**DATE:** June 23, 2014

**TO:** Mary C. Mayhew, Commissioner, DHHS

**THROUGH:** Kenneth Albert, R.N., Esq., Director, DLRS

**FROM:** Larry D. Carbonneau, Manager, Health Care Oversight

Richard S. Lawrence, Senior Health Care Financial Analyst

**SUBJECT:** Addition of 13 NF/SNF Beds.

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

**REGISTERED AFFECTED PARTIES:** No applicants

**I. BACKGROUND:**

Maple Grove Nursing Home, Inc. d/b/a Madigan Estates (MGNH) operates an 86-bed nursing and 47-bed residential care facility, and an adjacent 14-bed independent living facility in Houlton, Maine. MGNH has been an integral part of the greater Houlton community since 1972. Brenda Brown has owned and operated the facility since inception. Three related persons share the current ownership of MGNH. Brenda Brown holds a 40% interest and each of her children, Jim Brown and Debbie Fitzpatrick, own 30% of the shares in the company. Jim and Debbie are both licensed multi-level administrators and actively participate in the daily operations as the facility’s Business Manager and Director of Social Services and Admissions, respectively.

**II. PROJECT DESCRIPTION:**

The proposed project entails adding 13 nursing home beds along with certain renovations to the facility. Upon completion of the project, the facility will have a total of 146 beds which will consist of a 99-bed nursing unit and a 47-bed residential care unit. The estimated costs of the project are approximately $1,288,000.

The applicant and Certificate of Need Unit (CONU) staff held a pre-release technical assistance meeting 10 days before the scheduled release of the preliminary analysis in accordance with Section 357 of the Act. As a result of that conversation on April 23, 2014, the applicant requested an amendment to the original CON application. The original request would have included the conversion of 13 Residential care (RCF) beds to NF beds as well as adding 12 additional SNF/NF beds. The facility would have had a 111-bed nursing unit and a smaller 34-bed residential care unit. The CONU had determined that the applicant had not acquired enough resources to fully implement the plan and at the same time could not address where the displaced residential care patients would be relocated.

**III. HIGHLIGHTS:**

Letter of Intent dated: June 18, 2013

Technical Assistance meeting held: Originally waived – held January 8, 2014

CON application filed: March 3, 2014

CON certified as complete: February 19, 2014

Comment Period Ended: April 2, 2014

Preliminary Analysis released: May 1, 2014

Record Closed: May 22, 2014

**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:**

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

Maple Grove Nursing Home, Inc. (MGNH) is licensed for 86 NF/SNF beds and 47 Level IV RCF beds. The facility is located at 93 Military Street in Houlton, Maine. The administrator is Brenda Brown. The license was issued on July 1, 2013 and is valid from July 1, 2013 through June 30, 2014.

The applicant provided a summary of MGNH last completed survey data. CONU verified this survey data utilizing the Medicare.gov website and Division of Licensing Regulatory Services (DLRS) files.

This survey revealed the following ratings:

|  |  |
| --- | --- |
| **Maple Grove Nursing Home, Inc.** | |
| **Nursing Home Compare Ratings** | |
| **Category** | **Ratings** |
| Overall | Much Above Average |
| Health Inspections | Average |
| Staffing | Above Average |
| Quality Ratings | Much Above Average |

MGNH scored “Average” or above in all four categories rated by CMS with an overall rating of “Much Above Average”. The last recertification survey was conducted on November 20, 2013. The result of the survey was the identification of two deficiencies. Both deficiencies were Level 2 (minimal harm or potential for actual harm). The average number of health deficiencies identified during a recertification survey in Maine is 4.3 and the average number of health deficiencies in the United States is 6.8.

Inspectors determined that the nursing home failed to:

**1)** Ensure that garbage and refuse were disposed of in a manner to prevent pest infestation for 3 out of 3 survey days for 2 out of 3 dumpsters.

**2)** Ensure that expired medications were removed from use on 2 out of 2 medication carts and from 1 of 1 medication storage rooms.

