**Date: June 2, 2016**

**Project**: **Change of Ownership of Mount St. Joseph Nursing Home**

**Proposal by: Mercy Community Health, Inc.**

**Prepared by: Richard Lawrence, Senior Health Care Financial Analyst**

**Larry Carbonneau, Senior Health Care Financial Analyst**

**Directly Affected Party: None**

**Certificate of Need Unit Recommendation: Approval**

 **Proposed Approved**

 **Per Applicant** **CON**

Estimated Capital Expenditure $0 $0

Maximum Contingency $0 $0

Total Capital Expenditure with Contingency $0 $0

Pro-Forma Marginal Operating Costs $0 $0

MaineCare Neutrality Established N/A

# I. Abstract

1. **From Applicant**

This CON application concerns an acquisition of control of a nursing facility by substitution of a nonprofit corporation’s corporate membership and the transfer of ownership of the nursing facility real estate. The parties to the transaction and applicants for this CON are:

* Mount St. Joseph (“MSJ”) is a Maine nonprofit, Section 501(c)(3) tax-exempt corporation with its principal offices in Waterville, Maine. MSJ operates a 111-bed licensed nursing facility in Waterville, and also operates 27 assisted living beds and 9 independent living beds, for a total of 147 beds.
* Mercy Community Health, Inc. (“Mercy”), is a Connecticut non-stock (i.e., nonprofit) corporation with its principal offices located in West Hartford, Connecticut. Mercy is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The sole corporate member of Mercy is Trinity Continuing Care Services (d/b/a Trinity Senior Living Communities) (“TSLC”). Mercy operates the Mercy Community located on 43 acres in West Hartford, CT. The Mercy Community consists of St. Mary Home, a 256-bed nursing facility and The McAuley, a 228-unit continuing care retirement community.

MSJ will be subject to the governance of, have the benefit of the resources of, and be fully incorporated into TSLC. For this reason, TSLC is introduced here.

TSLC is a Michigan nonprofit corporation with its principal offices located in Livonia, Michigan. TSLC is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Itself and through its subsidiaries, TSLC owns or manages 54 nursing, assisted living, and independent living communities.

TSLC is a subsidiary of Trinity Health, the second-largest nonprofit health care system in the United States (by number of acute care hospitals). Trinity Health has operations in 21 states with 91 hospitals, 61 continuing care communities, and other programs.

Upon execution of a Member Transfer Agreement and receiving a CON and other necessary approvals, MSJ’s entire corporate membership – which is currently held by certain members of the Congregation of the Sisters of Saint Joseph of Lyons – will be replaced with Mercy, which will then be the sole corporate member of MSJ. The Congregation will also be transferring ownership of the nursing facility land and building to Mercy. Following the transfer of real estate and upon becoming the sole corporate member of MSJ, Mercy will acquire direct or indirect control over substantially all of the assets and operations of MSJ. As described elsewhere in this Application, after the transaction the parties do not intend to substantially change the scope of services or increase or reduce the number of beds at MSJ.

The terms and conditions of the transaction will be set forth in a Membership Transfer Agreement to be entered into between Mercy and MSJ. A copy of the Agreement is on file with the Certificate of Need Unit.

**CONU Comment #1:**

According to 22 M.R.S.A §329 a certificate of need is required for:

**Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control**. Any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department.

**II. Fit, Willing and Able**

**A. From Applicant**

***A. Introduction to Mercy Community Health, Inc.***

 Mercy operates the Mercy Community located on 43 acres in West Hartford, CT. The Mercy Community consists of St. Mary Home, a 256-bed nursing facility and The McAuley, a 228-unit continuing care retirement community. Mercy was founded by the Sisters of Mercy of the Americas, Northeast Community. The Sisters of Mercy were founded in 1831 in Ireland and arrived in the United States in 1843, opening its first hospital in 1847.

The Sisters opened St. Mary Home in 1880, which is the oldest continuously-operated skilled nursing facility in Connecticut. In addition to having 256 nursing beds, St. Mary Home operates a 97-unit residential care home, The Frances Warde Towers Apartments. St. Mary Home is accredited by the Commission on Accreditation of Rehabilitation Facilities and Continuing Care Accreditation Commission (“CARF-CCAC”) as an aging services network, person-centered long-term care community, and person-centered long-term care community with a dementia care specialty program. The Centers for Medicare and Medicaid Services (“CMS”) nursing home compare program gives St. Mary Home an overall **five-star rating**. *See* Exhibit1.

The McAuley is operated to promote and foster an independent lifestyle within a life care setting. CARF-CCAC has accredited The McAuley as an aging services network and continuing care retirement community.

In total, The Mercy Community employs 470 individuals: 39% of the workforce has 10 or more years of service, 24% has 15 years or more, 15% has 20 years or more, and 9% has 25 years or more. It achieves annual revenues of $43 million. Through a strategic outreach plan, The Mercy Community returned more than $3 million to greater Hartford in the last fiscal year in the form of charity care and other community benefit programs. On a daily basis, some 600 individuals entrust their care to The Mercy Community.

Mercy and TSLC are committed to ensuring that MSJ’s facility is managed consistent with Mercy and TSLC’s other facilities in a compassionate and clinically competent manner, reflecting Mercy’s, TSLC’s, and MSJ’s faith-based missions.

 The primary reason why Mercy will become MSJ’s sole corporate member, rather than TSLC, is that Mercy is geographically the closest TSLC-affiliated entity to MSJ. MSJ will be fully incorporated into the TSLC system, made subject to the oversight of TSLC, and benefit from the resources and expertise of the TSLC system.

 A copy of the current corporate organizational chart showing the relationships between Mercy, TSLC, and Trinity Health is attached as Exhibit2. An organizational chart showing where MSJ would fit within the TSLC system post-affiliation is attached as Exhibit3.

***B. Introduction to Trinity Senior Living Communities and Trinity Health***

 TSLC is the sole corporate member of Mercy and the pre and post-acute care and senior housing subsidiary of Trinity Health. TSLC offers independent living, assisted living, memory care, nursing care, and rehabilitation and wellness services and provides care to 35,000 residents each year at 54 communities throughout the United States with 5,499 beds/units.

 Trinity Health, itself and through its affiliates, is one of the largest health care systems in the United States, operating in 21 states with 91 hospitals, 61 continuing care facilities of different varieties, and home health and hospice programs that provide nearly 2.8 million visits annually. Employing 89,000 people and 3,300 physicians, Trinity Health has annual operating revenues of $14.4 billion and assets of about $21.8 billion. Annually, it provides about $1 billion in the form of charity care and other community benefit programs. Trinity Health is sponsored by an entity established by the Catholic Church – Catholic Health Ministries – to ensure that Trinity Health furthers the healing ministry of the Church through ownership, management, and governance of health facilities, programs, and services intended to improve the health of individuals and communities served.

 Although one of the largest health care systems in the United States, Trinity Health has adopted a mission, core values, and a vision compatible with MSJ’s. *See* Exhibit4*.* Trinity Health’s and TSLC’s cultures will be consistent with that of MSJ’s: providing compassionate and quality health care services in furtherance of their faith-based missions.

In addition, TSLC provides consulting services to other faith-based senior living organizations, including MSJ. Since 2013, MSJ has received consulting services from TSLC subsidiary Trinity Senior Services Management (“TSSM”). Under this consulting relationship, TSLC has provided assistance to MSJ in the areas of Medicare, MaineCare, and commercial payor management and compliance, billing software set-up and maintenance, collections, and clinical operations. These consulting services have resulted in an improved financial outlook as described in Section III, and improvement in several quality areas, examples of which are described in Section VI.

