**Preliminary Analysis**

#### Date: March 17, 2014

**Project**: **Acquisition of Control of Freeport Nursing Home Inc.**

**Proposal by: Freeport Nursing and Rehabilitation Center, Inc. (Proposed New Operating Entity)**

**Prepared by: Larry Carbonneau, Manager Health Care Oversight**

**Richard Lawrence, Senior Health Care Financial Analyst**

**Directly Affected Party: None**

**Certificate of Need Unit Recommendation: Approval**

**Proposed Approved**

**Per Applicant** **CON**

Estimated Capital Expenditure $1,313,009 $ 1,313,009

Maximum Contingency $ 0 $ 0

Total Capital Expenditure with Contingency $1,313,009 $ 1,313,009

Pro-Forma Marginal Operating Costs $ (5,864) $ (5,864)

MaineCare Neutrality Established Yes

# I. Abstract

**A. From Applicant**

Freeport Nursing Home is a 61 bed licensed nursing care facility located on 3 East Street in Freeport, Maine.

“Freeport Nursing Home, Inc., the entity that owns the Real Estate and Operations of Freeport Nursing Home, proposes to transfer the Operations of the facility to Freeport Nursing and Rehabilitation Center, Inc. Freeport Nursing Home Inc. is a Q-sub of Hicks Family Services, which owns both the Real Estate and Operations of Freeport Nursing Home. CONU NOTE: [Hicks Family Services is incorporated as a “Sub-Chapter S Corporation” in the Internal Revenue Code and Freeport Nursing Home is a subsidiary of that S-Corporation, this is referred to as a Q-Sub. Both corporation taxes are the responsibility of the members of the owners and not the corporations.] Hicks Family Services is 100% owned by David & Elaine Hicks. The goal of this transfer and 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.”

“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.”

# II. Fit, Willing and Able

**A. From Applicant**

Applicants/Principals:

**Douglas N. Powers**

**211 Mountfort Road**

**North Yarmouth, Maine 04097**

“Douglas Powers has been the licensed Administrator at Freeport Nursing Home since 1982. As a family owned business, Douglas has been involved in long term care his entire adult life. He has also been actively involved in the Maine Health Care Association as past Chairman of the Shared Services Cooperative as well as past Chairman of the Worker’s Compensation Trust Fund.”

“With over 30 years of experience as the facility’s Administrator, Douglas brings a wealth of experience to the long term care industry. He continuously strives to meet all Medicare and Medicaid licensing/certification requirements while improving the quality of care for the residents of Freeport Nursing Home.”

**Cheryl L. Lancaster**

**15 Pine Knoll Drive**

**Durham, Maine 04222**

“Cheryl Lancaster is a licensed Residential Care Administrator. Cheryl began her career in health care in 1997 working in the family owned home health care business. She became a licensed Residential Care Administrator in 2000. In 2003, Cheryl assumed the position of Residential Services Coordinator at Auburn Residential Care Center (also part of Hicks Family Services) and Administrator in 2006.”

“In 2011, Cheryl began focusing her attention on Freeport Nursing Home as Quality Assurance Coordinator, working with Douglas to improve the quality of care at Freeport Nursing Home. Her responsibilities include planning, developing, organizing and implementing the facility’s Quality Assurance Program.”

“Combined, Douglas and Cheryl will continue to bring strong management experience in the long term care industry and a deep commitment to continuously improve the quality of care and quality of life for the residents at Freeport Nursing Home.”

Recent DHHS Survey Results

“The latest State and Life Safety survey was conducted on April 4, 2013. A Plan of Correction for any deficiencies was submitted and on July 10, 2013, based on a visit to the facility, the State Survey Agency determined that substantial compliance has been achieved.”

“On July 13, 2013, the Maine Department of Public Safety conducted a Life Safety Code Survey and found that the facility was in substantial compliance with Federal participation requirements for nursing facilities in the Medicare and Medicaid program.”

Medicare Compare Rating Under Five Star System

“CMS created the Five-Star Quality Rating System to help consumers, their families, and caregivers compare nursing homes more easily and to help identify areas about which you may want to ask questions.”

