#### Date: September 8, 2015

**Project**: **Acquisition of Control of Victorian Villa**

**Proposal by: Pinnacle Group of Hudson Valley, LLC**

**Prepared by: Larry Carbonneau, Manager Health Care Oversight**

**Richard Lawrence, Senior Health Care Financial Analyst**

**Directly Affected Party: None**

**Certificate of Need Unit Recommendation: Approval**

 **Proposed Approved**

 **Per Applicant** **CON**

Estimated Capital Expenditure $1,800,000 $1,800,000

Maximum Contingency $ 0 $ 0

Total Capital Expenditure with Contingency $1,800,000 $1,800,000

Pro-Forma Marginal Operating Costs $ 0 $ 0

MaineCare Neutrality Established Yes

# I. Abstract

**A.** **From Applicant**

“Victorian Villa, located in Canton, Maine, is licensed with 47 nursing care beds, 67 residential care beds, and operates an adult day care program to serve 12 clients per day. The facility has a long standing excellent reputation and serves a large rural area in Western Maine. It is the only licensed nursing home within a 15 mile radius and historically and currently operates with a strong occupancy. Attached as Exhibit I-A is a copy of the license for Victorian Villa.”

“The current ownership, Reddings Home Inc., and Reddings Realty LLC., is comprised of several family members who desire selling the facility and operating business.”

“Pinnacle Group of Hudson Valley, LLC, headquartered in Monsey, New York, proposes to acquire from Redding Homes, Inc. substantially all of Redding Homes’ property and assets. Pinnacle Group will be the operating entity. Pleasant St. Realty, LLC will acquire from Redding Realty, LLC the Real Property and be the real estate entity. Pinnacle Group is a consulting and operating company owned by Israel Nachfolger. As CEO of Pinnacle Group, Israel brings a unique mix of clinical and operating expertise to the continued operations of Victorian Villa.”

“Attached as Exhibit I-B is an Asset Purchase Agreement. The total purchase price is $1,800,000 and allocated as follows:”



“Please note that there will be no change in the type or number of licensed beds in the facility and services provided will not be adversely affected by this change in ownership.”

“Mark Jacobs, the current licensed Administrator of Victorian Villa, has agreed to continue in this capacity. Victorian Villa is currently a 5 star rated facility in both Quality measures and Overall rating. The applicant intends to facilitate the continuation of the administration and staff’s excellent work which has resulted in the favorable star ratings.”

“Buyer and Seller shall request that the MaineCare Program of HHS calculate the amount of depreciation recapture to be paid to the MaineCare Program at closing from the sale proceeds. All other amounts owed to the State will be reconciled and settled at the time of closing.”

# II. Fit, Willing and Able

1. **From Applicant**

History & SNF Experience:

“As CEO of Pinnacle Group of Hudson Valley, Israel Nachfolger brings a unique mix of clinical and operational expertise to the healthcare arena. (Attached please see Exhibit II-A, Israel Nachfolger Resume)”

“Initially getting his EMT-B certification in his early 20’s, Israel’s love for patient care led him to embark on NREMT & NYS Paramedic certification which enabled him to gain a wealth of actual field experience caring for patients of all acuities. Simultaneously, Israel was employed by one of the largest SNF operators in NYS, Centers for Specialty Care Group. Israel’s employment in Centers for Specialty Care marked a torrid growth period in which multiple distressed facilities were purchased and turned around into profitable, sustainable operations. In 2009, after being involved in 10 facility turnarounds with Centers for Specialty Care, Israel decided to embark on his own, creating a management and consulting company, Pinnacle Group of Hudson Valley, Ltd.”