***C. Introduction to Mount St. Joseph***

 Co-applicant MSJ is a Maine nonprofit, tax-exempt corporation. Its entire corporate membership interest is held by the Congregation of the Sisters of St. Joseph of Lyons (the “Congregation”) through certain of its members. The Congregation has its origins in 17th Century France. The Congregation established its first presence in the United States in 1836, and in Maine in 1906. It built schools and convents in Jackman, South Berwick, Auburn, and Winslow in the first-half of the 20th Century. The Congregation delved into health care in 1962 by staffing a small community hospital in Jackman, and founding MSJ in 1966.

Today, MSJ is a 111-bed licensed nursing facility in Waterville. It also operates 27 assisted living beds and 9 independent living beds, for a total of 147 beds. The nursing facility building and land are owned by the Congregation. MSJ’s mission is as follows:

With a mission to foster unity and reconciliation in a spirit of respect and compassion for all, we strive to:

* create a caring, stimulating environment that promotes growth and independence;
* enhance well-being through nutrition, fitness and activity; and
* foster peace and contentment by honoring the unique spirit of each individual and treating everyone with dignity and respect.

MSJ offers assisted living, residential care, skilled nursing, long-term nursing care, short-term rehabilitation, physical/occupational/speech therapy, wound care management, intravenous therapy, pain management, end-of-life care, diabetic care and education, nutritional support (TPN/tube feeding), respiratory treatment and care, discharge planning and rehabilitation services, and Alzheimer’s/dementia care.

Among its services, since 1996, MSJ has operated a unique gero-psychiatric component with eighteen nursing facility beds and sixteen residential care beds. MSJ is reimbursed by MaineCare for these beds pursuant to a separate agreement with MaineCare. Only two other facilities in Maine operate these types of beds: Freeport House and Gorham House. MSJ is the only facility among the three (or any other facility in Maine, for that matter) to provide residential care gero-psychiatric beds. As described in Section IV, there is great need in the State for these gero-psychiatric services.

***D. Profiles of the Mercy, TSLC, and MSJ Senior Leadership Teams***

 The following individuals from Mercy and TSLC comprise the senior leaders who will oversee and support MSJ:

Mercy Personnel

* William J. Fiocchetta, President/Chief Executive Officer
* Steven D. Beaulieu, Senior Vice President/Chief Financial Officer

TSLC Personnel

* Ken Robbins, President/Chief Executive Officer
* Steven Stein, M.D., Chief Medical Officer
* Jerald Benjamin, Chief Financial Officer

Biographies of each of the Mercy and TSLC senior leaders are attached as Exhibit5.

MSJ Personnel

* Diane Sinclair, RN, Administrator
* Dr. Toby Atkins, Medical Director
* Tammy Thayer, RN, Director of Clinical Services
* Kate McCarron, LSW, Social Service Director
* Clark Phinney, HR Director
* Rana Raymond, RN, Quality Assurance/Infection Control/Staff Development
* Charles Demm, Mission/Pastoral Care Director
* Marcio Biacuz, Environmental Director
* Carla Black, Life Enrichment Director
* Adam Duvall, Admissions Director

***E. TSLC Clinical Structure and Quality Programs***

 TSLC’s clinical structure at the system level consists of a Chief Nursing Officer/VP of Clinical Operations who is responsible for overall clinical operations. Reporting to this officer are the Regional VP of Clinical Operations for Midwest, Regional VP of Clinical Operations for East, and four Regional Clinical Managers who provide on-site clinical support to facilities. These regional clinical support systems are also used to assist facilities with performance improvement plans and compliance with federal and state regulations. The TSLC system’s clinical support also includes a director of learning and development.

 TSLC has a deep-rooted commitment to providing high quality care, services, and experience to each of its facilities’ residents. Key to working toward and ensuring high-quality clinical services throughout the TSLC system is its Mission Driven Quality Assessment Performance Improvement Process (the “QAPI”). The QAPI is a data-driven and proactive approach to improving the quality of life, care, and services at TSLC facilities. TSLC requires each of its facilities to develop and implement a QAPI to engage stakeholders (e.g., residents, families, providers, staff) in the development of ways to improve quality. A sample QAPI that is typical of TSLC facilities is attached as Exhibit6.

Under its QAPI, a facility must seek out opportunities for improvement and, in a methodical and measurable manner, take steps to improve upon the identified opportunities. Many of these opportunities are discovered in large part due to TSLC’s data and analytics services developed specifically for long-term care, such as My Innerview and PointRight. Additionally, each facility is required to have a Mission Driven Quality Assurance and Performance Improvement Committee that meets monthly and as needed to develop performance improvement projects and determine the status of quality improvement efforts. When a performance improvement initiative is identified, a Performance Improvement Plan (“PIP”) is developed with the input of residents, family, staff, and providers. Each PIP must describe the issue, root cause, and desired outcome; develop a plan of action and implement it; and determine whether the PIP is having the desired outcome. Facilities are held accountable to their PIPs through the use of monthly grade point averages relating to whether and to what extent PIP goals are met.

 In addition, TSLC conducts an annual clinical system review for each facility. The purpose of the review is to ensure that facilities are following TSLC standards and to provide a uniform system of scoring to analyze how well each facility is performing across 24 quality measures, including but not limited to infection control, clinical tracking, resident quality of life, facility appearance, staff education, and social services. If within a category a facility falls below a certain score, the facility is required to develop an action plan to make improvements. A copy of an annual clinical system review scoring sheet is attached as Exhibit7.

Through TSLC’s consulting relationship with MSJ, TSLC has helped MSJ establish benchmarks, PIP goals, and otherwise utilize the QAPI. Examples of areas where MSJ has improved with the assistance of TSLC are described in Section VI.C below.

***F. Medicare Nursing Home Compare Star Ratings of TSLC Nursing Facilities***

*1. Ratings of TSLC Nursing Facilities*

 TSLC’s primary focus is the safety and well-being of its residents, and it accomplishes this through a multitude of programs and measures to ensure that each of its facilities provide high-quality services and that its service delivery employees are appropriately trained, educated, and supported. These efforts have achieved excellent ratings from CMS’s Medicare Nursing Home Compare program. As of September 30, 2015, TSLC’s facilities perform well overall (8 of the 17 facilities have overall 5-star ratings), and perform particularly well in the Quality Measures category with two earning 4 stars and all of the others earning 5-star ratings. *See* Exhibit8. Three of TSLC’s facilities have 2-star overall ratings, which TSLC is working to improve. These efforts are more fully described in correspondence from Joseph M. Kozak to Larry Carbonneau, dated December 4, 2015. *See* Exhibit8.

*2. TSLC Ratings Improvement Activities and Recent Successes*

 TSLC facilities use a variety of strategies and methods to maintain, improve and ensure high ratings. These include a benchmarking system in which facilities are rated based on resident satisfaction, quality of care, and rehospitalization rates. As described above, each facility is required to develop and implement a PIP through TSLC’s QAPI process.

 TSLC provides ongoing education through the use of an online learning system and webinars, director of nursing meetings, and on-site education provided by Regional Clinical Managers. In addition, TSLC provides support to facilities from its Director of Education and Development, who oversees staff orientation and ongoing education system wide.

TSLC also uses a system-wide patient satisfaction survey called My Innerview to gauge performance on various metrics. This data is used in the above-mentioned benchmarking process for PIPs.

