Department of Health and Human Services
Division of Licensing and Regulatory Services
State House, Augusta, ME
Preliminary Analysis

Date: **12/18/08**

Project: **Proposal by an entity to be named, John Orestis and Joseph Cuzzupoli to purchase the stock and/or membership interests in Gardiner Health Care Facility, Inc and MAAKF, LLC in Houlton, Maine.**

Prepared by: **Phyllis Powell, Certificate of Need Manager**
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Directly Affected Party: None

Recommendation: Disapproval

	Proposed Per Applicant	**Approved CON**
Estimated Capital Expenditure	$ 950,000	$ 0
Maximum Contingency	$ 0	$ 0
Total Capital Expenditure with Contingency	$ 950,000	$ 0
Pro-Forma Operating Costs	$ 2,390,593	$ 0
MaineCare Funding Pool Impact:	$ 0	$ 0
RCF Allocated Costs Portion	$ 171,000	$ 0
NF Allocated Costs Portion	$ 779,000	$ 0

Estimated Costs to Maine Care System Stock Acquisition – Deemed Neutral

I. Project Description

A. From Applicant

"The focus of this application is the acquisition of the outstanding stock of Gardiner Health Care Facility, Inc. and the ownership interests of MAAKF, LLC. The stock and the ownership interests are now owned by Mark A. Anderson and Kathy F. Anderson. At the end of the transaction the stock and partnership interests will be owned by the applicants."

"The sellers are a Maine limited liability company and corporation. The LLC owns the real estate and the corporation operates the facility under a lease. The facility is a 55 bed long term care facility located in Houlton. It has 45 dual certified nursing beds and 10 residential care beds. It is a participating provider in both the MaineCare and federal Medicare programs. . The facility has been in operation for many years with its primary historical service area comprising an approximate 25 mile radius of Houlton."

"Since the co- applicant and his company North Country Associates have operated similar facilities for many years, and the applicant intends to buy consulting services from NCA no operating changes are anticipated other than the ordinary change of staff, the ramping up of skilled services and the necessary changes to meet regulatory change, challenges and demands. The applicant does intend to actively offer skilled nursing services. The present owner/operator, while having a provider agreement and dually certified beds, has not offered skilled services or had a census of skilled patients. The offering of skilled services by the applicant will provide the population of that market with more patient choice."

"Several significant capital improvements are anticipated in the first year after completion of the transaction as the facility has not had many needed capital expenditures made for several years due the financial constraints of the present ownership. A list of these proposed improvements is attached."

B. CONU Discussion

The application it is not clear as to the name or the type or entity that will own the stock once it is purchased. In a follow-up communication by e-mail, Mr. Orestis explained that he and Mr. Cuzzupoli would own the stock individually, with each owning 50% of the stock.

The sellers are Mark and Kathy Anderson of Houlton and the buyer is listed as John C. Orestis. They own 100% of the issued and outstanding shares of the capital stock of Gardiner Health Care Facility, Inc. which is the operating company of the facility. The proposal also includes purchasing 100% of the membership interests of MAAKF, LLC a limited liability company that owns 100% of the real estate as well as some of the

I. Project Description

tangible property. This price was originally contingent on 2006 and 2007 cost settlements. The purchase price for all of the properties is $1,175,000.

An addendum to the Purchase Agreement was signed on the 5th of April, 2008. It modified the purchase price to $950,000 and dropped the contingency for the 2006 audited statements and adjustment. It also added an adjustment for the 2008 interim period. The price to be paid is now to be adjusted by the settlements of 2007 and 2008.

An agreement to provide financing for this proposal dated April 11, 2008 from Love Funding Corporation for an FHA –insured mortgage was included. The acquisition is contingent on HUD financing.

On January 12, 2007, Gardiner Health Care facility agreed to sell two of its licensed nursing beds to Northern Maine Medical Center in return for financial consideration. The seller has stated that the agreement is not valid or enforceable. If clear title is not available, 5% of the purchase price will be placed in escrow.

Certain assets of the corporation will be transferred to the current owners of the company.