**References:**

Centers for Specialty Care

CEO – Kenneth Rozenberg

Cell: 917-468-4174

Email: krozenberg@centershealthcare.org

CFO – Abraham Bronner

Cell: 914-261-2614

Email: abronner@centersbusiness.org

“Pinnacle Group’s first client in 2009 was Sprain Brook Manor Rehab, a 121 bed SNF in Scarsdale, NY. Marred by numerous issues including labor, workforce and other operational challenges, Sprain Brook was in a negative cash flow state, and at risk for closure. After much diligence and hard work, Sprain Brook has been generating an annual profit in excess of 3M/year since 2011. Israel & the managing member of the facility continue to operate this facility on a day to day basis and are proud of the excellent standing the facility has in the community.”

“Post fiscal turnaround, Israel led the implementation of a full electronic medical records system in Sprain Brook in 2012. Recognizing the importance of data driven patient care, the facility has leveraged this investment in technology to meet critical data points set by CMS and State surveyors. In the recent NHQI initiative, Sprain Brook achieved an enviable 2.13 potentially avoidable hospitalizations per 10,000 stay days metric. This immediate improvement in patient care was achieved on the heels of the successful implementation of the Sigmacare EMR system. The facility was placed in the second quintile statewide for quality initiatives in April 2014.”

“In addition to the quality initiatives mentioned above, Sprain Brook has a reputation for providing the highest quality rehab in the Westchester area. As a testament to Sprain Brook’s stellar reputation for short term rehab among hospitals and members of the community, the 121-bed facility currently has a 50% quality mix of non-Medicaid patients. Sprain Brook also recently received a deficiency-free survey.”

**References:**

Sprain Brook Manor Rehab

Managing member: Allen Stein

Contact info: Cell: 917-337-0110

Email: stein1120@gmail.com

“In 2010, Pinnacle Group entered into a fiscal management agreement with Kingsbridge Heights Rehabilitation & Care Center, a 400 bed SNF in Bronx, NY under a state appointed receiver. Pinnacle was successful in collecting over 6M of aged receivables, which in turn put the facility onto stable financial footing.”

“In November 2011, Israel entered into an extensive consulting agreement with Focus Ventures LLC, a regional healthcare provider, to head up the financial and operational turnaround of the Loretto Utica facility. Having entered into a receivership agreement earlier that year, Focus Ventures was tasked by NYS to assist in the efforts to turn around Loretto Utica, a CMS SFF designated facility. As a 120 bed SNF, 110 bed ALP & 30 slot ADC in a severely depressed economic region, the challenge was quite evident. Originally slated to close its doors with a formal plan of closure submitted to the state, 200 employees were close to losing their employment, and 240 residents at risk for displacement. After Israel & the principals of Focus Ventures held intense negotiations with 1199 SEIU and implementing other critical operational changes, the newly rebranded facility continues to make its way toward being Utica’s premier SNF/ALP. Having gotten the SFF designation removed a few months after takeover, the new Focus Rehab & Senior Living at Utica is now cash flow positive, and drawing up plans to make severely needed capital improvements.”

“Focus Ventures was subsequently selected by the legislature of Otsego County to purchase the 174-bed Otsego Manor, located in Cooperstown, NY. Having tracked the progress of the new Focus Rehab & Nursing at Utica, the County selected Focus Ventures as the most suitable purchaser to take the reins of the county-run facility which was running an annual deficit of 6M. The new Focus Rehab at Otsego began operations in September 2014 with Israel & the principals of Focus Ventures working in tandem.”

**References:**

Focus Ventures LLC

CEO: Joseph Zupnik

Cell: 845-596-7123

Email: jzupnik@focusventuresllc.com

CFO: Ben Friedman

Cell: 845-548-1144

Email: bfriedman@focusbiling.net

“A number of future projects are on the horizon as well. Together with the managing member of Sprain Brook Manor, Israel led the effort to be selected as the purchaser of the Michael Malotz SNF, a 120 bed SNF in Yonkers, NY. Being located on the premises of the prestigious St. John’s Riverside Hospital, Israel and his team were honored to be selected as the purchasers from among tens of interested parties. The facility, which includes 8 vent beds, is slated to change ownership on July 1, 2015, with final state approval having occurred in March 2015.”