TSLC’s QAPI process has resulted in better than average state survey results, CMS Nursing Home Compare Star Ratings, and recognition of quality in the form of awards.

**Average Number of Deficiencies of TSLC Facilities by State and Statewide Averages**

|  |  |  |
| --- | --- | --- |
| **State** | **TSLC Average** | **Statewide Average** |
| Michigan | 4.3 | 9.7 |
| Indiana | 0.5 | 8.9 |
| Iowa | 4.3 | 5.5 |
| Maryland | 4 | 12.4 |
| Connecticut | 4 | 10.3 |
| North Carolina | 2 | 4.1 |

As shown in the above table, TSLC has on average outperformed its peers in each of the states in which TSLC has facilities. In five states, TSLC facilities on average have a fraction of the number of deficiencies of the average facility.

TSLC’s facilities and personnel have received quality of care awards and recognitions, including the following recent awards and recognitions:

* + Sanctuary at Bellbrook (Rochester Hills, MI) received the 2014 Governor's Award and has received the Excellence in Action award the last two years from My Innerview for resident satisfaction scores.
	+ The Alverno (Clinton, IA) received 2015 Quality Program Award for Quality Care from the Iowa Health Care Association for its lymphedema treatment program.
	+ The 2015 Excellence in Long Term Services and Supports Award for Therapy Services was awarded by Iowa Health Care Association to The Alverno’s Therapy Director, Molly Sichterman.
	+ The 2015 Iowa Health Care Association Excellence in Long Term Services and Supports Award for Caregiving was awarded to The Alverno’s Certified Medication Aide and Transportation Coordinator Cindy Boekeloo.
	+ The 2014 Iowa Health Care Association Excellence in Long Term and Post-Acute Care Award for Social Services was awarded to The Alverno’s Barb Dehaven.

*3. MSJ CMS Star Ratings*

 TSLC has reviewed MSJ’s CMS star ratings for the periods ending June 30, 2015, and November 30, 2015, which are as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Period EndingJune 30, 2015Nov. 30, 2015 | Overall3 stars4 stars | Health Inspection2 stars3 stars | Staffing5 stars4 stars | Quality Measures4 stars4 stars |

The star ratings immediately show three things: (i) MSJ’s staffing and quality components are excellent compared to other nursing facilities, (ii) overall MSJ is operated very well, and (iii) overall MSJ is improving its star ratings.

The June 30 star ratings are a reflection of MSJ’s February 4, 2015, state survey. MSJ’s overall star rating suffered under the health inspection component, but the information underlying its 2-star rating shows that MSJ had relatively few deficiencies and that these deficiencies posed minimal harm or potential for actual harm to residents.

The February 4 state survey underlying the June 30 star ratings found three deficiencies falling under the health inspection category. This is less than the average number of such deficiencies found in nursing facilities in Maine and nationwide. In comparison, the average number of such deficiencies cited for Maine nursing facilities is 3.6, and nationwide the average number is 6.8.

Looking at the three health inspection deficiencies, the CMS Nursing Home Compare website categorizes these deficiencies on a 1-4 scale with level 4 deficiencies being the worst. All three of MSJ’s deficiencies were rated level 2, which means “minimal harm or potential for actual harm.” *See* Exhibit 9. Following the survey, MSJ promptly submitted a plan of correction, which was accepted by the Maine Department of Health and Human Services (the “Department”). *See* Exhibit10.

 The November 30 star ratings are a reflection of MSJ’s November 5, 2015, state survey. During this survey, DHHS cited MSJ for one minor finding relating to issues with MSJ’s kitchen operations. *See* Exhibit11. MSJ promptly submitted a plan of correction, which was accepted by the Department, and it corrected the deficiencies. *See* Exhibit12.

 The improvement in star ratings is a testament to MSJ’s commitment to quality and improvement, and to the value of TSLC’s expertise and assistance. The improvement of the overall rating is largely tied to the improvement of the health inspections rating. MSJ has greatly improved on its health inspections annual surveys and complaint surveys. The February 4 annual state survey resulted in only three minor findings and the November 5 annual survey resulted in only one minor finding. There have been no health inspections findings from any complaint surveys in 2015.

***G. State Facility Licensure Surveys***

*1. TSLC Approach to State Facility Licensure Surveys*

TSLC facilities use a variety of methods to provide high quality care and services and receive high ratings. They include a benchmarking system in which facilities are rated based on resident satisfaction, quality of care, and rehospitalization rates. Facilities develop Performance Improvement Plans through the TSLC system’s Quality Assessment Performance Improvement Process.

TSLC also provides ongoing education through use of the online learning system, director of nursing meetings, webinars, and on-site education provided by Regional Clinical Managers. In addition, the system office provides support through the Director of Education and Development who oversees education system wide. Each facility has a Director of Education who assists with orientation of colleagues and ongoing education.

TSLC collects data on patient satisfaction through My Innerview. This data is utilized in the benchmarking process described above.

*2. Overview of Most Recent Survey of Mercy Facilities*

 Mercy operates one nursing facility, St. Mary Home, which is located in West Hartford, CT. Under the current CMS nursing home star ratings, St. Mary Home has received high marks as demonstrated by the following ratings:

|  |  |  |  |
| --- | --- | --- | --- |
| Overall5 stars | Health Inspection3 stars | Staffing4 stars | Quality Measures5 stars |

In the most recent inspection reported on CMS’s Nursing Home Compare website, St. Mary Home received four health-related deficiency citations, all of which were level 2 (“minimal harm or potential for actual harm”).

 As far as TSLC’s other nursing facilities, TSLC points to these facilities’ CMS Medicare Nursing Home Compare star ratings, as described in the December 4 letter to the CON Unit. *See* Exhibit8. As indicated in the letter, TSLC’s facilities receive high quality marks. For those few facilities that received overall 2-star ratings, TSLC is working to correct deficiencies and improve their ratings, as described in the letter.

*3. MSJ Most Recent Survey and Responses to Findings*

 As described above, on November 5, 2015, MSJ was surveyed by the Department, in which the Department cited MSJ for issues with MSJ’s kitchen operations. MSJ promptly submitted a plan of correction, which was accepted by the Department, and corrected the deficiencies. *See* Section II.F.3.

***H. Transition of MSJ into the TSLC System***

*1. Generally*

 MSJ and TSLC anticipate a smooth transition of MSJ into the TSLC system. Because TSLC has been providing consultant services to MSJ since 2013, TSLC and MSJ are familiar with each other, and MSJ has already incorporated certain TSLC programs into its operations. These include various TSLC clinical and operations systems, including TSLC’s electronic medical record system. Additionally, throughout the transition, MSJ staff will be in close contact with TSLC during the transition to address all transition-related issues and tasks. As a result of this advance work, it is not anticipated that MSJ will experience any significant disruption in programming or staff that might otherwise be characteristic of similar types of transactions.

In addition, TSLC has established a track record of bringing long-term care facilities into the TSLC system, and intends to use its effective approach to the MSJ affiliation. In 2013 TSLC acquired The Alverno Healthcare Facility in Clinton, Iowa. Prior to the acquisition, TSLC provided management services to The Alverno for five years. It has retained The Alverno’s century-long commitment to ill and aging individuals in the Clinton region, as well as the Mission and legacy of the Sisters of Saint Francis. Also in 2013, TSLC acquired both Marycrest Manor and its companion independent living facility, Marycrest Heights, both in Livonia, Michigan, from the Franciscan Sisters of St. Joseph of Hamburg, NY. The Sisters expressed great satisfaction in Trinity Health’s financial and stabilizing capacity in addition to its perpetuation of the Catholic identity, heritage and values for which Marycrest Manor had been known for more than 50 years.