For purposes of the Certificate of Need, the purchase price of the transaction is evaluated by both the square footage of the residential care spaces and the comparable bed count. Both of these calculations indicate a ratio of approximately 18%. RCF floor square footage is 17.7%. RCF beds make up 18.18% of available beds. RCF costs are expected to be 15.11% but are based on speculations about patient case mix and occupancy. For this evaluation CONU estimates 18% of the costs for this purchase should be allocated to the RCF purchase. This calculation yields $779,000 of the purchase price allocable to the NF facility and $171,000 allocable to the RCF.

II. Profile of the Applicant

A. <u>From Applicant</u>

"The applicant John C. Orestis is an established long term health care provider of long standing in Maine. Mr. Orestis and his affiliated companies own thirteen long term care facilities in Maine and one in Massachusetts. They also manage two other long term care facilities in Maine and provide comprehensive consulting services to seven more facilities in Maine."

"A list of facilities is provided in the attachments to this application. In total services are provided to 1245 beds."

"Gardiner Health Care Facility, the subject of this application, is a 55 bed facility located in Houlton. It has 45 dual certified nursing beds and 10 residential care beds."

"North Country Associates and Mr. Orestis have a long and successful history of operating diverse and complicated long term care services throughout the facilities. The applicant is well positioned to meet the challenging of delivering long term care in Maine. They acquired their first homes in 1981 (residential care) and 1984 (nursing care) and have been continually in the business since."

"He has a strong and continuing commitment to quality patient and resident care. He brings many years of service experience and a wide range of talent, ability, and dedication to the task of delivering long term care to frail elderly citizens in a challenging business and regulatory environment."

"The delivery of quality skilled, long term and residential level care to Maine's frail elderly is the foremost goal of the applicant and his associated professionals. The applicant intends to buy management consulting services on an arms length as needed basis from NCA. The table of organization of the company attached to this application is reflective of the number and quality of professionals who lend their talent to that task."

"The senior management team comprises John C. Orestis – President and CEO, Mary Jane Richards – Chief Operating Officer, Glen Cyr – Senior Vice President of Finance, Sandy Pomelow – Senior Vice President of Human Resources and Customer Service, Rosanne Tousignant - Vice Presidents of Operations, and Michelle Dubord– Director of Clinical Services. This team combines many years of experience and professional talent and has served the company well in achieving its goal of delivering high quality service and care to its patients and residents."

"The co-applicant, Joseph Cuzzupoli, is a long time provider of services to long term care. Until its recent sale, he was the majority owner and CEO of Summit Services a provider of housekeeping and laundry services to more than 400 facilities in 37 states. He is presently a principal and CEO of West River Pharm a long term care pharmacy in Massachusetts. He is also a principal in the ownership of Russell Park Rehabilitation and Living Center in Lewiston along with Mr. Orestis and others."

B. CONU Discussion

i. Criteria

Relevant criteria 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;

ii. Analysis

Gardiner Health Care Facility is located at 8 Holland Street in Houlton, Maine. Its licensed administrator is Mark Anderson, one of the current owners. It is currently licensed for 55 beds, ten level IV residential care beds and 45 beds - 9 skilled and 36 nursing. Its current license was issued April 30, 2008 with an expiration of April 30, 2009. A new license will be required as the administrator is expected to change.

The applicant included copies of the past three years survey results for this facility.
The 2007 survey was notable in regards to its brevity of reportable conditions. The most serious deficiency was a level E deficiency cited by the long-term care survey team from licensing and regulatory services. Level E deficiencies are described as "a pattern of deficiencies that constituted no actual harm with the potential for more than minimal harm that is not immediate jeopardy."

It is not specifically stated in the application that North Country Associates will be retained as a management company for this facility. This has been the practice with the other facilities that Mr. Orestis and Mr. Cuzzupoli have purchased in this same manner.

iii. Conclusion

CONU concludes that the applicant has shown that it provides services needed in the communities where its facilities are located. By operating their other facilities in compliance with regulatory guidelines, the applicant has also demonstrated their ability to continue this level of care at this nursing facility in Houlton, Maine.

