which will be owned by the children of the current owners and operators. Freeport Nursing Home Inc. is a subsidiary of Hicks Family Services; Hicks Family Services is incorporated as a “Sub-Chapter S Corporation. Freeport Nursing Home is a subsidiary of that S-Corporation; both corporations’ taxes are the responsibility of the owners and not the corporations. Hicks Family Services is 100% owned by David & Elaine Hicks. The goal of this transaction is to separate the Real estate from the Operations and sell the operations to Douglas Powers and Cheryl Lancaster. Doug Powers and Cheryl Lancaster are children of David and Elaine Hicks.

Freeport Nursing and Rehabilitation Center, Inc., a newly formed Sub S Corp, will be owned 50% by Douglas Powers and 50% by Cheryl Lancaster – and will become the operating entity for Freeport Nursing Home. Doug Powers and Cheryl Lancaster have extensive experience with operating and managing long term care facilities. Doug is a licensed nursing home administrator and currently the administrator of the Freeport Nursing Home and has been for over 30 years. Cheryl is a Residential Care administrator with over 10 years of experience. Cheryl is currently the Quality Assurance coordinator for the Freeport Nursing Home.

**II. PROJECT DESCRIPTION:**

Freeport Nursing and Rehabilitation Center Inc. (FNRC) would acquire the operating assets from Freeport Nursing Home Inc. for the assumption of certain operating Liabilities. The lease will be a triple net lease, with all operating costs and cash requirements of the real estate entity being covered as part of the lease payment by the FNRC; including but not limited to the Debt Service (interest, principal, MIP), Replacement Reserve payment, Property taxes, Insurance, and Maintenance. The term of the lease will be equal to the term of the underlying HUD financing that is in place or is refinanced. Capital improvements are the responsibility of the Tenant, however the tenant will have access to the balance in the capital replacement reserve to fund needed capital items.

There will be no changes to the MaineCare rate, the number of licensed nursing care beds, nor services being offered.

**III. HIGHLIGHTS:**

Letter of Intent dated: August 20, 2013

Technical Assistance meeting held: September 18, 2013

CON application filed: December 26, 2013

CON certified as complete: December 26, 2013

Public Hearing held: January 15, 2014

Comment Period Ended: February 14, 2014

Preliminary Analysis released: March 17, 2014

Record Closed: April 4, 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:**

Freeport Nursing and Rehabilitation Center is licensed for 61 NF/SNF beds. The facility is located at 3 East Street in Freeport, Maine. The administrator is Douglas N. Powers. The license was issued on February 1, 2014 and is valid through January 31, 2015.

A review of Freeport Nursing and Rehabilitation Centers last completed survey data, available from Medicare.gov website revealed the following ratings:

|  |
| --- |
| **Freeport Nursing and Rehabilitation Center** |
| **Nursing Home Compare Ratings** |
| **Category** | **Ratings** |
| Overall | Below Average |
| Health Inspections | Much Below Average |
| Staffing | Above Average |
| Quality Ratings | Average |

Freeport Nursing and Rehabilitation Center scored “Average” or above in two categories rated by CMS, with an overall rating of “Below Average”. The last recertification survey was conducted on April 4, 2013. The result of the survey was the identification of five (5) deficiencies. All five deficiencies were Level 2 (minimal harm or potential for actual harm) or below. The average number of health deficiencies identified during a recertification survey in Maine is 4.0; the average number of health deficiencies in the United States is 6.8.

Inspectors determined that the nursing home failed to:

**1)** Give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.

**2)** Store, cook, and serve food in a safe and clean way.

**3)** Safely provide drugs and other similar products available, which are needed every day and in emergencies, by a licensed pharmacist.

**4)** Provide housekeeping and maintenance services.

**5)** Make sure that the nursing home areas are free from accident hazards, risks and provide supervision to prevent avoidable accidents.

All deficiencies were corrected by May 3, 2013.

Survey data for this facility can be accessed at Medicare.gov and is on file at CONU.

Freeport Nursing and Rehabilitation Center has been under the ownership of David and Elaine Hicks for many years and has been a provider of SNF/NF nursing services for decades. The services provided by the applicant are consistent with applicable licensing and certification standards.

