

BRIEFING MEMO

Gardiner Health Care Facility Acquisition of Control by John Orestis and Joseph Cuzzupoli

DATE: February 2, 2009

TO: Brenda M. Harvey, Commissioner, DHHS

THROUGH: Catherine Cobb, Director, Division of Licensing and Regulatory Services

FROM: Phyllis Powell, Manager, Certificate of Need Unit
Larry Carbonneau, Health Care Financial Analyst

SUBJECT: Proposal by 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.

ISSUE ACTIVATED BY: The referenced proposal requires Certificate of Need (CON) approval as defined in "The Maine Certificate of Need Act of 2002," 22 MRSA Section 326 et seq., as amended.

REGISTERED AFFECTED PARTIES: None

I. BACKGROUND:

- John Orestis and Joseph Cuzzupoli are owners of 20 facilities providing long-term care in Maine. They wish to purchase the stock of Gardiner Health Care Facility, Inc (the operating company) the operator of Gardiner Health Care Facility. As part of the transaction they intend to purchase 100% of the membership interests of MAAKF, LLC a limited liability company organized to control the real estate and facilities of Gardiner Health Care Facility in a lease arrangement with the operating company. Both companies are organized in the State of Maine.
- The Division of Licensing and Regulatory Services, Long-Term Care Unit, confirms that Gardiner Health Care Facility is a nursing facility licensed in the State of Maine and is MaineCare and Medicare certified.
- In 2006, the applicants received CON approval to purchase the facility at Russell Park Rehab & Living Center in Lewiston, Maine.

II. PROJECT DESCRIPTION:

The applicants for the project under CON review proposes to purchase 100% of the operating company and 100% of the membership interest in the two companies that together own and operate Gardiner Health Care Facility, a 55-bed long term care facility in Houlton, Maine. There are 45 dually certified nursing care beds and 10 residential care beds.

The proposal calls for the two individual investors to purchase 50% each of the outstanding shares and interests of the two companies. This financing structure is similar to numerous projects undertaken by the parties in the past decade, most recently at Russell Park Rehab & Living Center in Lewiston.

North Country Associates (Mr. Orestis is President) will operate the facility for the two individuals. North Country Associates has operated long term facilities since 1981 (residential care) and 1984

(nursing care). Gardiner Healthcare Facility has been in operation for many years with its primary historical service area comprising an approximate 25 mile radius of Houlton.

This application does propose to reinstate its skilled nursing program.

III. HIGHLIGHTS:

Letter of Intent dated January 4, 2008
Subject to CON review letter issued January 15, 2008
Technical Assistance Meeting held on February 6, 2008
Application filed and certified as complete on April 30, 2008
Applicant's public informational meeting held on June 17, 2008
Preliminary analysis released on December 16, 2008
Preliminary analysis published in newspapers on December 17, 2008
Record closed on December 31, 2008

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

Following release of the Preliminary Analysis, no public comments were received.

V. CONU ANALYSIS/APPLICANTS COMMENTS (condensed):

The Preliminary Analysis by CONU staff, dated December 16, 2008, concluded that this application failed the following CON review criteria: Capital Expenditure & Financing; Needs to be Met; Alternatives Considered; State Health Plan; Outcomes and Community Impact; and Service Utilization. The applicants have provided additional information that satisfies the concerns raised in the Preliminary Analysis.

1) Capital Expenditures & Balance Sheet Analysis

In the Preliminary Analysis, the applicants did not provide specific information addressing the disposition of current debts.

The applicant provided additional financial data regarding their application. This information responded to concerns CONU had discussed in its preliminary analysis. The information indicated the scope and responsibilities of the applicants and the sellers of the facility.

2) Financing

The preliminary analysis discussed the existence of a seller's agreement with Northern Maine Medical Center. The applicant responded that the opportunity to consummate the sale has expired by agreement and the Medical Center has purchased beds elsewhere. The applicants have satisfied the HUD lender as to their ability to fund equity required by the loan. Equity injection for improvements to the facility not required by HUD, but part of the CON, will be funded by equity injection by the principles over the period of time necessary to complete the improvements. It is estimated that these improvements will occur during the first two years once the transaction is completed.