CONU 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. Capital Expenditures & Financing

A. <u>From Applicant</u>

"The purchase price for this transaction is $950,000. A copy of the purchase agreement and its addendum is attached. There are also numerous transaction fees and expenses related to the HUD insured loan under HUD's Section 232 loan program for nursing facilities. A list of these fees and expenses is attached. Application for the HUD insured loan will be filed and a copy of a financing availability letter from Love Funding Corporation, a HUD licensed Mortgagor is attached. Additional capital costs consist of improvements to the facility which are long overdue and have been postponed for years due to the financial constraints of the present owner. After an extensive inspection of the facility by the applicant and an independent HUD certified inspection firm, certain repairs have been scheduled for completion; some immediately (Critical Repairs) amounting to $10,783.00. while others are to be completed in the first year (First Year Repairs) after the acquisition amounting to $78,242.00. There are also owner's elective repairs which will be completed amounting to $252,000.00. A list of these repairs is attached."

"The sum of the purchase price plus the required transactional costs and repairs is a total project cost of $1,456,803. The HUD insured loan will be for $1,088.000 based on the program's lending limit of 85% of total project costs. The difference of $368,803 will be provided as equity by the applicant."

"Since the nature of the transaction is a stock and interests acquisition, there will be no change in the depreciable basis of the assets currently owned by the sellers for Maine Care payment purposes. The estimated useful lives and basis for determining annual depreciation expense will remain unchanged for the existing assets unimproved. There will be recognition of the improvements to the property as is normal in the improvement and repair of existing facilities. There will also be no recognition of interest for any debt that creates more interest expense than is already being recognized. There will also be no change in the number or mix of beds after the transaction. Therefore, the requirement that the transaction preserve Maine Care "budget neutrality" will be met."

"The fiscal year ended December 31, 2007 is the most recent period for which annual financial information is available for Gardiner Healthcare Facility, Inc. Applicant has used this information along with the 2005/2006/2007/2008 operating budget for performance of financial due diligence and to project the anticipated operating revenues and expenses expected for the first year of operations. The anticipated changes (other than annual inflation) are as follows:"

- "Expenses and related owner expenses have been removed. All these costs were supported by a rent payment which will change. The following is a list of expenses paid and included in the rent payment to Proprietor's Leased Assets.

- Depreciation
- Amortization
- Real Estate Taxes
- Mortgage Interest & Principle

A new rent expense will be created with the anticipated financing with the Housing and Urban Development 232 Program (HUD) which will include the following:"

- Property Insurance
- Real Estate Taxes & Personal Property Taxes
- Mortgage Interest & Principle
- Deposit to Capital Reserve account
- Mortgage Insurance Premium (MIP)

For purposes of projecting revenue, the assumptions are:

- "Annual occupancy of 92.0% for the nursing facility and 97.5% for residential care facility. In addition, the applicant will be adjusting the facility operations to provide Medicare services to the market area. These skilled services have historically not been provided by this facility."

- "The current MaineCare rate applicable to Gardiner Healthcare Facility for the fiscal quarter beginning April 1,2008 forward of $131.12 for the nursing facility and the half year rate beginning Jan 1,2008 forward of $101.61 for the residential care facility were used as the projected rate following the change of ownership. (Note: There may be changes in the final applicable rate for reasons not related to the proposed transaction. This would be caused by a change in the quarterly CMI or an increase in fixed costs.)"

"The average per diem charge to self-pay residents is $180 per day for a nursing home private room, $160 per day for a nursing home semi-private, $130 per day for a residential care private room, and a $120 per day for a residential care semi-private."

"This transaction involves a change of ownership in an existing entity with no proposed changes to licensed capacity and no significant changes to programs or staffing other than the ramp up of skilled services, and applicant was advised to submit with this application a projected schedule of operating revenues and expenses and proforma MaineCare cost report for only the first year of operations."

"Gardiner Health Care Facility has been licensed as a nursing and residential care facility in both the MaineCare and federal Medicare programs for many years. Applicant is not aware of any aspect of the real estate, personal property or resident service programs that would jeopardize the ability of the facility to continue to maintain required licenses and provider agreements in both of these programs."

B. CONU Discussion

i. Criteria

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

a. 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

b. The applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and locan licensure and other applicable or potentially applicable rules.

ii. Analysis

In its response to this section, the applicant stated that $368,803 of capital for this project will be provided by equity from the applicants. Other than that statement there was no offer of proof that funds are available to finance the equity portion of this project.
The applicant has stated that this transaction is an acquisition of Capital stock of the corporation, Gardiner Health Care Facility, Inc. and the ownership interest of MAAKF, LLC a limited liability corporation. A letter addressed to Herbert Downs, Office of Audit for MaineCare, requesting confirmation of nonapplicability of MaineCare depreciation recapture was included. The Office of Audit has responded that this transaction as proposed will not be subject to depreciation recapture.