1. **Economic Feasibility**:

The applicant will acquire $1,313,009 of operating assets from Freeport Nursing Home, Inc. in exchange for assuming $1,313,009 of operating liabilities. Freeport Nursing and Rehabilitation Center, Inc. will have an option to purchase the real estate from Freeport Nursing Home, Inc. for $2,000,000 at any time during the lease. No change in cost basis will result from this transaction. No changes to the facilities operations or financial results are expected due to the ownership change. This is demonstrated by the pro forma cost report submitted with the application. The transaction will be considered a related party lease due to the relationship of the parties involved. Currently no long term debt and associated interest expense is considered allowable. No changes in the current reimbursement rates are allowable because of this transaction.

1. **Public Need:**

In order to determine public need, CONU reviewed the demographic and service use trends in Freeport Nursing and Rehabilitation Centers service area described as Cumberland County, Maine.

Cumberland County is the most populous county in Maine with a population of 283,921. Approximately 15% of the population is 65 and over. The 65 and over population is expected to experience a 66% increase by 2022. This coincides with the State of Maine as a whole where the 65 and above population continues to grow at a rate faster than New England and the United States as a whole. Statewide nursing home utilization declined between 2000 and 2008 but leveled off in 2010.

Freeport Nursing and Rehabilitation Center occupancy rates compare favorably with other providers at 96.72%. This transaction involves the change of ownership of Freeport Nursing & Residential Center which has served the Cumberland County area for decades. The demographics of Cumberland County along with Freeport Nursing and Rehabilitation Center’s occupancy data clearly demonstrate a need for SNF/NF services in the area. The occupancy data included above demonstrates that the County facilities average greater than an 85% occupancy.

Retaining needed SNF/NF and Residential Care services will have a positive impact on the health status indicators of the population to be served. This facility enables residents to remain close to home and family while receiving services. Freeport Nursing and Rehabilitation Center admission staff work closely with hospital discharge planners and area home and community-based service providers in an effort to transition elderly from the acute setting. The facility is committed to systematic improvements to its operations.

The services affected by the project will be accessible to all residents in the area.

Freeport Nursing and Rehabilitation Center has responded to the evolving health care market by actively seeking to provide I.V. therapy and in-patient hospice in an effort to improve its Medicare utilization (The 11/15/2013 Medicare occupancy rate stands at 3.39%). There is a program in place to ensure that the direct care staff receives ongoing training to overcome the challenges that are presented in order to experience quality outcomes.

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. No additional capital expenditures or borrowings will result due to this ownership change. Because of the nature of this transaction, there will be no impact on total health care expenditures.

MaineCare reimbursement rates for direct care and routine services will not change due to this transaction because allowable costs are subject to existing peer group cost caps for reimbursement. Since there are no increases in state costs, the question of the availability of state funds to meet increases in state costs is rendered moot.

Freeport Nursing and Rehabilitation Center, Inc. is an existing nursing facility providing necessary services in the Cumberland County area. It is highly unlikely that more effective, more accessible or less costly alternative technologies or methods of service delivery will become available.

1. **Outcomes and Community Impact:**

The applicant is assuming control of an existing nursing facility. Continuing necessary services in the current geographic areas will have a positive impact on the quality of care. The existing scope of services will not be changed. Any future addition of services will be aligned with the needs of the community. Since there will be no change in either services or the number of licensed beds, existing service providers will not be negatively impacted. As described in other sections of this preliminary analysis, the applicant has undertaken several initiatives to improve overall performance and quality.

The Quality Improvement Team is measuring and reporting in at least the following areas for Quality Assurance:

 Residents with Excessive Weight Loss

 Pressure Ulcers

 Behavioral Symptoms Affecting Others

 Urinary Tract Infections (UTI’s)

 Increased Need for ADL Assistance

 CaseMix

 Restraints

 Falls

 Antipsychotic Medication Use

The facility has utilized consultants to review the following areas that affect quality services: Documentation, Medicare Compliance, Physician Medicare Certifications, Coding, Rehabilitation Resource Utilization, Financial Status and Census Development.

The Polaris Group continues to assist the facility in the implementation of systematic improvements to its operations and meets via teleconference with management on a regular basis to discuss ongoing improvement activities.

The facility has implemented a training program for all staff and has hired a new in-service training nurse who began full-time with the facility in April 2013. The facility has redesigned its in-service and orientation program and developed additional training programs as well as additional nursing services.

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

This application involves a change of ownership and does not increase the number of nursing home beds or a change in the services offered. This transaction will not result in inappropriate increases in utilization.

**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 that this application be **Approved.**