“Over the last few months, Israel has already been hard at work laying the groundwork for the transition of this premier facility. Implementation of the Point Click Care EMR and Rehab Optima therapy system is well underway, with members of Israel’s clinical team leading the effort.”

“Israel lives in Rockland County, NY with his wife & four children. He is still very active locally as a volunteer Paramedic and is well on his way to obtaining both RN & LNHA certification to build on his current NREMT-P credentials.”

“Please note that Mark Jacobs, the current licensed Administrator of Victorian Villa, has agreed to continue in this capacity. The members of his facility management team will also remain in place. Mark, as a family member of the current ownership, has been the Administrator for 17 years. Mark brings a long history in successfully operating Victoria Villa and has a continued commitment to providing excellent care and services under the new direction of Pinnacle Group. (Attached as Exhibit II-B is a Mark Jacobs Resume)”

“Other members of Pinnacle’s management and advisory team will include:

*Rosalina Zaloba, RN, BSN, MSN, CRNAC”*

“With over 30 years of experience in healthcare, Ms. Zaloba has collaborated with Israel on numerous projects over the years. As an expert in the field of MDS & clinical documentation, Ms. Zaloba functions as the clinical lead for Pinnacle Group’s operations. As a former corporate MDS/Clinical Reimbursement Director for 24 facilities, Ms. Zaloba provides unmatched oversight of Medicare, Managed Care & Medicaid operations while ensuring compliance and integrity of all nursing interventions.”

*Tzali Stern, PT*

*Chaim Millman, EMT-P, M.A.*

“Tzali & Chaim are principals of Stern Therapy Group who provide rehabilitation services to many of the facilities that Pinnacle manages. With a portfolio of 27 skilled nursing facilities across the Northeast, they have developed a systematic approach to ensuring improved patient outcomes. Both Tzali & Chaim are close acquaintances of Israel and they share the same enthusiasm and desire to enhance the quality of life of the patients and residents in the skilled nursing setting.”

*David Silber, Controller, CPA*

*Ruth Markowitz, Medicare, Medicaid, HMO Billing & Collections*

“David & Ruth provide Pinnacle Group’s back office support to ensure all financial and billing related activities are handled appropriately. Aside from day to day billing and finance activities, David & Ruth provide cash flow and projection data to management to allow for CapEx planning and execution. Other responsibilities include filing of annual Medicare & Medicaid cost reports in addition to preparation of company financial statements.”

*Moshe Hirsch, IT & Network Security*

“In today’s data driven environment, Pinnacle Group recognizes the need to have bulletproof IT infrastructure. As CMS increases scrutiny of all aspects of healthcare related activities, the importance of data integrity and system design has never been greater. Moshe has extensive background in all aspects of IT relating to healthcare facilities, including Electronic Medical Records, Network Security, and implementation of HIPAA compliant cloud-based data systems for patient records. With a deep understanding of healthcare workflow, Moshe is uniquely qualified to administer the backbone of Pinnacle Group’s IT and Network systems.”

Quality Measures

“Victorian Villa is currently a 5 star rated facility in both Quality measures and Overall rating (CMS 5/4/15). With this in mind, the applicant intends to facilitate the continuation of the administration and staff’s excellent work which has resulted in the favorable star ratings.”

“Not to be satisfied with these results, the applicant has also reviewed the past 3 years of State survey results in order to gain an understanding of what still may be improved upon. Recent Statement of Deficiencies (SOD) for Victorian Villa have indicated a need to focus on the administration and management of anti-psychotic pharmaceuticals in the management of residents with dementia. As the population of the facility contains a sizeable cohort with this or related diagnoses, the applicant sees a necessity to address the needs of this population.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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**

Victorian Villa, located in Canton, Maine is currently licensed for 47 SNF/NF beds and 67 residential care beds. In addition they provide an adult day care program for 12 clients per day. Currently Victorian Villa is operated by Redding Home, Inc. and the real estate is owned by Redding Realty, LLC. CONU looked at the latest nursing home ratings available at Medicare.gov and Victorian Villas results are as follows:



Victorian Villa Scored average or above in all categories rated by CMS, with an overall rating of “Much Above Average”. A survey was completed on March 19, 2015 at Victorian Villa. The result of the survey was the identification of three (3) deficiencies. All three deficiencies were Level 2 (minimal harm or potential for actual harm) or below. The average number of health deficiencies identified during a recertification survey in Maine is 3.8; the average number of health deficiencies in the United States is 6.8.