“The Nursing Home Compare Web site now features a quality rating system that gives each nursing home a rating of between 1 and 5 stars. Nursing homes with 5 stars are considered to have much above average quality and nursing homes with 1 star are considered to have quality much below average. There is one Overall 5-star rating for each nursing home and a separate rating for each of the following three sources of information”:

* **Health Inspections** – The health inspection rating contains information from the last 3 years of onsite inspections, including both standard surveys and any complaint surveys. This information is gathered by individuals who go onsite to the nursing home and follow a specific process to determine the extent to which a nursing home has met Medicare’s minimum quality requirements. The most recent survey findings are weighted more than the prior two years. More than 200,000 onsite reviews are used in the health inspection scoring nationally.
* **Staffing** – The staffing rating has information about the number of hours of care on average provided to each resident each day by nursing staff. This rating considers differences in the level of need of care of residents in different nursing homes. For example, a nursing home with residents who had more severe needs would be expected to have more nursing staff than a nursing home where the resident needs were not as high.
* **Quality Measures (QMs)** – The quality measure rating has information on 9 different physical and clinical measures for nursing home residents - for example, the prevalence of pressure sores or changes to resident’s mobility. This information is collected by the nursing home for all residents. The QMs offer information about how well nursing homes are caring for their residents’ physical and clinical needs. More than 12 million assessments of the conditions of nursing home residents are used in the Five-Star rating system.

“Freeport Nursing Home has received an overall 2 star rating. The facility received a 1 star rating for health inspections, 5 star rating for quality measures, and a 4 star staffing rating.”

“The Management and Quality Improvement Team at Freeport Nursing & Rehabilitation Center are actively reviewing and monitoring the data used by CMS to compile the rating status reported on the Nursing Home Compare website.”

“The facility is monitoring the following areas.”

Residents with Excessive Weight Loss

Long-Stay, High-Risk Residents with Pressure Ulcers

Short-Stay Residents with New or Worsening Pressure Ulcers

Behavioral Symptoms Affecting Others

Urinary Tract Infections (UTI’s)

Increased Need for ADL Assistance

CaseMix

Restraints

Falls

Falls with Major Injuries

Antipsychotic-Meds Long-Term Residents

Antipsychotic-Meds Short-Stay Residents

Residents with Low-Risk – Loss of Bowel/Bladder Continence

“For purposes of compiling data reported on the Nursing Home Compare Site, CMS uses two collection periods April 1, 2012 through March 31, 2013 for Short-Stay Residents and July 1, 2012 through March 31, 2013 for Long-Stay Residents. The facility’s current review uses data for the 3rd Quarter of 2013 and indicates overall improvement as compared to the data reported on CMS’ Nursing Home Compare site. This data assists management in identifying areas for further focus and monitoring activities.”

“Management has also taken advantage of HUD’s program to provide the facility with an in-depth analysis of the facilities operations through a contract between HUD and the Polaris Group. HUD has provided access to the Polaris Group and a two-day onsite review of operations including: 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.”

“Management has implemented an aggressive training program for all staff and has hired a new in-service training nurse who began full-time with the facility in late April this year. The facility has redesigned its in-service and orientation program and developed additional training programs as well as additional nursing services. Freeport Nursing Home has also implemented an aggressive professional staff recruiting and hiring program.”

“The facility is positioning itself to provide I.V. Therapy and in-patient hospice in an effort to improve its Medicare Utilization.”

“In December of 2012, the facility experienced a couple of events that management feels negatively impacted several areas of operations including the current 2-star rating noted on the nursing home compare website.”

“The first of these events was management’s decision to protect its resident and staff population from the effects of influenza by limiting admissions. The second event was the loss of the facility’s admission coordinator in January and the difficulty in finding a replacement until mid-April.”

“These two events led to the lowest census numbers that management can remember the facility ever experiencing. Management feels that the low census numbers may have had an adverse effect on the facility’s rating on the nursing home compare site as well.”

“The facility is currently well positioned staff and education wise to address the identified opportunities for improvement, develop its census, implement new services and improve its CMS rating. Management will continue to improve and monitor these areas and implement appropriate interventions wherever necessary to reach and maintain a high quality status.”

“Please refer to Exhibit II-A for a resume of Douglas Powers and Cheryl Lancaster.”