*2. MSJ Services and Programs*

MSJ and TSLC do not have plans to change MSJ’s current configuration of beds or services being provided as a result of the affiliation. Post-affiliation, MSJ intends to continue providing its current services to the Waterville area, including skilled nursing care, nursing care, and gero-psychiatric care. TSLC and MSJ do not anticipate any changes to MSJ’s current clinical arrangements with local hospitals, physicians, and other health care providers at this time. In addition, MSJ will maintain its current marketing and admissions practices

*3. Employees*

TSLC and MSJ do not anticipate any major changes to the wages and benefits of MSJ employees after the affiliation. TSLC continuously monitors the market to ensure that it provides competitive wages and benefits. It is anticipated that MSJ employees will move to TSLC’s standard benefit package.

There is no plan to add staff as compared to MSJ’s historical operations.

After the affiliation, MSJ employees will undergo TSLC’s standard new hire orientation. The new hire orientation agenda will resemble the attached Exhibit13, but MSJ and TSLC anticipate modifying the agenda in light of MSJ’s employees familiarity with MSJ.

*4. Communication with Public and Stakeholders*

 Once the affiliation date is established, TSLC’s communications team will coordinate written announcements to notify the public of the affiliation. TSLC and MSJ will also meet with staff, residents, and families to provide information about the transition and address questions and concerns.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.

1. **CON Unit Analysis**

Mount St. Joseph is a Maine nonprofit Section 501 (c)(3) tax exempt corporation located in Waterville Maine. Mount St. Joseph operates Mount St. Joseph Nursing Home (MSJ) a 111-bed nursing home licensed for 30 skilled beds and 81 nursing beds. In addition they are licensed for 27 Level IV residential care beds. MSJ also operates 9 independent living beds. MSJ is located at 7 Highwood Street, Waterville, Maine. The current administrator is Diane M. Sinclair. The current license is due to expire on March 31, 2017. CONU looked at the latest nursing home ratings available at Medicare.gov and MSJ’s results are as follows:

|  |
| --- |
| **Mount St. Joseph Nursing Home** |
| **Nursing Home Compare Ratings** |
| **Category** | **Ratings** |
| Overall | Above Average |
| Health Inspections | Average |
| Staffing | Above Average |
| Quality Ratings | Above Average |

MSJ scored average or above in all categories rated by CMS, with an overall rating of “Above Average”. A survey was completed on November 5, 2015 at MSJ. The result of the survey was the identification of one (1) deficiency. This deficiency was a Level 2 deficiency (minimal harm or potential for actual harm). The average number of health deficiencies during a survey in Maine is 3.2 and the average number of health deficiencies during a survey in the United States as a whole is 6.9.

Inspectors determined that the nursing home failed to:

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

This deficiency was corrected by November 27, 2015.

Post-closing Mercy Community Health (the applicant), a subsidiary of Trinity Continuing Care Services (TSLC) which owns or manages 54 nursing, assisted living and independent living communities, will become the sole member of MSJ.. TSLC is a subsidiary of Trinity Health which is one of the largest non-profit health care systems in the United States. The applicant provided a pre-closing and post-closing organizational chart illustrating the membership change occurring as a result of this transaction. This applicant is not currently licensed in Maine. CONU verified the CMS ratings and survey data of Mercy’s current nursing facility, St. Mary Home, a 256 bed nursing home located in West Hartford, CT. The latest nursing home ratings available at Medicare.gov and St. Mary’s results are as follows:

|  |
| --- |
| **St. Mary Home** |
| **Nursing Home Compare Ratings** |
| **Category** | **Ratings** |
| Overall | Much Above Average |
| Health Inspections | Average |
| Staffing | Above Average |
| Quality Ratings | Much Above Average |

St. Mary Home scored average or above in all categories rated by CMS, with an overall rating of “Much Above Average”. A survey was completed on April 23, 2015 at St. Mary Home. The result of the survey was an identification of four (4) deficiencies. All four deficiencies were Level 2 (minimal harm or potential for actual harm) or below. The average number of health deficiencies identified during a survey in Connecticut is 7.8: the average number of health deficiencies in the United States as a whole is 6.9.

Inspectors determined that the nursing home failed to:

1) Provide necessary care and services to maintain the highest well-being of each resident.

2) Make sure that residents receive treatment/services to not only continue, but improve the ability to care for themselves.

3) Keep the rate of medication errors (wrong drug, wrong dose, wrong time) to less than 5%.

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

All deficiencies were corrected by May 10, 2015.

The applicant also provided extensive nursing home compare ratings for Trinity Senior Living Communities owned nursing homes. Eight out of seventeen nursing homes earn a “Much Above Average” overall rating while only three facilities Sanctuary at the Abbey, Sanctuary at the Park and Sanctuary at St. Mary’s earned a “Below Average” overall rating. The applicant submitted a plan of correction to increase these ratings to “Average” or above. These plans are as follows:

“Sanctuary at the Abbey (Warren, Michigan): This facility is on an active process improvement plan with priority oversight by the regional clinical manager. TSLC’s efforts are expected to pay off with a 3-star overall rating when the ratings are next calculated. This is based on the results of the facility’s 2015 annual survey, which has not yet been calculated into the Star Ratings. Based on TSLC’s internal calculations, the Health Inspections ratings will improve to 2 stars, the quality Measures rating will remain at 5 stars, and the Staffing rating will be 4 or 5 stars.”

“Sanctuary at the Park (Muskegon, Michigan): The facility’s opportunity for a gain in ratings rests upon the upcoming annual survey due in March of 2016. A major factor in the lower Health Inspections rating is due to the kitchen. A vendor has been engaged to increase inspections of the kitchen and assist the facility in taking corrective actions when issues are spotted. The facility is scheduled for a multidisciplinary system review in January 2015 to critically appraise its current state and to provide education to the facility’s team on survey management. Given the action plan and efforts being put forth, it is anticipated that the facility will achieve a minimum of a 3-star overall rating after the completion and posting of its next annual survey around March of 2016.”

“Sanctuary at St. Mary’s (Grand Rapids, Michigan): The facility’s star rating is directly related to the annual survey in January of 2014 in which the facility received a citation associated with its abuse policy. This effectively reduced the Health Inspection rating to 1-star. A multi-disciplinary system review was conducted in October and an active process improvement plan is in effect to ensure optimal survey outcomes and raise the Health Inspection rating to 2 stars. Additionally, the facility is expected to receive a higher Staffing rating. To do this, a standardized process to crosswalk job codes to the CMS Form 671 has been implemented and all Form 671’s are validated by system office operations or clinical operations before being submitted to the state agency. It is anticipated that the facility will achieve an overall 3-star rating following the next annual survey due in January 2016.”

Mr. Joseph Kozak’s (attorney for applicants) full correspondence is contained in his letter of December 4, 2015 and is on file at CONU.

The applicant has demonstrated their ability to maintain services at the proper standard of care in other states. In addition, MSJ has a record of providing quality care and an experienced staff that is likely to remain in place. However, due to the applicant’s lack of history operating health care facilities in the State of Maine CONU recommends the following condition.

**Condition:** The applicant is to report improvements in quality outcome measures for services affected by the project on an annual basis within 90 days of its fiscal year end beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

1) MSJ’s most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps MSJ has taken or will take to maintain positive indicators and improve average or below average indicators.

