**DATE:** June 10, 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:** Addition of 13 SNF/NF Beds

**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:**

Seaside Healthcare, located on Baxter Boulevard in Portland, Maine, is a multi-level long term care facility offering SNF/NF and residential care services to the elderly of the greater Portland area. Seaside has been in operation since the 1970’s and has been part of the First Atlantic Healthcare group since 1997. Currently the facility is dually licensed for Medicare and MaineCare beneficiaries in its 124 nursing facility beds and operates another 30 RCF Private Non-Medical Institution (PNMI) beds.

**II. PROJECT DESCRIPTION:**

This proposed change would add 13 additional SNF/NF beds, increasing its current nursing facility capacity by 10% to a total of 137 beds. The 30 RCF PNMI beds would remain as they are today. Seaside manages a short term rehab business with an excess of 45 admissions and discharges on a monthly basis. The additional beds will allow Seaside flexibility to accommodate a census that regularly fluctuates due to the admission cycles of its short-term patient population and serve an expanding need for nursing facility services in the greater Portland area.

This increase in licensed beds will be accomplished by converting private rooms to semi-private rooms. No new construction is required so this project will incur minimal cost. The applicant believes that all rooms meet the size standards of the Regulations Governing the Licensing and Functioning of Nursing Facilities to accommodate semi-private spaces. The changes requested in this application would commence within 30 days after receipt of CON approval.

**III. HIGHLIGHTS:**

Letter of Intent dated: March 19, 2014

Technical Assistance meeting held: March 27, 2014

CON application filed: April 15, 2014

CON certified as complete: April 15, 2014

Public Hearing held: N/A

Comment Period Ended: May 15, 2014

Preliminary Analysis released: May 16, 2014

Record Closed: June 6, 2014

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

No public comments were received following release of the Preliminary Analysis.

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

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

Seaside Rehab & Health Care Center (Seaside) is licensed for 124 NF/SNF beds and 30 Level IV Residential Care beds. The legal name of the facility is Seaside Healthcare, LLC. The facility is located at 850 Baxter Boulevard in Portland, Maine. The administrator is Jacob Anderson; he has been the administrator since May16, 2012. The license was issued on January 28, 2014 and is valid from February 1, 2014 through January 31, 2015.

The applicant provided a summary of Seaside Rehab’s last completed survey data. CONU verified this survey data utilizing the Medicare.gov website and DLRS files. This survey revealed the following ratings:

|  |
| --- |
| **Seaside HealthCare, LLC** |
| **Nursing Home Compare Ratings** |
| **Category** | **Ratings** |
| Overall | Below Average |
| Health Inspections | Much Below Average |
| Staffing | Above Average |
| Quality Ratings | Average |

Seaside scored “Average” or above in only two of four categories rated by CMS with an overall rating of “Below Average”. The last recertification survey was conducted from March 24, 2014 through March 28, 2014. The on-site visit was conducted at Seaside Rehab and Healthcare for the purpose of completing the annual Quality Indicator Survey for Federal Recertification and for the purpose of investigating three complaints. The result of the survey was the identification of 7 deficiencies. Six deficiencies were Level A through E (minimal harm or potential for actual harm). One deficiency was level F and is considered a widespread issue. The average number of health deficiencies identified during a recertification survey in Maine is 4.3 and the average number of health deficiencies in the United States is 6.8. It was determined that Seaside Rehab and Health Care was not in compliance with 41 CFR Part 483, Subpart B, Requirements for Long Term Care Facilities.

Inspectors determined that the nursing home failed to:

**1)** Ensure a liability notice, which included appeal rights, was provided at least two day prior to a planned discharge whose Medicare services were discontinued.

**2)** Act upon food grievances regarding food quality that were expressed in 3 of 5 reviewed Resident Council Meetings.

**3)** Develop a comprehensive care plan for 1 of 2 residents reviewed for catheter use.

**4)** Ensure that water temperature did not exceed 120 degrees Fahrenheit in 1 of 5 wings.

**5)** Provide food that conserved flavor and palatability for 14 of 26 sampled residents,

**6)** Ensure food was labeled and dated when opened, cooked or removed from the original packaging and failed to remove expired liquids from unit and main refrigerators. (Level F).

**7)** Ensure that all expired medications were removed from resident use for 2 of 5 wings.

All deficiencies were corrected by May 12, 2014. During the same period three complaint surveys were conducted and inspectors determined that two complaints were unsubstantiated but one was substantiated for the items regarding food palatability and freshness as previously indicated.