The preliminary analysis questioned the ability of the facility to carry or service existing debt. All existing debt will be paid by the Sellers at closing and will not burden the property or operations under the Applicant's ownership. These debts must be paid at closing, because this is a condition of the sale, a condition on the CON is not warranted.

The Preliminary Analysis questioned the interest expense set forth in the operating expenses. The applicant's operating estimates include rent. This rent includes an allowance of principal and interest for the real estate mortgage (HUD loan). Interest expense on the HUD loan of \$1.1 million is reflected in the amortization schedule provided to CONU. The applicants restated its operating financials by removing the Seller's interest expense that had been mistakenly included in the original operating statement.

The applicants have proposed offering skilled services. The applicants responded to concerns that staffing costs were not explained adequately by providing information regarding planned staffing levels and modifications of duties.

The applicant provided information that indicated that current staff-to-resident ratios exceed the minimum standards required by the State of Maine, Long Term Care regulations. Current staffing mix relies on RN/LPN's to pass medications and C.N.A's to provide direct care on their Residential Care unit. A nursing facility is not required to have licensed professionals to administer medications according to the Maine State Board of Nursing and the State of Maine, Long Term Care Regulations. Also, according to the State of Maine regulations for Residential Care, it is not a requirement to have C.N.A's to provide direct care.

The applicants stated that the current staffing mix does not utilize the skills inherent to these professions. By creating this shift, the applicant expects job satisfaction to increase and staff turnover to decrease. Additional staff will be Physical, Occupational and Speech Therapists in order to meet the skilled needs of the residents. The applicants have typically utilized in-house therapists. The intention with this facility is to hire a full complement of therapists to provide skilled care for this facility.

The applicant responded to the question regarding the availability of staffing by pointing out that it has several facilities in remote locations, including the towns of Van Buren, Jackman, Milbridge, and Patten. As a company they have not had to employ agency staffing as they have the benefit of drawing from other facilities for temporary staffing should there be a need.

CONU has determined that the applicant has the financial capacity to proceed with this project.

3) **Needs to be Met**

In the Preliminary Analysis the applicants did not meet their burden to demonstrate that the project met the following factors used to determine if a public need exists:

- 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; and
- whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

The applicant submitted the following clarifying information:

- i. The applicant provided several additional attachments to justify need.

The analysis questioned the timing and scope of implementation of the applicants' plan. The current operator has never used skilled beds. The applicant feels that he has not aggressively built census. Operating numbers in 2007 support that outcome. Applicant and the proposed operator (North Country) are experienced in maximizing service to the

community. The Applicants have surveyed community need and visited with the local hospital as well as Eastern Maine Medical Center, located in Bangor.

- ii. In review of the Assessment of Maine's Long-term Care needs, Baseline Report, prepared by the Lewin Group, it is apparent that there is a need for skilled and long term care in Houlton, Maine (population: 5,140). According to the Lewin Group's report, Aroostook County compared to the other 15 counties in the state of Maine has one of the largest populations of residents aged 65 years and older (17.4% compared to the statewide average of 14.6%) and of residents 85 years and older (2.4% compared to the statewide average of 2.0%). Also according to this report, Aroostook County has the second highest average of persons age 65 years and older who reported incomes below the Federal Poverty Level (16%). In the Houlton area there is a high percentage of people age 65 years and older that both fall below the Federal Poverty Level and have a disability. The existence of this large population, living below the Federal Poverty Level in this geographic location, needing skilled services, is evident from the analysis. Dual certification of the beds means that the beds can be utilized to provide additional levels of care.

4) Alternatives

The application did not specifically address the impact of the project on total health care expenditures in light of the competing demands in the local service area and statewide for available resources for healthcare.

The criteria for this determination are now met because the plan to offer skilled services is projected to reduce the number of MaineCare days. The total bed days for the Long Term Care unit is 16,425. The projection is that there will be 1,095 (7.21%) Medicare days which will reduce the number of MaineCare dependant resident's days by 412 days, a 6.6% decrease. With the current Medicaid rate of \$135.00, this is estimated to reduce the burden on the State of Maine by \$56,000.00 per year.