In regards to its proposed structure of the assets included in the stock sale, all assets will remain with the company of which they are now part of. This means that for accounting purposes rent will be paid from the operating company to the real estate company. For reconciliation on the cost report rent is disallowed and replaced with the actual cost of ownership provided by the real estate company.

Since the nature of the transaction is a stock and interests acquisition, there will be no change in the depreciable basis of the assets currently owned by the sellers for Maine Care payment purposes. The estimated useful lives and basis for determining annual depreciation expense will remain unchanged for the existing assets unimproved. There will be recognition of the improvements to the property as is normal in the improvement and repair of existing facilities. There will also be no recognition of interest for any debt that creates more interest expense than is already being recognized. There will also be no change in the number or mix of beds after the transaction. Therefore, the requirement that the transaction preserve Maine Care “budget neutrality” will be met.

The applicant presented a one-year pro-forma indicating the first year results for the facility. They anticipate an occupancy rate of 94.3%. The applicant also presents a reduction in MaineCare NF days of 412 and an increase of Medicare days from 0 to 1,095.

The facility has outstanding financial obligations to Katahdin Trust Company of $231,780 collateralized by real estate, equipment, furniture and fixture, and inventory. The facility also has an outstanding financial obligation for $48,320 collateralized by the building. The facility has two additional notes payable for $22,157 and $56,606 collateralized by the real estate. There is no mention of what will happen to these loans once the transaction occurs. Additionally there is a $75,000 line of credit guaranteed by the current stockholders with no amount drawn.

The applicant did not state what the structure of the companies and related debt will be. The CONU believes that the debt must be paid off before HUD would finance this transaction. Because of this uncertainty, CONU cannot precisely determine balance sheet items at the end of the first operating year. There exists a strong probability that the applicants would require a capital infusion for the facility to have a positive net worth.

First year operating expenses are projected to be $2,621,271 including $171,903 in non-reimbursable therapy expenses, $1,482 miscellaneous non-reimbursable costs and $57,530 in rental payments exceeding costs of ownership. The total of reimbursable costs is $2,390,353. Interest expense appears marginally too high in relation to the debt service when comparing the proposed interest rate with the outstanding loan balance on the HUD loan.

Financial Ratio Analysis

In an effort to sustain readability, the pertinent financial ratios, as well as financial projections are on file with CONU. The following discussion relies on the information as presented by the applicant. 2008 Balance sheet projections were done using estimates developed by CONU.

There are four areas of financial ratio analysis related to the ability of the project to be successful. These ratios are profitability, liquidity, capital structure, and activity ratios.

Profitability: These ratios show how well the nursing facility does in achieving an excess of revenues over expenditures or providing a return. Generating revenue in excess of expenditures is important to secure the resources necessary to update plant and equipment, implement strategic plans, or respond to emergent opportunities for investment. Losses, on the other hand, threaten liquidity, drain other investments, and may threaten the long-term viability of the organization. The profitability ratios reported here include the operating margin, which measures the profitability from operations alone, the net margin (called total margin in some sources), which measures profitability including other sources of income, and the return on total assets.

Financial Performance Indicators

Profitability	2005	2006	2007	Proforma 2008
Operating Margin	3.31%	3.51%	-1.49%	2.94%
Net Margin	4.99%	3.53%	-1.59%	2.94%
Return on Total Assets	8.58%	8.03%	-3.81%	5.38%

A review of financial indicators is important because they can present a fair and equitable representation of the financial health of an organization and assist in presenting appropriate comparisons. This provides a sound basis for determining whether the facility has the ability to commit the financial resources to develop and sustain the project. Facilities need to perform at financially sustainable levels in order to carry out their public-interest missions. An adequate operating margin is a key indicator of the financial health of a facility. Of great concern to CONU is the determination of the reasonableness of the methodology the applicant has used in determining the appropriateness of the timing and scope of the project. Over time, capital expenditures can and need to be made in order to meet the goals expressed in the State Health Plan. CONU evaluates the applicant’s ability to organize and respond to its challenges in improving and maintaining the health care system. The applicant provided no explanation as to why operating performance in 2007 was considerably worse than in 2006. The table above shows that the applicant expects a dramatic shift in the profitability of the facility. This is primarily dependent on the implementation of a rehabilitation service in skilled beds which the present operators have not offered.