All deficiencies were corrected by November 21, 2013.

On December 23, 2013 a complaint survey was conducted and inspectors determined that the nursing home failed to:

**1)** Ensure staff notified a legal guardian of changes in medications and treatments for 2 out of 5 residents.

This deficiency was corrected on January 22, 2014.

Survey data for this facility can be accessed at Medicare.gov or at the Department of Health and Human Services (DHHS), DLRS and is on file at CONU.

The commissioner can rely on data available to the department regarding the quality of health care provided by the applicant as allowed at M.R.S. 22 §337(3).

**Deeming of Standard**

As provided for at 22 M.R.S. §335 (7)(A), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards.

MGNH has been under the ownership of the Brown family since 1972 and has been a provider of both SNF/NF beds and Level IV Residential Care beds for decades. The services provided by the applicant are consistent with applicable licensing and certification standards.

**Change of Ownership**

On April 5, 2013 Brenda Brown transferred 90 shares of her stock to James W. Brown and 90 shares of her stock to Deborah L. Fitzpatrick. Maple Grove Nursing d/b/a Madigan Estates failed to seek CON approval as required under Section 329(1) of the Maine Certificate of Need Act of 2002, as amended. After consultation with the Attorney General’s Office and DHHS management, CONU has determined that this transaction can be reviewed in conjunction with the proposal to add beds. This decision was reached since the applicant has supplied all relevant information necessary to analyze this subsequent transaction. Because of the length of time that has elapsed between the initial infraction and the discovery, it falls beyond the statute of limitations. Both James W. Brown and Deborah L. Fitzpatrick currently work in senior management positions at Madigan Estates.

1. **Economic Feasibility**:

The applicant provided a pro-forma cost report that represents the change in the provided service level. The applicant is proposing to add an additional thirteen SNF/NF beds. The pro-forma cost report includes the applicants projections of increased staffing levels required to perform the services required by the occupants of the additional SNF/NF beds. CONU reviewed the underlying assumptions used in the preparation of this cost report regarding financing, construction budgets, depreciation/amortization expense and projected payor mix and found them reasonable. Future reimbursement will ultimately be determined by DHHS Rate Setting and DHHS Audit. The increase in SNF/NF, care as well as the 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.

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

**Deeming of Standard**

As provided for at 22 M.R.S. §335(7)(B), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this standard if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with the applicable licensing and certification standards.

The applicant has operated a mixed level of care facility with a total of 133 beds (86 SNF/NF and 47 RCF). If this application were to be approved the applicant would be operating a mixed level of care facility with 146 beds (99 SNF/NF and 47 RCF). The operations are of a similar size and scope. Schedule L of the applicants pro forma cost report demonstrates the need for additional nursing staff to handle the increase in the SNF/NF census.

1. **Public Need:**

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

Aroostook County Maine is the largest county east of the Mississippi and is larger than Connecticut and Rhode Island combined. The population is 71,757 with 13,712 people (or over 19%) of the population in the 65 or over age group. This population is the primary consumer of nursing and residential care services. The breakdown of this population by age group and projected growth is contained in the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Aroostook County Age**  **Group** | **2012 Current**  **Population** | **Rate of**  **Growth** | **2022 Projected Population** |
| Age 85+ | 1588 | 4% | 1652 |
| Age 75 – 84 | 4805 | 29% | 6198 |
| Age 65 – 74 | 7319 | 38% | 10,101 |
| **Total** | **13,712** |  | **17,950** |

This rate of growth coincides with the State of Maine as a whole, where the 65 and over population continues to grow at a rate faster than New England and the United States as a whole. Statewide nursing home utilization declined between 2000 and 2008 but leveled off in 2010. Utilization of residential care facilities grew 30% between 2000 and 2010 before declining slightly in 2010. The average statewide percentages of the 65+ population utilizing SNF/NF and RCF services are as follows:

|  |  |  |
| --- | --- | --- |
| **Age Group** | **% of age group needing SNF/NF care** | **% of age group needing**  **RCF care** |
| Age 85+ | 11.50% | 6.30% |
| Age 75 – 84 | 3.60% | 1.80% |
| Age 65 – 74 | 0.80% | 0.50% |