5) State Health Plan

The applicants did not provide quantifiable data that "unambiguously and directly" supports the assertion that this application is necessary to protect public health and safety, specifically patient safety. The application assumed that operations were adequate and the change was negligible.

The State Health Plan is broken down into various priorities which CONU has addressed individually in the following subsections.

- i. **Projects that center on a redirection of resources and focus toward population-based health and prevention;**

There is a need of Skilled and Long Term care in this geographic area due to the existing and growing population of persons aged 65 years and older that fall below the Federal Poverty levels and are also disabled. The accessibility to Houlton Regional Hospital and Eastern Maine Medical Center will allow for residents admitted to these hospitals from the Houlton area to return to the Houlton area for their Skilled care and potentially reduce days spent at a hospital as inpatients.

ii. Projects that contribute to lower costs of care and increased efficiencies;

The applicants have adopted the INTERACT, a framework to reduce acute care transfers (ACT) of Nursing Home residents. According to the INTERACT Research it suggests that a substantial proportion of hospitalizations of nursing home resident may be potentially avoidable. These hospitalizations cause discomfort for residents, anxiety among their loved ones, exposure to iatrogenic events and related morbidity, and excess health care costs. Reducing the number of hospitalizations will improve quality of care and reduce health care costs. The applicant has begun the development of this program in coordination with the North East Health Care Quality Improvement Organization. North Country Associates has the ability to provide more efficiency to Gardiner Health Care by providing many resources that might otherwise need to be contracted. North Country Associates would make considerable resources available to Gardiner Health Care Facility.

iii. Projects that improve access to necessary services for the population.

The applicants state that by adding skilled care to the services provided by Gardiner Health Care will provide options to the current population as currently they have only one nursing home in the area that provides this service. Otherwise, residents remain in the hospital at a much higher cost or are forced to go to a facility outside of their home town.

iv. Applicants that demonstrate 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 applicants state their commitment to an active, ongoing and comprehensive Continuous Quality Improvement program with the goal of continually monitoring, measuring, evaluating and improving the quality of care, environment and services delivered to our residents and customers. All of the applicants facilities are expected to have a progressive Safety program that identifies all safety concerns related to patient care and all other departments in the facility. North Country Associates uses evidenced based protocols to assist in identifying targeted areas of oversight by clinical professionals.

6) Outcomes and Community Impact

The application did not address how adding skilled services would affect other providers of this service within the service area. The Office of Elder Services should have been contacted regarding the development of this service and used by the applicant to determine the potential for the services they wish to provide.

The applicant states that this project will not have any negative affect on other service providers. The adding of skilled services would provide patient choice to the community. While it might decrease the skilled census of the other provider in the community, it might also increase quality because of the competition. Also, it is clear that the growing aged and disabled population in the area coupled with the increase of patient choice for the skilled services lead to higher quality services and increased positive community outcomes. Since the census of the Gardiner Health Care Facility is not running at 100%, there will be no displacement of patients by the addition of skilled services.

7) Service Utilization

The application did not address this specific criterion.

The applicants admit that additional efforts to maintain a healthier patient census will have some impact on the other community provider. However, it appears that the current operator would not be able to maintain services indefinitely at the levels of loss sustained in 2007 and that could contribute to dire need for beds if the current operator was forced to close. Additionally, the applicant stated in a prior response that it expects to shift patients that might otherwise have had prolonged hospital stays to more appropriate long-term care placement.

VI. CONCLUSION:**Concluding Statement:**

For all the reasons set forth in the Preliminary Analysis, in the record, and considering the clarifying information provided by the applicants, CONU concludes that the review criteria have been satisfied. CONU recommends the approval of a Certificate of Need.

VII. RECOMMENDATION:

The CONU recommends this proposal be **Approved**.

Estimated Capital Expenditure: \$950,000
Estimated Operating Costs \$2,611,242