“Please refer to Exhibit II-B for a copy of the license to operate Freeport Nursing Home.”

**B. Certificate of Need Unit Discussion**

**Certificate of Need Standard**

Relevant standards for inclusion in this section are specific to the determination that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

**Certificate of Need Unit Analysis**

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.

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).

**Deeming of Standard**

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.

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.

**Conclusion**

The Certificate of Need Unit recommends that the Commissioner find that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant’s control meets industry standards.

# III. Economic Feasibility

**A. From Applicant**

“Freeport Nursing Home, Inc., the entity that owns the Real Estate and Operations of Freeport Nursing Home, proposes to transfer the Operations of the facility to Freeport Nursing and Rehabilitation Center, Inc. Freeport Nursing Home Inc. is a Q-sub of Hicks Family Services, which owns both the Real Estate and Operations of Freeport Nursing Home. Hicks Family Services is 100% owned by David & Elaine Hicks. Again, the goal of this transfer and 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.”

“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.”

“FNRC will have an option to purchase the Real Estate from Freeport Nursing Home Inc. with the option exercisable at any time during the lease.”

“While the owners of the new operating entity continue to work toward improving the operating performance of Freeport Nursing Home, the proposed change in ownership itself will have no impact on the facility’s operations or financial results. Employee benefits currently in place will continue and staffing patterns are expected to remain consistent with the historical operations of the facility.”

“Attached as Exhibit III-A is Freeport Nursing Home’s detailed Income Statement for 2012 resulting in a Net Income of $64,436. Also attached is a YTD October 2013 detailed Income Statement.”

“Attached as Exhibit III-B, is a pro forma Operating Statement.”

“Attached as Exhibit III-C, is the most recent completed MaineCare cost report for Freeport Nursing Home.”

“Attached as Exhibit III-D, is a pro forma MaineCare cost report.”

“Attached as Exhibit III-E, is an Outline of the Proposed Transaction.”

**B. Certificate of Need Unit Discussion**

**CON Standard**

The relevant standards for inclusion in this section are specific to the determination that the economic feasibility of the proposed services is demonstrated in terms of the:

* Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
* The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules.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. This is allowable 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.

**Certificate of Need Unit Analysis**

As stated in the abstract section of the CON application this transaction involves the transfer of the operations of Freeport Nursing Home, Inc. to Freeport Nursing and Rehabilitation, Inc. This newly formed S Corporation will be owned 50% by Douglas Powers and 50% by Cheryl Lancaster. This new entity will become the operating entity for Freeport Nursing Home and Rehabilitation Center. The goal of this transaction is to separate the real estate from the operations of the facility as well as transfer the operational control of the facility to the children of the current owners. The real estate will continue to be owned by Hicks Family Services.

Douglas Powers and Cheryl Lancaster are the children of David and Elaine Hicks. Douglas has been the licensed Administrator at Freeport Nursing Home since 1982. Cheryl has worked in the family business since 1997. In 2011 Cheryl became the Quality Assurance Coordinator at Freeport Nursing Home.

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.

The applicant provided additional detail regarding this transaction in Exhibit III-E of the Certificate of Need application.

**Changing Laws and Regulations**

Certificate of Need Unit staff is unaware of any imminent or proposed changes in laws and regulations that would impact the project, except for federal health care reform as part of the Affordable Care Act (ACA). The impact of health reform as part of the ACA has not been determined.

**Deeming of Standard**

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 owners of the applicant have operated, and will continue to operate the 61-bed SNF/NF facility after the transaction.

**Conclusion**

The Certificate of Need Unit recommends that the Commissioner determine that the applicant has met their burden to demonstrate: (1) the capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and (2) the applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules

# IV. Public Need

**A. From Applicant**

This proposal is a transfer of ownership of the operations and does not involve a change in the 61 licensed NF beds.

“Please refer to Exhibit IV-A Freeport Nursing Home’s Average Daily Census and Payer Mix for 2012, and YTD 2013 for an overview of historical and current census and payer mix. The facility experienced a drop in occupancy during the last quarter of 2012 and much of 2013. In December of 2012, the facility experienced a couple of events that Management feels negatively impacted several areas of operations.”