2) A summary of the results of periodic surveys of MSJ carried out by DLRS over the past year, and a description of the remedial measures taken to address the identified deficiencies.

3) An analysis showing key trends at MSJ relating to quality measures, along with a review of the quality improvement steps being undertaken.

1. **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**

***A. Financial Projections for MSJ***

*1. Five-Year Projections*

 TSLC’s accounting and consulting firm, Plante Moran, has prepared financial projections for the first five years of operations in which MSJ is a subsidiary of TSLC (2016-2020). The projections are attached as Exhibit14, which demonstrate the ability to support MSJ’s operations and cash flow needs.

The following is a summary of the projections:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 2016 | 2017 | 2018 | 2019 | 2020 |
| Total Revenue and Other Support | $13,454,000 | $13,550,000 | $13,729,000 | $13,911,000 | $14,097,000 |
| Operating Expenses | $12,858,000 | $13,058,000 | $13,271,000 | $13,491,000 | $13,715,000 |
| Net income | $596,000 | $492,000 | $458,000 | $420,000 | $382,000 |

During the first five years of operations, it is projected that MSJ will have operating margins between 4.4% and 2.7% per year. TSLC and MSJ expect MSJ’s margins to improve beginning in 2016 (as compared to $111,000 operating income in 2014) as a result of increased Medicare skilled nursing utilization. The assumptions relating to bed utilization, payor mix, reimbursement rates, and labor and non-labor expenses are included in Exhibit14.

*2. Explanation of MSJ’s Gero-psychiatric Payment Arrangement with the State*

 Pursuant to a special arrangement with the State of Maine, MSJ is one of three providers of specialized geriatric-psychiatric nursing facility and residential care facility beds in the State of Maine, and the only such provider north of Freeport.[[1]](#footnote-1) Under this arrangement, MSJ operates 18 specialized nursing facility beds and 16 specialized residential care beds. Ten of the nursing facility beds are also secured. These beds are designated for older individuals with mental illness who would otherwise have to be cared for in more expensive and more restrictive hospital settings.

This arrangement has been in place since 1996. In 1992, Robert W. Glover, then Commissioner of the Department of Mental Health and Mental Retardation (“DMHMR”) announced a plan to provide community mental health options, including dedicated nursing facility (“NF”) beds, for Augusta Mental Health Institute (AMHI) and Bangor Mental Health Institute (BMHI) residents. Later that year, the Maine Department of Human Services (“DHS”), in cooperation with DMHMR, issued a request for proposals (“RFP”) soliciting CON proposals for the building of specialized gero-psychiatric units in the State. MSJ, along with two other applicants, received a CON for such a new unit, and built the new unit with 30-year financing from MHHEFA.

Subsequent refinements and complications in State policy regarding this new plan, and the appointment of a new Commissioner of DMHMR, Melodie Peet, resulted in changes in the model for community mental health beds envisioned in the RFP and the CONs. As a result of these changes, each of the three contracts for these new specialized beds was negotiated independently, and MSJ’s arrangement differs significantly from the other two. At MSJ, the beds were divided into two units, one consisting of NF beds and the other of residential care beds reimbursed under the DHS rules for “Private Non-Medical Institutions” (“PNMIs”). While Commissioner Glover’s plan and the RFP had contemplated long term leases or contracts for these beds, subsequent negotiations produced contract terms of a few years during the initial implementation of the units, and in recent years the contracts have been for one year with relatively little change from year to year. The basic reimbursement and operational structures for these beds have remained relatively stable (with various updates and operational refinements) since the first multi-year contract was executed in June 1996.

As with other facilities throughout the State, MSJ receives reimbursement from the Department in accordance with the MaineCare Principles of Reimbursement for PNMIs, the MaineCare Principles of Reimbursement for Nursing Facilities (which now provide directly for a substantial part of the reimbursement for specialized mental health beds), and the Principles of Reimbursement for RCFs for Room and Board Costs. Consistent with the State’s original design and in recognition that the services provided to these individuals are both challenging to staff and more resource-intensive, and understanding that MSJ must meet MHHEFA bond covenants, MSJ receives supplemental cost-based reimbursement under the arrangement.

***B. Financial Ability of Trinity Health***

 As a member of the Trinity Health system, the second-largest nonprofit health care system in the United States (by number of acute care hospitals), MSJ will be affiliated with an organization with significant financial resources and strong financial results. For Trinity Health’s fiscal year ending June 30, 2015,[[2]](#footnote-2) Trinity Health’s financial resources and results were as follows:

* Total assets: $21.8 billion
* Unrestricted cash and assets: $7.8 billion
* Total unrestricted revenue: $14.4 billion (7% increase over FY 2014)
* Total operating expenses: $13.9 billion
* Operating income: $470 million

 Clearly, Trinity Health is in a very strong financial position represented by both its assets and ability to generate net revenues, which surpassed FY 2014’s net revenues.

***C. Ability to Operate MSJ in Accordance with Existing and Reasonably Anticipated***

***Future Changes in Federal, State, and Local Licensure and***

***Other Applicable or Potentially Applicable Rules***

The financial projections assume 1.5% annual increases in Medicare rates, 2% annual increases in commercial insurance rates, and 1% annual increases in MaineCare rates. Due to the State of Maine’s budget environment, the assumptions on increases in MaineCare rates are conservative. With these assumptions, MSJ and TSLC project that MSJ will realize net income over the next five years.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.

1. **CON Analysis**

The applicant addressed this section by providing post-transaction five year financial projections for MSJ (2016 through 2020). These projections show positive net income for all five years. The underlying assumptions supporting these projections were prepared by the TSLC’s accounting and consulting firm, Plante Moran, and are on file at CONU. CONU reviewed these underlying assumptions and believes they are both reasonable and conservative.

Post-transaction MSJ will be a member of the Trinity Health system, the second largest nonprofit health care system in the United States. Trinity Health system has significant financial resources. Based on the 2014 Audit report, Trinity has over $4 billion dollars in cash and investments, total assets of 20.4 billion, and unrestricted revenues of $13.5 billion. The applicant has the capacity to support MSJ financially in the event that financial projections do not meet expectations.

The applicant states that this project will not involve the addition of beds, capital expenditures or significant long-term borrowing during the first three years of operations post-transaction. The staffing at MSJ is not expected to either increase or decrease but benefits are likely to be moved to TSLC’s standard benefits package. CONU requested that the applicant provide a pro-forma cost report that represents the changes occurring as a result of this transaction in order to demonstrate MaineCare neutrality. CONU reviewed the underlying assumptions used in the preparation of this cost report and found them reasonable. Certain administrative costs are projected to increase, however, this will have no immediate effect on reimbursement as they are subject to a cost cap. As of July 1, 2016 all nursing facilities in the State of Maine will go through a rebasing per the Principles of Reimbursement for Nursing Facilities. The effect of this reimbursement on Mt. St. Joseph and other Maine nursing homes is unknown at this time. Future reimbursement will ultimately be determined by DHHS Rate Setting and DHHS Audit. The increase in SNF/NF care as well as analysis of need located in Section IV of this analysis supports the applicants’ assertion that this project is financially feasible and will maintain the financial stability of this facility.

Due to the applicant’s limited history operating health care facilities in the State of Maine CONU recommends the following condition:

**Condition:** The applicant is to report financial results of the project on an annual basis to coincide with the filing of its MaineCare cost report beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

1. A summary income statement and a narrative comparison with the projections set forth in the application.
2. A summary of management’s plan to sustain or improve operating results in the next twelve months. The summary would include specific measures recently implemented or those planned to be implemented to assure the ongoing economic viability of the facility.
3. **Conclusion**

CONU recommends that the Commissioner determine that the applicant has demonstrated that the project is economically feasible.