Survey data for this facility can be accessed at Medicare.gov or at DHHS DLRS 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.

Seaside LLC has been under the ownership of First Atlantic for no less than 16 years and has been a provider of both SNF/NF beds and Level IV Residential Care beds. The services provided by the applicant are consistent with applicable licensing and certification standards.

1. **Economic Feasibility**:

The applicant provided a pro-forma cost report that represented the change in the provided service level for the additional thirteen SNF/NF beds. The pro-forma demonstrated the applicants proposed staffing levels, routine costs and fixed costs associated with the increased licensed capacity. The pro-forma cost report supports the applicant’s assertion that the additional 13 SNF/NF beds are financially feasible. The applicant’s goal is to increase the capacity of the facility to accommodate more short-term rehab patients while incurring minimal additional costs.

Certificate of Need Unit staff is not aware 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.

1. **Public Need:**

In order to determine public need, CONU analyzed demographic and service use trends in Seaside’s 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 has a land area of approximately 835 square miles. It is comprised of three cities: Portland, South Portland, and Westbrook and twenty-five towns. The estimated 2012 population is 283,840, consisting of 40,689 persons (or 15%) in the 65 or older age group. This population is the primary consumer of nursing home services. The breakdown of this population by age group and projected growth is contained in the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Cumberland County Age** | **2012 Current** | **Rate of** |  **2022 Projected** |
| **Group** | **Population** | **Growth** | **Population** |
|  Age 85+ | 6,141 | 13% | 6,939 |
|  Age 75-84 | 13,494 | 46% | 19,701 |
|  Age 65-74 | 21,054 | 66% | 34,950 |

This rate of growth coincides with the State of Maine as a whole where the 65 and over 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. The average statewide percentages of the 65+ population utilizing SNF/NF services are as follows:

|  |  |
| --- | --- |
| **Age Group** | **% of age group needing SNF/NF care** |
| Age 85+ | 11.50% |
| Age 75-84 | 3.60% |
| Age 64-74 | 0.80% |

It is likely that additional SNF/NF services will be required over the next ten years given the projected increase in the 65+ population. Over the past two decades many new services have been added which allow persons to stay at home or receive services within the community. However, when an individual does enter a nursing home they are usually older and require more care. Adding additional SNF/NF beds would substantially address specific health problems associated with an aging population requiring more intensive care. Cumberland County had 41 nursing home beds per 1,000 person’s aged 65 and above in 2010 as compared to the State-wide average of 33 nursing home beds per 1,000 person’s aged 65 and above. The available beds in Cumberland County exceed the statewide average; however the average occupancy is greater than 93%. CONU compiled occupancy data for all Cumberland County nursing homes. Please see table below.

Table 1: Cumberland County Nursing Homes Occupancy Data

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | **Distance** | **Licensed** |  | % |
| **Facility** | **Location** | **From Applicant** | **Beds** | **Occupancy** | **Occupancy** |
|  Barron Center | Portland | 0 | 219 | 213 | 97.26% |
| Brentwood | Yarmouth | 12 | 78 | 68 | 87.18% |
| Bridgton | Bridgton | 38 | 43 | 39 | 90.70% |
| Cedars | Portland | 0 | 102 | 86 | 84.31% |
| Coastal Manor | Yarmouth | 12 | 39 | 37 | 94.87% |
| Falmouth by the Sea | Falmouth | 6 | 65 | 60 | 92.31% |
| Freeport Nursing | Freeport | 17 | 61 | 56 | 91.80% |
| Gorham House | Gorham | 11 | 69 | 65 | 94.20% |
| Hawthorne House | Freeport | 17 | 81 | 79 | 97.53% |
| Horizons | Brunswick | 26 | 65 | 65 | 100.00% |
| Ledgewood Manor | Windham | 14 | 60 | 58 | 96.67% |
| MVH-Scarborough | Scarborough | 9 | 120 | 114 | 95.00% |
| Mid Coast Senior  | Brunswick | 26 | 42 | 34 | 80.95% |
| Pine Point | Scarborough | 9 | 58 | 57 | 98.28% |
| Piper Shores | Scarborough | 9 | 40 | 37 | 92.50% |
| Seaside | Scarborough | 9 | 124 | 117 | 94.35% |
| Sedgewood | Portland | 0 | 65 | 64 | 98.46% |
| South Portland | So. Portland | 3 | 73 | 73 | 100.00% |
| Springbrook | Westbrook | 8 | 123 | 118 | 95.93% |
| St. Josephs Rehab. | Portland | 0 | 121 | 106 | 87.60% |
| **TOTAL (Average)** |  |  | **1648** | **1546** | **93.50%** |

The above table shows that Cumberland County has an average occupancy rate of 93.5%. Only two facilities, Cedars and Mid Coast Senior, fall below an occupancy level of 85%. CONU expanded its analysis to review a full year of occupancy data for these facilities. Cedars had a 2013 average of 88.17% occupancy and Mid Coast Senior had a 2013 average occupancy of 87%. This analysis confirms that occupancy levels are high in Cumberland County nursing homes and that there is a demand for nursing services.