Inspectors determined that the nursing home failed to:

**1)** Develop a complete care plan that meets all of a resident’s needs, with timetables and actions that can be measured.

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

**3)** Maintain drug records and properly mark/label drugs and other similar products according to accepted professional standards.

All deficiencies were corrected by June 2, 2015.

The current owners of Victorian Villa are comprised of several family members who wish to sell the operating company (Redding Homes, Inc.) and the real estate (Redding Realty, LLC) to Mr. Israel Nachfolger. Mr. Nachfolger is the CEO of Pinnacle Group of Hudson Valley, LLC (Pinnacle Group). Pinnacle Group will act as the operating company of Victorian Villa and acquire the assets of Redding Home, Inc. while a newly formed company called Pleasant St. Realty, LLC will acquire the Real Property of Redding Realty, LLC. The total purchase price will be $1,800,000.This applicant is not currently licensed in the State of Maine therefore CONU looked at the most recent ratings available at Medicare.gov for the three nursing homes currently operated by Pinnacle Group in New York State. A summary of rating results follow:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Pinnacle Group****Current Clients** | **Date of Rating Data** | **Overall Rating** | **Health Inspection Rating** | **Staffing Rating** | **Quality Measure Rating** |
| **NEW YORK** |  |  |  |  |  |
| Sprain Brook Manor Rehab, LLC (Scarsdale) | 03/31/2015 | AA | AVG | MAV | AVG |
| Focus Rehab & Nursing at Utica (Utica) | 03/31/2015 | MBA | MBA | MBA | BA |
| Focus Rehab at Otsego, (Copperstown) | 03/31/2015 | MBA | MBA | AVG | BA |

AA = Above Average, AVG = Average, MAV = Much Above Average, MBA = Much Below

Average, BA = Below Average

Focus Rehab & Nursing at Utica has 3 ratings much below average and one rating below average. Focus Rehab at Otsego has 2 ratings much below average, one rating below average and one rating of average. Their most recent surveys indicate 16 health deficiencies and 15 health deficiencies respectively. The average number of health deficiencies in New York is 5.3 and the average number of deficiencies in the U.S. is 6.8. In addition Focus Rehab & Nursing at Utica had two findings of immediate jeopardy on their 12/19/2014 survey and Focus Rehab at Ostego had two findings of actual harm on their 12/17/2014. Surveys are on file at CONU. Pinnacle has shared operational responsibility of Focus Rehab & Nursing at Utica since November of 2011 and Focus Rehab at Otsego since September of 2014. CONU has requested that the applicant submit specific action plans for each of the two facilities sited above.

In a response to our request, dated August 6, 2015 (on file at CONU) Mr. Nachfolger provided the following response:

“The Focus facilities are not operated by Pinnacle Group, rather they are solely operated by Focus Ventures, LLC, which has contracted with Pinnacle Group on an advisory basis. While Pinnacle Group is called upon to do regular work in the facility, it does not direct day to day operations. In contrast with Sprain Brook manor, where Pinnacle is heavily involved in all aspects of care including clinical and operational, the Focus Ventures consulting agreement is generally limited to purchasing, fiscal oversight and labor relations including labor management and union negotiations.”

“With the above stated, please find the attached accepted plan of correction (POC) for both facilities which has been accepted by NYS DOH as being in substantial compliance with respect to the issues in question. The Focus Utica issue was related to a wide-spread product defect with PTAC HVAC units which has since been addressed. The aforementioned IJ was subsequently revised to that of an F tag (see pg. 5 on the attached Utica POC Acceptance letter). The Focus Otsego matter was related to timely notification of resident status to physicians. NYS has also accepted the POC for that matter as being in substantial compliance (please see attached).”