**IV. Public Need**

**A. From Applicant**

***A. MSJ Occupancy Rates\****

|  |  |  |  |
| --- | --- | --- | --- |
|  | 2013 | 2014 | 2015 |
| Nursing Facility (NF & SNF)\*\*Payor Mix  Medicare Medicaid OtherTotal Occupancy | 22.7%66.8%10.5%93% | 21%69%10%93% | 18%70%12%91% |
| Other Long Term CareMountain Top (Gero-psych NF)Payor MixMedicaidOtherKeystone (Gero-psych ALF)Payor MixMedicaidOtherTotal Occupancy(Mountain Top + Keystone) | 100%0%100%0%96% | 97%3%97%3%96% | 96%4%100%0%93% |
| Total Facility Occupancy | 94% | 94% | 93% |

\*Based on MSJ’s internal census and demographic data. Percentages based on bed days.

\*\* Friendship Cove, Friendship Harbor, and Memory Lane units

 As shown above, MSJ has operated with a 93% - 94% total facility occupancy based on bed days. MSJ sees high utilization for both its gero-psych and non-gero-psych nursing facility/skilled nursing facility beds. This historical and current occupancy data demonstrates that MSJ is serving a need in the communities it serves, and TSLC and MSJ expect that occupancy rates will remain at these historical levels. Additionally, MSJ will continue to maintain accessibility to applicants for services who are medically qualified and who have made necessary payment arrangements with their payors, whether Medicare, Medicaid, commercial, or private pay.

***B. Meeting Community Needs through Accepting Local Provider Referrals***

 MSJ is committed to ensuring that it remains clinically aligned with community providers by accepting referrals and placements of patients of these providers who are in need of MSJ’s services. MSJ currently has transfer agreements with both Waterville-area hospitals: MaineGeneral Medical Center and Inland Hospital. In addition, MSJ maintains clinical and contractual relationships to ensure continuity of care and end of life care for its residents. TSLC and MSJ have no plans to change MSJ’s clinical arrangements and relationships with local hospitals, physicians, and other health care providers as a result of the affiliation. TSLC and MSJ will maintain their commitment to local providers by communicating on a regular basis about community needs.

***C. Specialized Gero-Psychiatric Services***

 As noted above, pursuant to its special arrangement with the State of Maine, MSJ is one of three providers of specialized geriatric-psychiatric nursing facility and residential care facility beds in the State of Maine, and the only such provider north of Freeport. MSJ is the only facility in the state with residential care gero-psychiatric beds.

Under this arrangement with the State, MSJ operates 18 specialized nursing facility beds and 16 specialized residential care beds. Ten of the nursing facility beds are also secured. These beds are designated for older individuals with mental illness who may otherwise be subjected to psychiatric hospitalization. Because the services provided to these individuals are more resource-intensive, MSJ receives enhanced reimbursement under the contract. This enhanced reimbursement is described in Section III.A.2 above.

 There is an acute need for these services in the community and surrounding region. As indicated in the table above, occupancy for these specialized beds have been at least 93% for 2013-2015. MSJ and TSLC anticipate that the occupancy rate for these specialized beds will remain substantially the same for the next three years.

 In addition, a report adopted on December 7, 2015, by a Legislative study committee provides further evidence that MSJ’s gero-psychiatric capacity is needed, and found that there is a gero-psychiatric bed shortage in the State. The report confirmed the need in the State for gero-psychiatric beds and recommended the addition of gero-psychiatric beds north and east of Waterville. (*See* Exhibit15, p. iii).[[3]](#footnote-3)

During the 2015 session of the 127th Legislature, the Legislature created the Commission to Study Difficult-to-Place Patients “to study certain issues related to difficult-to-place patients with complex medical conditions and the feasibility of making policy changes to the long-term care system for those patients . . . .” Resolves 2015, ch. 44 (Exhibit16). The report adopted a recommendation that the State increase gero-psychiatric bed capacity by a maximum of 25 beds. (*See* Exhibit15*,* p. iii). The Committee heard testimony that gero-psychiatric beds “are in high demand and rarely vacant, indicating an immediate need for additional capacity,” and concluded that “there is a specific lack of gero-psychiatric capacity in Northern and Down East Maine.” (*See* Exhibit15, p. iii). Because MSJ is the northern and eastern-most facility with gero-psychiatric capabilities, the need for MSJ’s capabilities is all the more evident.

***D. Continued Provision of MSJ Services***

MSJ and TSLC do not have plans to change MSJ’s current bed configuration or services being provided as a result of the affiliation. Post-affiliation, MSJ intends to continue providing its current services to the Waterville area, including skilled nursing care, nursing care, and gero-psychiatric care. TSLC and MSJ do not anticipate any changes to its current clinical arrangements with local hospitals, physicians, or other health care providers at this time. In addition, MSJ and TSLC do not intend to change MSJ’s current marketing and admissions practices at this time, and have no intent to change accessibility to MSJ’s services based on payment source (e.g., Medicare, MaineCare, commercial, private pay).

Based on MSJ’s current and historical occupancy rates, and the Legislature’s study committee’s findings, TSLC and MSJ anticipate that there will continue to be a strong public need for MSJ’s services.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.
1. **CON Unit Analysis**

In order to determine public need, CONU reviewed the demographic and service use trends in MSJ’s service area (Kennebec 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://www. quickfacts.census.gov.

Kennebec County is located in central Maine. According to the 2015 census it has a population of 121,112. Approximately 17.7% of the population is 65 and over. The 65 and over population is expected to experience a 54.4% growth rate between 2010 and 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. The average monthly number of people in case mix residential care facilities grew 30% during this same time period. CONU prepared a summary of occupancy data for MSJ and other Kennebec County nursing and residential care facilities using the latest data available (11/15/2015 for nursing homes and 2/1/2016 for residential care facilities):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **Total** | **Total** | **Occupancy** |
| **Nursing Facilities: Kennebec County** | **Town** | **Beds** | **Occupancy** | **%** |
| Augusta Center For Health & Rehabilitation | Augusta | 72 | 65 | 90.28% |
| Heritage Rehab & Living Ctr | Winthrop | 28 | 24 | 85.71% |
| Lakewood | Waterville | 105 | 100 | 95.24% |
| Maine Veterans Home - Augusta | Augusta | 120 | 105 | 87.50% |
| MaineGeneral Rehab & Nursing At Glenridge | Augusta | 125 | 113 | 90.40% |
| MaineGeneral Rehab & Nursing At Graybirch | Augusta | 77 | 73 | 94.81% |
| Mount St Joseph Nursing Home | Waterville | 111 | 98 | 88.29% |
| Oak Grove Center | Waterville | 90 | 82 | 91.11% |
| Winthrop Manor Longterm Care & Rehab Ctr | Winthrop | 46 | 36 | 78.26% |
|  |  |  |  |  |
|  |  | **Total** | **Total** | **Occupancy** |
| **Residential Care: Kennebec County** | **Town** | **Beds** | **Occupancy** | **%** |
| Alzheimer's Care Center | Gardiner | 30 | 28 | 93.33% |
| Arbor Terrace | Gardiner | 41 | 40 | 97.56% |
| Capitol City Manor | Augusta | 29 | 28 | 96.55% |
| Fontbonne Comm -MSJ | Waterville | 11 | 11 | 100.00% |
| Graybirch - KLTC | Augusta | 37 | 33 | 89.19% |
| Hall-Dale Manor | Farmingdale | 26 | 23 | 88.46% |
| Heritage Rehab & LC | Winthrop | 24 | 21 | 87.50% |
| Hillside Terrace of Hallowell | Hallowell | 19 | 17 | 89.47% |
| Maine Veterans Home -Augusta | Augusta | 30 | 29 | 96.67% |
| Snow Pond RCC | Sidney | 22 | 21 | 95.45% |
| Sunset Home | Waterville | 20 | 20 | 100.00% |
| The Woodland - Evergreens | Waterville | 32 | 32 | 100.00% |
| Woodlands AL of Hallowell, LLC | Hallowell | 51 | 49 | 96.08% |
| Woodlands Hallowell - ALZ unit | Hallowell | 24 | 22 | 91.67% |
| Woodlands, Inc | Waterville | 58 | 58 | 100.00% |