Financial Performance Indicators

Profitability	2005	2006	2007	2008
Operating Surplus	77,939	84,611	(35,018)	79,413
Total Surplus	116,970	85,049	(37,285)	79,413

Expected surplus is reasonable given the assumptions. If achievable, this level of surplus would allow the facility enough cash flow to maintain operations.

III. Capital Expenditures & Financing

Liquidity: Current ratios and acid test ratios are indicators of the ability of a facility to meet its short-term obligations. This liquidity alleviates the need for decision making to be focused on short term goals and allows for more efficient planning and operations of a nursing facility. The acid test ratio is generally considered to be a more stringent measure because it recognizes only the most liquid assets as resources available for short-term debt; the current ratio assumes that inventory and accounts receivable can be liquidated sufficiently to meet short-term obligations. Days in accounts receivable and average payment period also are used to monitor liquidity. Respectively, they indicate the average length of time the nursing facility takes to collect one dollar of receivables or pay one dollar of commercial credit. Together, they can provide a cursory indication of cash management performance.

Financial Performance Indicators

Liquidity	2005	2006	2007	2008
Current Ratio	0.92	0.91	0.66	0.98
Days in Patient Accounts Receivable	19.29	8.79	9.98	8.68
Days Cash on Hand	48.14	13.21	13.74	28.31
Average Payment Period	85.18	33.88	45.76	44.37

Days Cash on Hand is a ratio that is an industry accepted, easily calculated, method to determine a facility's ability to meet cash demands.

Since the balance sheet was prepared by CONU is based on the financing activities proposed by the applicant and not actually submitted by the applicant, comment is limited to the fact that operating activities may generate improved cash flow for the nursing facility.

Activity and Capital Structure: Activity ratios indicate the efficiency with which an organization uses its resources, typically in an attempt to generate revenue. Activity ratios can present a complicated picture because they are influenced both by revenues and the value of assets owned by the organization. The total asset turnover ratio compares revenues to total assets. Total assets may rise (or fall) disproportionately in the year of heavy (dis)investment in plant and equipment, or decrease steadily with annual depreciation. Thus, it is helpful to view total asset turnover at the same time as age of plant. Debt service coverage is reviewed in greater detail. Debt Service coverage measures the ability of a nursing facility to cover its current year interest and balance payments.

Financial Performance Indicators

Solvency	2005	2006	2007	2008
Equity Financing	33%	44%	41%	-7%
Debt Service Coverage	2.09	1.95	0.81	1.73
Cash Flow to Total Debt	24%	31%	10%	13%
Fixed Asset Financing	45%	44%	37%	127%

Debt service coverage is the most widely used capital structure ratio. Debt service coverage minimums are often seen as loan requirements when obtaining financing. Debt service coverage is the ratio of earnings plus depreciation and interest expense to debt service requirements. The projected debt service as shown in the table above is adequate for operations. With a large increase in fixed asset financing, operations will be more expensive than with a less leveraged operation. Because of the ambiguities relating to the existing debt, projected equity in this project after the transaction occurs would be quite limited and significantly less than before the transfer of ownership occurred. While debt service coverage would improve to pre-2007 levels, fixed asset financing would increase to a significant level. These ratios would change for the better if existing debt is eliminated in its entirety.

Efficiency Ratios: Efficiency ratios measure various assets and how many times annual revenues exceed these assets.

Financial Performance Indicators

Efficiency	2005	2006	2007	2008
Total Asset Turnover	1.72	2.28	2.40	1.83
Fixed Asset Turnover	2.62	2.78	2.99	2.68
Current Asset Turnover	5.04	12.87	12.43	9.10

Total asset turnover (TAT) provides an index of the number of operating revenue dollars generated per dollar of asset investment. Higher values for this ratio imply greater generation of revenue from the existing investments of assets. There is a decrease in TAT because of the increase in base fixed assets. This is indicative of a significant investment in repairs and improvements to the facility.