After reviewing Mr. Nachfolgers response and attached documentation (on file at CONU) we believe that the aforementioned Focus facilities are in substantial compliance. We further understand that Pinnacle Groups responsibilities at these facilities do not involve directing day to day operations. Since this is Mr. Nachfolger’s first business venture in Maine, CONU believes it important to take a more in depth look at Pinnacles business practices. We requested a detailed description of Sprain Brook Manor when Pinnacle assumed responsibility for the facility and the actions Pinnacle took to get the facility back on solid footing. In response Mr. Nachfolger provided a detailed history of Pinnacle groups six year history with Sprain Brook Manor and the actions Pinnacle took to turn the facility profitable and ensure quality delivery of services. The history of Sprain Brook Manor and management actions responsible for its turnaround are summarized below:

Inexperienced management, critical census issues, low staff morale, labor union issues and an aging infrastructure led Sprain Brook Manor to the brink of closure. Since becoming involved in 2009 Pinnacle has conducted a concerted effort to improve census and quality mix. They have improved nursing services by focusing on a customer-service oriented approach. In addition a full electronic medical records system was brought on line. Dietary Services were out-sourced to improve customer satisfaction. Activities staff was increased to provide residents with quality recreation and leisure activities. Therapy services were contracted to a respected provider and significant upgrades to the therapy plant are planned. Approximately $2 million dollars has been allocated to upgrade the physical plant and premises with a completion date in 2016.

Mr. Nachfolger’s full response to CONU’s questions is contained in his letter of August 12, 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, Victorian Villa has a record of providing quality care and has an experienced administrator, with 17 years of experience at the facility who will remain in the position. 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) Victorian Villa’s most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps Victorian Villa 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 Victorian Villa 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 Victorian Villa relating to quality measures, along with a review of the quality improvement steps being undertaken.

1. **Conclusion**

CON 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

1. **From Applicant**

“As requested in the Technical Assistance meeting, attached as Exhibit III-A are Pro forma Income Statements for the first two full years of operations under the proposed change of ownership. Also included are actual results for 2014. Income Statements are included for both Pinnacle Group, the proposed operating entity, and Pleasant St. Realty, LLC, the real estate ownership entity.”

“Attached as Exhibit III-B are pro forma MaineCare cost reports for the first two full years of operations. Attached as Exhibit III-C are projected Balance Sheets.”

“Attached as Exhibit III-D is the most recent completed MaineCare cost report for Victorian Villa”.

“Please note the following:

1. It is assumed the facility will continue to operate “as-is” with no changes in staffing and programming; nor any capital improvements are included as part of this CON.
2. The applicant will borrow 80% of the acquisition price of $1,800,000 ($1,440,000) with an assumed interest rate of 4.5%. It is anticipated that final negotiations on financing will result in a lower interest rate. The debt is split into two pieces, $828,800 for the operating entity and $611,200 for the real estate entity.
3. The operating entity will pay rent in the amount of $240,000 annually as is the case by the current owners.
4. The pro forma cost report for Year 1 projects a MaineCare NF rate of $160.53, and in Year 2 an NF rate of $162.87. Please note that the current MaineCare NF rate is $158.16. Expenses were inflated by 2% in both Year 1 and Year 2.
5. Occupancy has been assumed to remain consistent with 2014 results at 96.19%, as is the payor mix.”

MaineCare Neutrality

“The proposed acquisition of Victorian Villa does not achieve MaineCare neutrality. Attached as Exhibit III-E is an analysis of the purchase price allocation and projected annual depreciation. As noted, allowable interest expense (assuming a loan of $1,440,000 at 4.5% interest rate) is projected at $35,459 in Year 1. There will be a decrease in allowable depreciation by ($11,777) and an increase in fixed cost reimbursement of $23,682 with a net cost to the MaineCare program of $22,498 in Year 1.”