MSJ’s occupancy rates for both nursing and residential care services compare favorably with other providers at 88.29% for nursing and 100% for residential care services. Data submitted by the applicant shows average occupancy of 92.3% for nursing and 93.6% residential care services between 2013 and 2015. The latest average occupancy for Kennebec County is 89.07% for nursing and 94.8% for residential care services. The demographics and occupancy data from Kennebec County clearly demonstrate a need for nursing and residential care services in this area.

What differentiates this applicant from other nursing homes is that MSJ is one of only three providers in the State of Maine who offer gero-psychiatric beds and the only one operating in the Kennebec County service area. The applicant provided a copy of a legislative study committee report entitled Commission to Study Difficult-to-Place Patients stating that there is a shortage of this gero-psychiatric capacity in the State.

Retaining needed SNF/NF, residential care and gero-psychiatric services will have a positive impact on the health status indicators of the population to be served.

No services will be affected by this project and nursing, residential and gero-psychiatric services will be accessible to all residents in the area.

MSJ has consistently achieved high rankings in the CMS nursing home compare ratings. Although there will be a change in ownership, current staffing will be essentially unchanged.

1. **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**

**From Applicant**

***A. Overview***

 Bringing MSJ into the TSLC family will further the orderly and economic development of health facilities and health resources for the communities served by MSJ by ensuring the continuation of needed services. Need for MSJ’s services are demonstrated by MSJ’s high historical facility occupancy rate, as well as the Legislative study committee’s findings. *See* SectionIV. The affiliation of MSJ with TSLC will help continue the operation of MSJ and the meeting of community need by giving MSJ access to TSLC resources such as system clinical and financial expertise and back-office services such as billing and accounting.

***B. MaineCare Neutrality***

 The project does not involve the addition of beds or capital expenditures. Moreover, TSLC does not plan to make significant capital expenditures during the first three years of operations post-transaction. There will be no long-term borrowing as a result of this transaction and TSLC and MSJ have no plans for significant long-term borrowing during the first three years of operations post-transaction.

 The staffing for MSJ is not expected to increase or decrease in any significant way. There are also no plans to significantly change employee wages, which TSLC intends to keep competitive with the market. Benefits are likely to be moved to TSLC’s standard benefits package.

 Finally, MSJ accepts the current MaineCare limits as reflected in current facility rates and the current contract with the State of Maine for gero-psychiatric beds. MaineCare neutrality is demonstrated by acceptance of current MaineCare rates and no additional capital costs or changes to bed licenses.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.
1. **CON Unit Analysis**

This project does not involve capital expenditures, new or increased service levels or the addition of licensed beds. As stated by the applicant this transaction will not require any significant changes in staffing levels or significant changes in employee benefits or wages.

The current reimbursement rates are not expected to change until nursing facility rebasing occurs after July 1. This transaction will not require additional state funding.

Continuing needed services in the community, in particular gero-psychiatric services will result in orderly and economic development. Given the facilities occupancy rate and specialized services it is unlikely that more effective, more accessible or less costly alternative technologies or services will become available.

1. **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**

**From Applicant**

***A. Introduction***

 MSJ’s affiliation with TSLC will not negatively impact the quality of care provided by MSJ or other service providers. Rather, the affiliation is expected to have a positive impact on the quality of care provided to MSJ’s residents and by area physicians, hospitals, and other health care providers. TSLC has an established record of high-quality care and outcomes (*see* Section II) and is optimistic that MSJ’s quality (already rated at four stars under the CMS Nursing Home Compare system) will further benefit from the programs, expertise, and resources of TSLC. After the affiliation, MSJ will have additional access to the TSLC system’s clinical expertise, educational programs, and quality improvement programs, including the QAPI.

***B. TSLC’s Commitment to Quality***

 As outlined in Section II of this Application, TSLC is committed to rendering high-quality care and services to its nursing facility residents. TSLC operates a robust quality program that involves requiring each of its facilities to implement TSLC’s QAPI. TSLC’s facilities also benefit from system-wide educational tools and programs which are available via online or on-site trainings, as well as to resources and collaboration across all operational aspects and the entire care continuum. In addition, facilities are benchmarked and required to establish performance improvement goals and are held accountable to their goals through the use of monthly grade point averages relating to whether and to what extent goals are met. *See* Section II.E. Finally, TSLC has data analysis capabilities which give it insight into trends and issues with facilities, which can then be promptly corrected. MSJ will fully participate and benefit from these system-wide resources, as well as having professional exchanges with experts in the system office and at other TSLC facilities.

 TSLC’s efforts have resulted in excellent CMS Nursing Home Compare star ratings, with each of its nursing facilities, without exception, receiving four or five stars for quality measures.

***C. TSLC’s Quality Improvement Record at MSJ***

 TSLC’s relationship with MSJ has created positive results for MSJ and its residents in several important quality measures, which are further evidence of TSLC’s commitment to quality and ability to use its resources and expertise to help MSJ. In particular, TSLC has helped MSJ improve in the areas of antipsychotic use, resident falls, pain management, and readmissions rates.

*1. Reduction in Antipsychotic Use*

 In October 2014, MSJ had a high rate of antipsychotic use for its gero-psychiatric and memory care residents. The rate stood at 31.8%. One year later, as of October 2015, the rate stood at 8.5%, which is much below the Maine and national averages of 17.8% and 17.7%, respectively.[[4]](#footnote-4)

 TSLC’s assistance and expertise played critical roles in this impressive reduction. TSLC helped MSJ develop a quality assurance performance improvement plan for the use of antipsychotics. Under the plan, MSJ worked with its Medical Director, health care practitioners, and a consultant pharmacist. MSJ arranged for education of its staff regarding the appropriate use of antipsychotic use, which included an in-service provided by TSLC called the “Sanctuary Dementia Care Model.”

*2. Fall Reduction*

 In October 2014, MSJ’s fall/injury rate was 71.8%. This rate dropped to 41.3% in October 2015, which is below the Maine average of 56.1% and slightly above the national average of 44.8%. TSLC helped MSJ improve in this area by helping MSJ develop a PIP. This program involved the implementation of a fall management program and joining the Maine Senior Living Collaborative, which focuses on fall programs and fall reductions.

*3. Pain Management Improvement*

 MSJ has been able to reduce the number of long-term residents experiencing moderate to severe pain, again with a performance improvement program developed with the assistance of TSLC. Under this program, MSJ has developed a formal policy and procedure regarding pain management and trained its staff on it. In addition, MSJ has been working with area hospice providers regarding end-of-life care and pain management. In October 2014, the rate of long-term residents indicating severe to moderate pain was 13.3%. In October 2015, the rate was sharply reduced to 5%, below both the Maine and national rates of 13.9% and 9.1%, respectively.