Of greatest concern, is the failure of the applicant to address the composition of the statement of assets and liabilities in regards to the existing debt. If the existing debt was to remain, the owners of the company would have negative equity in the organization. Negative equity or low equity is undesirable from a regulatory point of view because it makes the likelihood of default and reduction of services greater than well capitalized organizations. Since the applicants are generally known to the Department and have demonstrated considerable ability to support the existing facilities, this problem may have been alleviated through conditions placed on the CON; however, since other areas of the application were not addressed the uncertainty of the equity position leads the CONU to recommend that the applicant has not met its obligations for the determination.

The following is the breakdown of the proposed HUD loan Financing:

HUD Section 232 Loan Project Costs

Purchase Price	$950,000
Initial Deposit to Replacement and Repair Reserve	44,000
Critical Repairs	10,783
Non-Critical Repairs	78,242
Owner Elective Repairs	252.000
FHA Mortgage Insurance Premium (First Year, 1%)	10,880
Financing Fee	8,160
Permanent Loan Placement Fee	8,160
FHA Examination Fee	3,264
Finance deposit and GNMA Fee	3,000
Survey (Estimated)	10,000
Third Party Reports (Appraisal and Engineering/Environmental)	28,400
Title/Recording (Estimated)	15,000
HUD Application Fee	3,264
HUD Inspection Fee	1,650

Legal Fees-Borrower and Lender (Estimated)	30,000
Total Project Costs	1,456,803

Staffing

As part of the purchase and sale agreement the seller disclosed that the corporation has not had any discussions regarding changing staffing ratios. Since the applicant proposed offering skilled services, CONU would have expected to see additional staffing hours to be projected to cover the increased needs of the patients that skilled services typically require. Alternatively, the applicant may expect that staff pick up additional duties to account for the increase in work from offering skilled services. This in turn may lead to personnel dissatisfaction and turnover. The area where the facility is located is relatively remote and typically finding skilled care providers can be difficult. Maintaining adequate staffing and contingency plans for staffing shortages was not addressed.

Changing Laws and Regulations

CONU staff is not aware of any imminent or proposed changed in laws and regulations that would impact the project. Mr. Orestis and the North Country staff presently have the organizational strength to adjust to reasonable changes in laws and regulations.

iii. Conclusion

The applicant has not demonstrated the financial capacity to support the project over its useful life because they did not address the disposition of current debts.
CONU recommends that the Commissioner determine that the economic feasibility of the project has not been demonstrated.

IV. Needs to be Met

A. From Applicant

"The 55 bed nursing and residential care facility is located in Houlton and has historically served the resident primarily within an approximate 25+ mile radius of the Greater Houlton area. The historical utilization of the facility for the 2005 thru 2007 fiscal year:"

NF	**12 Months Ended 12/31/05**	**12 Months Ended 12/31/06**	**12 Months Ended 12/31/07**
MaineCare Residents	13,162	11,793	12,512
Private Pay Resident	2,202	3,093	2,012
Medicare Residents	-0-	-0-	-0-
Managed Care	-0-	-0-	-0-
Total	15,364	14,886	14,524
Annual NF occupancy	93.5%	90.6%	88.4%

RCF	**12 Months Ended 12/31/05**	**12 Months Ended 12/31/06**	**12 Months Ended 12/31/07**
MaineCare Residents	2,970	3,222	2,874
Private Pay Resident	365	338	497
Total	3,335	3,560	3,371
Annual RCF occupancy	91.3%	97.5%	92.3%

"Based on the long operating history of Gardiner Healthcare Facility Inc. the Applicant believes it is reasonable to anticipate the demographics and continuing demand will support the assumptions made in our proforma. Specifically related to the NF & RCF occupancy, the addition of skilled services used in our proforma, and the major changes expected with the physical plant, we are confident that our estimates can be achieved."