With the projected increase in the 65+ population it is likely that additional SNF/NF and RCF services will be required over the next ten years. Adding SNF/NF and RCF beds would substantially address specific health problems associated with an aging population requiring more intensive care. Aroostook County had 46 NF beds and 25 RCF beds per 1,000 persons aged 65-and-above in 2010 as compared to the Statewide average of 33 NF beds and 20 RCF beds per 1,000 persons aged 65 and above. Although the available beds in Aroostook County exceeds the State average the applicant provided 2010 through 2012 occupancy data for both MGNH and Aroostook County SNF/NF and RCFs. MGNH had an average 2010 – 2012 SNF/NF occupancy of 95.66% and a RCF occupancy of 92.33%. During the same time period the Aroostook County SNF/NF occupancy was 92.33% and the RCF occupancy was 97%. The applicant states that MGNH’s waiting list has expanded since the closure of 28 SNF/NF beds at Houlton Regional. For the 8 month period ending January 31, 2014 there were 160 referrals to MGNH and there were 73 admissions. The remaining referrals were not admitted mainly due to a lack of beds. CONU expanded the applicants’ analysis to provide the names, locations, mileage from applicant, number of licensed beds and most recent occupancy data for SNF/NF’s and RCF facilities in Aroostook County.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Facility** | **Location** | **Mileage from applicant** | **NF**  **Beds** | **RCF**  **Beds** | **Ave NF/SNF Occupancy** | **AVE RCF Occupancy** |
| Borderview | Van Buren | 77 | 55 | 53 | 92.73% | 90.57% |
| Caribou | Caribou | 54 | 61 | 0 | 98.36% | 0.00% |
| Forest Hill | Fort Kent | 98 | 45 | 0 | 97.78% | 0.00% |
| Gardiner | Houlton | 0 | 45 | 10 | 95.56% | 100.00% |
| High View | Madawaska | 102 | 51 | 0 | 100.00% | 0.00% |
| Madigan | Houlton | 0 | 86 | 47 | 95.35% | 87.23% |
| MVH - Caribou | Caribou | 54 | 40 | 30 | 95.00% | 100.00% |
| Mercy | Eagle Lake | 92 | 40 | 10 | 95.00% | 110.00% |
| Presque Isle | Presque Isle | 42 | 67 | 0 | 98.51% | 0.00% |
| St. Joseph | Frenchville | 61 | 43 | 0 | 100.00% | 0.00% |
| TAMC -AHC | Mars Hill | 28 | 72 | 0 | 80.56% | 0.00% |
| Crestview | Houlton | 0 | 0 | 20 | 0.00% | 105.00% |
| Crosswinds | Fort Kent | 98 | 0 | 45 | 0.00% | 97.78% |
| Country Village | Madawaska | 102 | 0 | 27 | 0.00% | 96.30% |
| Limestone Manor | Limestone | 57 | 0 | 40 | 0.00% | 85.00% |
| Ridgewood Estates | Madawaska | 102 | 0 | 43 | 0.00% | 100.00% |
| Southern Acres | Westfield | 33 | 0 | 30 | 0.00% | 90.00% |
| **TOTAL** |  |  | **605** | **355** | **95.35%** | **96.53%** |

As shown in the table above TAMC-AHC has an occupancy rate of 80.56% for SNF/NF beds. A review of almost two years of occupancy data shows that the average occupancy rate at TAMC-AHC is approximately 79%. In addition, although Houlton Regional has closed its 28 SNF/NF bed nursing unit, the hospital has received a swing bed designation which allows it to use its beds, as needed, to provide either acute or SNF care. Due to the availability of SNF/NF beds in close proximity (within 30 miles) to Houlton we recommended and the applicant agreed that the applicant should downsize the requested number of new SNF/NF beds.