“The first of these events was management’s decision to protect its resident and staff population from the effects of influenza by limiting admissions. The second event was the loss of the facility’s Admission Coordinator in January and the difficulty in finding a replacement until mid-April.”

“These two events led to the lowest census numbers that Management can remember the facility ever experiencing. Since that time, the facility has rebounded and currently has a 93% occupancy.”

“In referencing a report by the Muskie School of Public Service titled *Older Adults and Adults with Physical Disabilities: Population and Service Use Trends in Maine 2012 Edition,*  please note that Maine has one of the fastest growing aging population in the country, and the rate of change is accelerating. In Cumberland County the number of persons age 65+ is projected to grow from 43,258 in 2012 to 65,701 in 2022, a 63% increase. Clearly there will be an increasing need for NF services in Freeport Nursing Home’s service area and throughout Maine over the next 10 years.”

“Again, this proposal is a transfer of ownership of the operations and does not involve any changes to the number or type of licensed beds in the facility. Management expects the occupancy to remain consistent with historical levels or increase as the population in the area continues to age.”

**B. Certificate of Need Unit Discussion**

**Certificate of Need Standard**

Relevant standards for inclusion in this section are specific to the determination there is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

* Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
* Whether the project will have a positive impact on the health status indicators of the population to be served;
* Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
* Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

**Certificate of Need Analysis**

In order to determine public need, CONU reviewed the demographic and service use trends in Freeport Nursing and Rehabilitation Centers service area (Cumberland County, Maine). CONU utilized the Older Adults with Physical Disabilities: Population and Service Use Trends in Maine, 2012 Edition, prepared by the Muskie School of Public Service and the U.S. Census Bureau’s website located at <http://quickfacts.census.gov>.

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.

Cumberland County had 41 nursing home beds per 1,000 persons age 65 and above which is higher than the State average of 33 beds per 1,000. CONU prepared a summary of occupancy data for Freeport Nursing and Rehabilitation Center and other Cumberland County nursing facilities using the latest data available (11/15/2013):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Nursing Facilities: Cumberland County** | **City/Town** | **Total Beds** | **Total Occupancy** | **Occupancy %** |
| Barron Center | Portland | 219 | 210 | 95.89% |
| Brentwood Rehab & Nursing Center | Yarmouth | 78 | 66 | 84.62% |
| Bridgton Health Care Center | Bridgton | 43 | 40 | 93.02% |
| Cedars Nursing Care Center | Portland | 102 | 86 | 84.31% |
| Coastal Manor | Yarmouth | 39 | 39 | 100.00% |
| Falmouth By The Sea | Falmouth | 65 | 59 | 90.77% |
| **Freeport Nursing & Rehab Center** | **Freeport** | **61** | **59** | **96.72%** |
| Gorham House | Gorham | 69 | 65 | 94.20% |
| Hawthorne House | Freeport | 81 | 77 | 95.06% |
| Horizons Living And Rehab Center | Brunswick | 65 | 61 | 93.85% |
| Ledgewood Manor | Windham | 60 | 56 | 93.33% |
| Maine Veterans Home - Scarborough | Scarborough | 120 | 111 | 92.50% |
| Mid Coast Senior Health Center | Brunswick | 42 | 39 | 92.86% |
| Pine Point Center | Scarborough | 61 | 53 | 86.89% |
| Piper Shores | Scarborough | 40 | 37 | 92.50% |
| Seaside Rehab & Health Care | Portland | 124 | 116 | 93.55% |
| Sedgewood Commons | Falmouth | 65 | 65 | 100.00% |
| South Portland Nursing Home | So Portland | 73 | 72 | 98.63% |
| Springbrook Center | Westbrook | 123 | 115 | 93.50% |
| St Joseph's Rehabilitation And Residence | Portland | 121 | 111 | 91.74% |

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.

**Conclusion**

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to show that there is a public need for the proposed project.

# V. Orderly and Economic Development

**A. From Applicant**

“Again, the goal of this transfer and transaction is to separate the Real Estate from the Operations and sell the Operations to Douglas Powers and Cheryl Lancaster. There are no plans to change the services provided at Freeport Nursing Home and no anticipated capital expenditures as a result of this change in ownership. The new owners will assume the current MaineCare rates with no changes to licensed bed capacity and no impact on MaineCare neutrality.”