B. CONU Discussion

i. Criteria

Relevant criteria 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;

ii. Analysis

The applicant has expressed in other sections of the application, the desire to extend skilled services to this community. The facility currently has dually licensed beds but apparently has not offered skilled services. The applicant expects to have 1,095 days of skilled care in its first year alone. This is based on the census summary located in appendix 12 of the application. The applicant provides no information as to the likelihood of these patients being available in the community the facility serves. The needs assessment being prepared by the Office of Elder Services (Lewin Group) was not complete at the time of the application being submitted. Needs assessment data is now available from the Office of Elder Services and should be used by the applicant to determine need in the area for the services they wish to provide. A review of the disability rates by the applicant from this data could strengthen this application.

iii. Conclusion

CONU recommends that the Commissioner determine that the public need has not been demonstrated.

V. Alternatives Considered

A. <u>From Applicant</u>

"This aspect of the CON Application is not applicable to this transaction."

B. <u>CONU Discussion</u>

i. <u>Criteria</u>

Relevant criteria 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;

ii. <u>Analysis</u>

The applicant has not provided information on these criteria. CONU believes that had the applicant provided information on what the financials would look like with a reduced skill care base of patients it may have fulfilled this criteria.

iii. <u>Conclusion</u>

CONU recommends that the Commissioner determine that the proposed services are not consistent with the orderly and economic development of health facilities and health resources for the State.

VI. State Health Plan

A. From Applicant

"Since the proposed transaction involves merely the transfer of ownership of the corporate stock and partnership interests in existing entities which own and operate a licensed nursing and residential care facility, said facility being licensed and in operation for many years, Applicant is not aware of any conflict with the State Health Plan by the continued operation of this facility."

B. CONU Discussion

i. Criteria

Relevant criterion for inclusion in this section are specific to the determination that the project is consistent with the State Health Plan.

ii. Introduction

This year, Certificate of Need (CON) applicants were provided with two items that provided clarifying information regarding the State Health Plan.

The first item is a memo to Potential CON Applicants dated October 9, 2008. This memo was developed by the CON Public Health Advisory Committee to provide clarification and guidance relative to the State Health Plan Priority "projects that directly and unambiguously protect the public's health and safety," more specifically: 1) "projects that have as a primary, overriding objective the elimination of threats to patient safety" and 2) "projects that center on a redirection of resources and focus toward population-based health and prevention; such efforts address our state's greatest area of need . . ." The criteria and definitions contained in this memo will be used to evaluate the applications consistency with the State Health Plan. A copy of this memo is on file with CONU.

The second item is a letter to CON Applicants dated January 10, 2008. This letter was developed to provide clarification specific to which State Health Plan guides the 2008 CON review process. The letter states that the current State Health Plan will guide the CON review.

Relevant criterion for inclusion in this section are specific to the determination that the project is consistent with the State Health Plan. "It is important to note that the order of the attributes below does NOT reflect the relative order of importance of each attributes, as different attributes might be needed to different degrees in different circumstances and geographic areas. Projects that meet more of these attributes shall receive higher priority than projects that meet fewer of these attributes."

VI. State Health Plan

State Health Plan goals targeted by Applicant

☐ The applicant is redirecting resources and focus toward population-based health and prevention.

☐ The applicant has a plan to reduce non-emergent ER use.

☐ The applicant demonstrates a culture of patient safety, that it has a quality improvement plan, uses evidence-based protocols, and/or has a public and/or patient safety improvement strategy for the project under consideration and for the other services throughout the nursing facility.

☐ The project leads to lower costs of care / increased efficiency through such approaches as collaboration consolidation, and/or other means.

☐ The project improves access to necessary services for the population.

☐ The applicant has regularly met the Dirigo voluntary cost control targets.

☐ The impact of the project on regional and statewide health insurance premiums, as determined by BOI, given the benefits of the project, as determined by CONU.

☐ Applicants (other than those already participating in the HealthInfoNet Pilot) who have employed or have concrete plans to employ electronic health information systems to enhance care quality and patient safety.

☐ Projects done in consultation with a LEEDS certified-architect that incorporate "green" best practices in building construction, renovation and operation to minimize environmental impact both internally and externally.

iii. Analysis

PRIORITY: The applicant is redirecting resources and focus toward population-based health and prevention.

A. From Applicant

The applicant did not provide information regarding this section of the application.

B. CONU Discussion

Since the applicant did not address this section, CONU did not evaluate this area.

iv. **Conclusion**

This project would have allowed for redirecting resources toward population based health by allowing for skilled services.