Maintaining and enhancing needed SNF/NF services in this area will have a positive impact on the health status indicators of the population to be served. This facility will enable residents to remain close to home and family while receiving services. According to the applicant, a recent survey of residents and families indicated that 82% of respondents would recommend this facility to others.

The services affected by the project will be accessible to all residents in the area based on clinical and financial eligibility criteria.

Seaside focuses its efforts on short-term rehabilitation with most residents returning home or to a lower cost community-based setting which is in line with the goals of the State of Maine. This emphasis on returning residents to their homes and families as quickly as possible improves the quality of life for residents and improves outcomes.

1. **Orderly and Economic Development:**

The decision to increase the Seaside facility SNF/NF capacity from 124 to 137 beds would address a demonstrated need for additional SNF/NF beds in the Portland area. This benefit would not be offset by a reduction in RCF beds in the area because of construction Seaside conducted last year to redistribute beds at this facility.

The increased operating costs associated with the 13 additional SNF/NF beds would be offset by utilization of the MaineCare revenue stream described in the Economic Feasibility section of this analysis.

No additional State funding is required for this project because MaineCare neutrality needs have been achieved.

Seaside is an existing facility and the incremental costs associated with adding an additional 13 SNF/NF beds are relatively low. It is unlikely that a less expensive alternative to these services is available.

1. **Outcomes and Community Impact:**

The addition of 13 nursing home beds in Cumberland County will have a minimal effect on the quality of care delivered by existing service providers. Seniors needing SNF/NF care will have a greater likelihood of finding the services offered in the area where they reside.

This proposal addresses the lack of available nursing home beds in the area. Seaside Healthcare’s focus will be on rehabilitation, with the goal of returning the patients to their homes and/or to community-based services rather than placing residents permanently in a more costly long term care nursing bed. This reintroduction of a patient into the at-large community is consistent with the goals of the department and national trends of extending home-based service.

**f)** **Service Utilization:**

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.

1. **Consistency with MaineCare Funding Pool and 333-A and 334-A:**

This facility achieved MaineCare neutrality by utilizing MaineCare resources from other projects. No funding from the MaineCare funding pool is required.

MaineCare Neutrality

This project is subject to MaineCare neutrality. MaineCare neutrality is computed by comparing the current utilization of MaineCare resources at the current 124 bed SNF/NF and 30 bed RCF capacity with the proposed 137 beds SNF/NF and 30 bed RCF capacity. The current utilization is $9,237,482.

The expected costs to the MaineCare program are calculated to be $10,019,399. The increase in MaineCare utilization is $781,916 based on 95% occupancy.

The resources available for the project are listed below in CONU Sources and Uses of MaineCare Funding. The applicant identified sources of revenue for offsetting the project’s annual expenses.

|  |  |
| --- | --- |
| **CONU Sources and Uses of MaineCare Funding:** |  |
|  |  |  |  |  |  |
| **Source:** | **Facility** | **#of Beds** | **$ Value** | **Allocated Beds** | **$ Value** |
|   |   |   |   |   |   |
|   | Colliers | 9 | $645,221  | 9 | $645,221  |
|   | Marshall | 4 | $136,695  | 4 | $136,695  |
|   | **Total** |  | **$781,916**  |  | **$781,916**  |
|   |   |   |   |   |   |
| **Uses:** | Seaside | 13 | $781,916  | 13 | $781,916  |
| **Excess Resources** |   |   | $0  |   | $0  |

The chart indicates that the revenue stream from 9 Colliers NF beds and 4 Marshall’s beds is sufficient to offset the potential costs of the thirteen new SNF/NF beds. The value of the revenue stream is $781,916. The expected costs to the MaineCare program are calculated to be $781,916. Sufficient resources exist to achieve MaineCare neutrality.

**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:**

Certificate of Need Unit recommends that the Commissioner determine that this project should be **approved.**