**B. Certificate of Need Unit Discussion**

**Certificate of Need Standard**

Relevant standards for inclusion in this section are specific to the determination that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

* The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;
* The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and
* The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available.

**Certificate of Need Analysis**

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.

**Conclusion**

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met its burden to demonstrate that the proposed project is consistent with the orderly and economic development of health facilities and health resources for the State.

# VI. Outcomes and Community Impact

**A. From Applicant**

“This proposed change in ownership does not include any change in services offered by Freeport Nursing Home. The owners will continue to improve the quality of care and achieve positive outcomes for its residents.”

“The owners also intend to strengthen and grow Freeport Nursing Home’s skilled rehab program which focuses on providing services to persons who have had an acute event and with appropriate rehabilitation services, can return back home. Without the skilled rehab programs of facilities such as Freeport Nursing Home, there would undoubtedly be increased usage of acute care beds as well as NF Mainecare beds and a decrease in positive outcomes for Maine’s seniors who benefit from being able to return home following an acute event.”

“Most admissions for the facility come directly from a hospital for rehabilitative services following an acute event, which is typical for a nursing facility that offers a sub-acute rehab program. The best measure of outcome is that patients complete appropriate sub-acute rehab and end up returning home, sometimes with the support of home and community-based services, rather than placed as residents in long term care beds in nursing homes.”

“Again, this proposal is to seek approval to a change in the operating entity and transfer ownership to children of David and Elaine Hicks. Combined, Doug Powers and Cheryl Lancaster have a long management history with Freeport Nursing Home and a strong commitment to continuously improve services being provided to the community.”

**B. Certificate of Need Unit Discussion**

**Standard**

Relevant standards for inclusion in this section are specific to the determination that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

**Certificate of Need Unit Analysis**

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.

As noted in the Fit, Willing and Able section of this analysis the facility received an “Average” rating for quality on the medicare.gov website.

**Conclusion**

Certificate of Need Unit recommends that the Commissioner find that the applicant met their burden to demonstrate that this project will ensure high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

# VII. Service Utilization

**A. From Applicant**

“There will be no changes in the services offered by Freeport Nursing Home as a result of this change in ownership. It is anticipated that the utilization of services will remain consistent with historical levels and only increase as the surrounding community continues to age.”

**B. Certificate of Need Unit Discussion**

**CON Standard**

Relevant standards for inclusion in this section are specific to the determination that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application.

**Certificate of Need Unit Analysis**

The Maine Quality Forum has not adopted any principles of evidence-based medicine directly applicable to the application; therefore this application meets the standard for this determination.

This application is for 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.

**Conclusion**

Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to demonstrate that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

# VIII. Timely Notice

**A. From Applicant**

“The applicant fully intends to follow the appropriate procedures outlined in the CON Procedures Manual to include all requirements for public meetings.”

**B. CONU**

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Letter of Intent filed: August 20, 2013

Technical Assistance meeting held: September 18, 2013

CON application filed: December 26, 2013

CON certified as complete: December 26, 2013

Public Information Meeting held: Waived

Public Hearing: January 15, 2014

Close of Record: February 14, 2014

# IX. Findings and Recommendations

Based on the preceding analysis, including information contained in the record, the Certificate of Need Unit recommends that the Commissioner make the following findings:

**A.** The applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant’s control meets industry standards.

**B.** The economic feasibility of the proposed services is demonstrated in terms of the:

1. Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and

**2.** The applicant’s ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;

**C.** There is a public need for the proposed services as demonstrated by certain factors, including, but not limited to;

1. The extent to which the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
2. The project has demonstrated that it will have a positive impact on the health status indicators of the population to be served;
3. The project will be accessible to all residents of the area proposed to be served; and
4. The project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project;

**D.** The proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

1. The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;
2. The availability of State funds to cover any increase in state costs associated with utilization of the project’s services; and
3. The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available was demonstrated by the applicant;

**E.** The project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers:

**F.** The project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum; and

**G.** The project does not need funding from within the Nursing Facility MaineCare Funding Pool.

For all the reasons contained in this preliminary analysis and based upon information contained in the record, Certificate of Need Unit recommends that the Commissioner determine that this project should be **approved.**