Since the applicant did not address this criterion, CONU recommends that the Commissioner determine that the applicant has failed to meet its burden to show how its application is consistent with the State Health Plan.

VII. Outcomes and Community Impact

A. From Applicant

The applicant did not address this section.

B. CONU Discussion

i. Criteria

Relevant criterion 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.

ii. Analysis

The applicant did not address how adding skilled services would affect other providers of this service. The applicant did not indicate a need for skilled services. The applicant did not address where persons who may otherwise have used the nonskilled services will be able to receive those services once skilled patients are admitted to formerly non-skilled beds.

iii. Conclusion

CONU recommends that the Commissioner determine that the project as presented does not address outcomes and community impact.

VIII. Service Utilization

A. <u>From Applicant</u>

The applicant did not address this section.

B. <u>CONU Discussion</u>

i. <u>Criteria</u>

Relevant criterion 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.

ii. <u>Analysis</u>

The applicant did not provide any information directly related to this criterion. However, because of the capacity of the facility, it is unlikely that this project would have an impact on utilization since the facility has been approximately 95% occupied**.**

iii. <u>Conclusion</u>

CONU recommends that the Commissioner determine that this application did demonstrate that this project would not result in increases in service utilization.

IX. Funding in MaineCare Nursing Facility Fund

A. From Applicant

The applicant did not address this criterion. However, these projects have been deemed to have no impact on MaineCare funding based on no change in depreciation and capital expenses being below threshold amounts.

B. CONU Discussion

i. Criteria

Relevant criteria for inclusion in this section are related to the needed determination that the project can be funded within the MaineCare Nursing Facility Fund.

ii. Analysis

Since this application is for an acquisition of a property by stock purchase, the transaction has been deemed to be accomplished without a cost to the MaineCare system. Additional capital expenditures, required and not required by the financing agent are below threshold amounts. Therefore, MaineCare funding from the MaineCare funding pool is not necessary.

iii. Conclusion

CONU comments that the project is exempt from funding by the MaineCare Nursing Facility Fund.

X. Timely Notice

A. From Applicant

"The Applicant has not incurred any expense with the exception of legal, accounting and necessary third party report costs related to the development of the sales agreement and financing and related due diligence. Applicant provided notice with regard to the nature of the proposed transaction by his Letter of Intent dated January 4, 2008. Larry Carbonneau representing the Department notified the applicant that a CON would be required since this transaction entails the change of ownership and control of a Maine licensed nursing facility. Applicant met with representatives of the Dept. for the required technical assistance meeting. Applicant is herewith submitting the required CON application. The Purchase Agreement contains a contingency that requires all appropriate regulatory approvals including a CON before the proposed transaction can be consummated. Applicant believes all appropriate notice required by the CON rules and regulations have been provided to the Dept."

B. CONU Discussion

Letter of Intent filed:	January 4, 2008
Subject to CON review letter issued:	N/A
Technical assistance meeting held:	January 31, 2008
CON application filed:	April 30, 2008
CON certified as complete:	April 30, 2008
Public Information Meeting Held:	June 17, 2008
Public Hearing held:	N/A
Comment Period Ended:	July 17, 2008

XI. CONU Findings and Recommendations

Based on the preceding analysis, including information contained in the public record, the CONU recommends that the Commissioner make the following findings and recommendations:

A. 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.

B. The economic feasibility of the proposed services is not 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. The applicant has not demonstrated that there is a public need for the proposed services certain factors, including, but not limited to;

1. 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 services affected by the project will be accessible to all residents of the area proposed to be served; and

4. The applicant has not demonstrated that the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project;

D. The applicant has not demonstrated that 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 applicant has demonstrated what 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 not demonstrated by the applicant;

In making a determination under this subsection, the commissioner shall use data available in the state health plan under Title 2, section 103, data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner. Particular weight must be given to information that indicates that the proposed health services are innovations in high quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

E. The applicant has not demonstrated that the project is consistent with the State Health Plan;

F. The applicant has not demonstrated that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;

G. The applicant has not demonstrated 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; and

H. That the project is exempt within the rules for the Maine Care Nursing Facility Funding Pool.

For all the reasons contained in the preliminary analysis and in the public record, CONU recommends that the Commissioner determine that this project should be **disapproved.**