“The applicant proposes to de-certify from the MaineCare Residential Care Program one RC bed in order to meet MaineCare neutrality requirements.”

Depreciation Recapture

## “Pursuant to 22 M.R.S.A. §3175-D(2) as amended by Public Law 2013, Chapter 582, L.D. 538, Buyer and Seller shall request that the MaineCare Program of HHS calculate the amount of depreciation recapture to be paid to the MaineCare Program at Closing from the sale proceeds utilizing the methodology set forth in §3175-D(2) as amended. Recognizing that such methodology has not yet been approved by federal authorities at the Centers for Medicare and Medicaid Services and that implementing state regulations have not yet been drafted by HHS, the parties have sought and received an estimate of the potential range of depreciation recapture from the accounting firm of BerryDunn. Making a number of assumptions, and based upon acceptance of its allocation of Purchase Price to particular classes of assets, BerryDunn estimates that, relying on the MaineCare allowable basis of depreciable assets as of December 31, 2013, the MaineCare depreciation recapture associated with the proposed transaction will likely fall in a range between $0 and $110,000 (the “BD Estimate”).”

“Seller and Buyer acknowledge that the actual MaineCare depreciation recapture will be dependent on a number of factors including the allocation of the Purchase Price to particular classes of assets, as well as allowable basis of depreciable assets and total accumulated depreciation recognized under the MaineCare NF payment/reimbursement program as of the Closing Date, coupled with the DHHS application of relevant regulations, that are yet to be drafted. The parties shall seek and strive to obtain confirmation from both the MaineCare Program and the Certificate of Need Unit of HHS in advance of Closing, that the MaineCare depreciation recapture amount to be paid at Closing falls within the range set forth in the BD Estimate, that this depreciation recapture amount will also govern the audit and final settlement of Sellers’ final MaineCare Cost Report post-Closing, and that the depreciation basis of assets for purposes of MaineCare reimbursement to Buyer post-Closing otherwise comports with the methodology set forth in §3175-D(2) as amended, in a form and with such content (including sufficient information to permit the parties to determine the adjusted final stated MaineCare allowable fixed asset basis, to include any potential step-up in basis) that is acceptable to each of them in their reasonable discretion.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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 Unit Analysis**

The sale of Victorian Villa will be structured as an asset purchase (The Asset Purchase Agreement is on file at CONU). Pinnacle Group will be the operator and will hold the license and provider agreements. Pinnacle Group will lease the real property from the new real estate LLC (Pleasant Street Realty, LLC) for $240,000 annually. The total purchase price for this transaction is $1,800,000. The applicant will be borrowing approximately $1,440,000 at a projected interest rate of 4.5%. The current book value of Victorian Villas assets are $497,135. Since this transaction is structured as an asset sale there will be a step-up in cost basis when this sale is consummated. The new book values of the acquired assets are projected at $995,000 (excluding Goodwill and other non-reimbursable intangible assets). According to Principle 44.2.9 of the Principles of Reimbursement for Nursing Facilities this asset purchase will be subject to depreciation recapture. These Principles can be accessed at http://www.maine.gov/sos/cec/rules/10/ch101.htm. The final amount of any depreciation recapture will be determined by DHHS Division of Audit prior to closing.

As stated by the applicant MaineCare neutrality will not be achieved due to various cost increases. Please see below:



In order to achieve MaineCare neutrality the applicant proposes to delicense one RCF bed. In order to achieve neutrality two RCF beds at a value of $59,745.03 will need to be delicensed. Final rates will be determined by the DHHS Rate Setting unit.

**Changing Laws and Regulations**

CON Unit staff is unaware 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.