This original proposal also requested that 13 RCF beds be converted to SNF/NF beds. An analysis of RCFs within a 30-mile radius of Houlton reveals that both Crestview and Gardiner currently have occupancy rates of over 93%. The applicant states that Madigan averaged over 92% occupancy during this time. This analysis shows that RCF services in close proximity (within 30 miles) to Houlton are equally in demand. By reducing the requested number of SNF/NF beds, the RCF beds can be retained and difficult relocations avoided.

Maintaining and enhancing needed SNF/NF beds will have a positive impact on the health status indicators of the population. This facility enables residents to remain close to home and family while receiving services. The facility will continue to provide individualized care and specialized rehabilitation services, which include podiatry services, occupational therapy, speech therapy and physical therapy.

The services affected by the project will be accessible to all residents in the area.

MGNH plans to continue to enhance its rehabilitation program, which will benefit patients by speeding their recovery and eventual discharge to home or community based services, which are far less expensive than long-term care.

The applicant’s revised project has addressed previous CONU concerns. Leaving the existing 47 bed RCF capacity in place at Madigan estates will ensure that necessary RCF services in the Houlton area will remain in place. The addition of only 13 SNF/NF beds ensures MaineCare neutrality while meeting current demand for SNF/NF services.

1. **Orderly and Economic Development:**

The decision to increase MGNH SNF/NF capacity from 86 to 111 beds would address a demonstrated need for some additional SNF/NF beds in the Houlton area. Unfortunately this benefit would be offset by a reduction in necessary RCF beds in the area by reducing MGNH capacity from 47 to 34.

The increased operating costs associated with the 25 additional SNF/NF beds, would only be partially offset by the MaineCare revenue stream associated with the 28 Houlton Regional SNF/NF beds. Total health care expenditures would increase by of $522,186. There are no State funds to cover any increased costs therefore MaineCare neutrality needs to be achieved.

A less costly alternative would be to add fewer SNF/NF beds which would require less intensive staffing while retaining some necessary RCF beds. There is additional SNF/NF capacity in the Houlton area at TAMC-AHC, and Houlton Regional has licensed swing beds which can be used to provide either acute or SNF care.

The revised project, which adds only 13 SNF/NF beds, achieves MaineCare neutrality, thus eliminating the need for additional State funding. Necessary RCF services in the Houlton area will remain in place because the current 47 bed RCF licensed capacity will remain unchanged.

1. **Outcomes and Community Impact:**

No additional analysis is needed for the Outcome and Community Impact standard as a result of the revised project. The addition of only 13 SNF/NF beds to the area, instead of the original 25, will further minimize any impact on other service providers while still addressing the need for additional SNF/NF beds in the area. Existing RCF services will remain in place.

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

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

**g)** **Consistency with MaineCare Funding Pool and 333-A and 334-A.**

The revised information provided by the applicant changes the results of the MaineCare neutrality calculation as follows:

**Table 1: Sources and Uses of MaineCare Funding:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Source** | **Facility** | **# of Beds** | **$ Value** | **Allocated Beds** | **$ value** |
|  | The Houlton Reg. | 28 | $844,800 | 28 | $844,800 |
|  | Prog. Care Fac. |  |  |  |  |
|  | Total | 28 | $844,800 | 28 | $844,800 |
|  |  |  |  |  |  |
| **Use** | **Madigan SNF/NF** | **13** | **$815,232** | **13** | **$815,232** |
| **Additional Savings** |  | 15 | $29,568 |  | $29,568 |

The above table shows that the additional resources purchased from the Houlton Regional Program Care Facility are sufficient to offset the additional expense of adding 13 additional SNF/NF beds.

MaineCare neutrality has been achieved. The remainder of the bed rights will be transferred to the MaineCare funding pool.

No funding is utilized from the MaineCare funding pool.

**VI. CONCLUSION:**

For all the reasons set forth in the Preliminary Analysis and in the record, CONU concludes that the review criteria have been satisfied. CONU recommends the approval of the CON.

**VII. RECOMMENDATION:**

CONU recommends that this application be **Approved.**