*4. 30-Day Hospital Readmissions Rates*

 TSLC has been assisting MSJ in monitoring MSJ’s readmissions rates by implementing data collection and analysis tools that allow MSJ to focus on what it can do to reduce the incidence of readmissions. With the assistance of TSLC, MSJ’s staff receives ongoing education and development in clinical areas that are correlated with readmissions, such as IV therapy, wound management, nutritional support, and pain management.

Overall, MSJ’s readmissions rates have declined. In 2014, MSJ had a 13.4% 30-day hospital readmission rate. In 2015, the readmission rate dropped to 8.2%.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.

1. **CON Unit Analysis**

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. Continuation of current programs and quality improvement initiatives will ensure high-quality outcomes. Since there will be no change in services and a no change in the number of licensed beds, existing service providers will not be negatively impacted.

1. **Conclusion**

Certificate of Need Unit recommends that the Commissioner find that the applicant has 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**

**From Applicant**

***A. Generally***

As described elsewhere in this Application, MSJ and TSLC both recognize the importance of collaboration with local hospitals, physicians, and other health care providers in providing high-quality and appropriate services to the community. TSLC facilities collaborate with local hospitals and providers in order to ensure appropriate continuity of care and that the needs of the communities served by TSLC facilities are being met. MSJ collaborates with local facilities and providers similarly, and neither TSLC nor MSJ anticipate that there will be changes to MSJ’s current clinical relationships with local hospitals, physicians, and other health care providers.

Moreover, TSLC and MSJ do not anticipate any material change in utilization of MSJ’s services or MSJ’s occupancy rate. As described in Section IV, there is demonstrated need for MSJ’s services, which TSLC and MSJ intend to continue after the affiliation.

***B. Maine Quality Forum***

 The Maine Quality Forum has not adopted principles of evidence-based medicine concerning inappropriate utilization relevant to the proposed affiliation. Nonetheless, the affiliation will not result in the inappropriate utilization of services.

***C. TSLC Cost and Quality Initiatives***

 TSLC has embraced the opportunities presented by the Affordable Care Act to achieve the goals of the Triple Aim: improve the outcomes of care provided, improve patient experience, and reduce cost. TSLC understands the need and embraces these opportunities to transition to newer payment models in health care that emphasize quality and outcomes. TSLC seeks to create a more seamless care experience by aligning more closely with providers to increase coordination and decrease fragmentation, as well as to create a more patient-centered experience.

Toward these ends, one major initiative undertaken by TSLC is to engage in CMS’s Bundled Payments for Care Improvement (“BPCI”) Model 3. The BPCI program, generally, links payments for the multiple services Medicare beneficiaries receive during an episode of care. Under the BPCI program, organizations enter into payment arrangements that include financial and performance accountability for episodes of care. The goal is to increase quality and coordination at a lower cost to Medicare.

 In Model 3, the episode of care is triggered by a Medicare beneficiary’s acute care hospital stay and begins at initiation of post-acute care services with a participating skilled nursing facility, inpatient rehabilitation facility, long-term care hospital or home health agency. The post-acute care services included in the episode of care must begin within 30 days of discharge from the inpatient stay and end 30, 60, or 90 days after the initiation of the episode of care. Participants can select up to 48 different clinical condition episodes to test in the model.

Model 3 involves a retrospective bundled payment arrangement where actual expenditures are reconciled against a target price for an episode of care. Under this model, Medicare continues to make fee-for-service payments to providers and suppliers furnishing services to beneficiaries in Model 3 episodes. The total expenditures for a beneficiary’s episode is later reconciled against a bundled payment amount (the target price) determined by CMS. A payment or recoupment amount is then made by Medicare reflecting the aggregate performance compared to the target price.

 TSLC has fully embraced this model by being a convening organization bringing together multiple health care providers to participate in the model. *See* CMS, BPCI Model 3: Retrospective Post-Acute Care Only, available at: https://innovation.cms.gov/initiatives/BPCI-Model-3/. TSLC has 12 of its 17 skilled nursing facilities participating in the initiative, as well as three of its home health agencies. TSLC has chosen the 90 day episode of care model and established as a target 3% savings, over a base period, in total Medicare cost during the episode. Quality outcomes being measured include acute care readmissions rates, length of stay, patient experience, and specific patient quality outcomes.

 TSLC expects that its experience with this model will position TSLC to engage in other payment reform initiatives and more effectively collaborate and coordinate with providers across the care continuum.

**B. Certificate of Need Unit Discussion**

1. **CON Standards**

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.

1. **CON 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 project does not involve an increase in either Nursing or Residential Care beds and does not propose to implement new programs or services. Therefore there will be no inappropriate increase in service utilization.

1. **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. MaineCare Funding Pool and MaineCare Neutrality**

1. **From Applicant**

“N/A”

1. **Certificate of Need Unit Discussion**
2. **CON Standards**

In the case of a nursing facility project that proposes to add new nursing facility beds to the inventory of nursing facility beds within the State, is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A.

1. **CON Unit Analysis**

Since the project does not include a proposal to add nursing facility beds to the inventory of nursing facility beds within the State, this standard is deemed to have been met.

1. **Conclusion**

Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to demonstrate that the project is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A.

**IX. Timely Notice**

Letter of Intent filed: October 8, 2015

Technical assistance meeting held: October 14, 2015

CON application filed: January 25, 2016

CON certified as complete: January 25, 2016

Public Information Meeting Held: N/A

Public Hearing held: N/A

Close of Record: February 24, 2016

**X. 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, CON Unit recommends that the Commissioner determine that this project should be **approved with the following conditions:**

**Condition:** The applicant is to report improvements in quality outcome measures for services affected by the project on an annual basis within 90 days of its fiscal year end beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

1) Mount St. Joseph Nursing Homes most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps Mount St. Joseph Nursing Home has taken or will take to maintain positive indicators and improve average or below average indicators.

2) A summary of the results of periodic surveys of Mount St. Joseph Nursing Home carried out by DLRS over the past year, and a description of the remedial measures taken to address the identified deficiencies

3) An analysis showing key trends at Mount St. Joseph Nursing Home relating to quality measures, along with a review of the quality improvement steps being undertaken.

**Condition:** The applicant is to report financial results of the project on an annual basis to coincide with the filing of its MaineCare cost report beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

1. A summary income statement and a narrative comparison with the projections set forth in the Application.
2. A summary of management’s plan to sustain or improve operating results in the next twelve months. The summary would include specific measures recently implemented or those planned to be implemented to assure the ongoing economic viability of the facility.
1. The other two providers are Gorham House and Hawthorne House (Freeport). [↑](#footnote-ref-1)
2. Trinity Health’s Consolidated Financial Statements and Independent Auditors’ Report for FY 2015 is not yet available, however, the FY 2014 report is available at http://www.trinity-health.org/documents/FourthQuarter2014.pdf. In summary, at the end of FY 2014 Trinity Health had total assets of $20.4 billion, unrestricted revenue of $13.5 billion, and operating income before other items of $382 million. Each of these metrics increased in FY 2015. [↑](#footnote-ref-2)
3. We have omitted the appendices from the attached report. The full report can be accessed at: <http://www.maine.gov/legis/opla/DTPPfinalreport.pdf>. [↑](#footnote-ref-3)
4. The figures provided in this Section VI.C are from MSJ’s CASPER quality measure reports. [↑](#footnote-ref-4)