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**

CON Unit recommends that the Commissioner determine that the applicant has met their burden to demonstrate: (1) 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 (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

# IV. Public Need

**A. From Applicant**

“Canton is a small town located on the eastern border of Oxford County and close to the borders of Franklin and Androscoggin County. Although the population of Canton is only 1,120 persons, Victorian Villa serves a large rural area that stretches into both Franklin and Androscoggin County. For example, Sandy River Nursing Care Center in Farmington (Franklin County) is approximately 20 miles from Victorian Villa and is considered a primary NF competitor.”

“Given the large geographic area served by Victorian Villa that includes a three county area, rather than just utilizing county data on NF and RC bed need from the often referenced source, Older Adults with Physical Disabilities; Population and Service Use Trends in Maine, 2012 Edition, prepared by the Muskie School of Public Service, perhaps a more accurate evaluation of NF and RC bed need in the Victorian Villa market area can be made by defining the market area as being within a 20 mile radius of Victorian Villa. This approach will capture parts of Franklin and Androscoggin County and provide a more realistic assessment of bed need within its service area.”

“According to the above Muskie 2012 report, Oxford County has 38 NF beds per 1,000 persons over age 65 and 27 RC beds per 1,000 persons over age 65. This compares with a statewide average of 33 NF beds and 20 RC beds per 1,000 persons over age 65. Please also note that according to this report, the number of persons age 65+ in Oxford County will increase by 49% from 2010 to 2022, or a projected total of 14,751.”

“In looking at demographic projections within a 20 miles radius of Victorian Villa, the 2015 estimate for the number of persons 65+ is 14,517 and projected to increase to 16,265 in 2020. Again, using a 20 mile radius captures parts of Franklin and Androscoggin County and provides a much more realistic service area for Victorian Villa. This information is from the Senior Life 2015 Report provided by The Nielsen Company, an often cited source for demographic data in the senior care industry. (Attached is the Senior Life 2015 Demographic Report as Exhibit IV-A)”

“The nursing homes within this defined service area include:”

|  |  |  |
| --- | --- | --- |
| **Facility** | **NF Beds** | **Driving Distance (Miles)** |
| Victorian Villa, Canton, Oxford County | 47 | 0 |
| Rumford Center, Rumford, Oxford County | 32 | 16 |
| Market Square, S Paris, Oxford County | 76 | 23 |
| Sandy River, Farmington, Franklin County | 62 | 23 |
| Edgewood, Farmington, Franklin County | 33 | 23 |
| **Total NF Beds** | **250** |  |

“Based on the estimated number of persons 65+ in 2015, there are 17 beds per 1,000 persons over 65 and projected 15 beds per 1,000 over 65 in 2020. Clearly, the current and projected increased need for NF beds is well below the current state average of 33 NF beds per 1,000 persons over 65.”

“The PNMI RC beds within this defined market area include:”

|  |  |  |
| --- | --- | --- |
| **Facility** | **RC Beds** | **Driving Distance (Miles)** |
| Victorian Villa, Canton, Oxford County | 67 | 0 |
| Pinewood Terrace, Farmington, Franklin | 30 | 23 |
| The Pierce House, Farmington, Franklin | 16 | 23 |
| **Total RC Beds** | **113** |  |

“Based on the estimated number of persons 65+ in 2015, there are 8 beds per 1,000 persons over 65 and projected 7 beds per 1,000 over 65 in 2020. Again, the current and projected increased need for NF beds is well below the current state average of 20 RC beds per 1,000 persons over 65.”

“This Certificate of Need application is to transfer the ownership of an existing multi-level facility and there is no proposed change in beds. The best indication of utilization and need is the historical occupancy of Victorian Villa which historically operates both on the NF and RC programs at about 94-96%. Victorian Villas is currently operating at 96.2% YTD 2015. (Attached is Occupancy for 2012, 2013, 2014 and YTD 2015, Exhibit IV-B)”

“Clearly, Victorian Villa plays a vital role in providing both NF and RC services in Oxford County as well as extending into both Franklin County and Androscoggin County. And the need for these services remains strong and will continue to do so as the population within this service area continues to age.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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 Victorian Villas service area (Oxford 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.

Oxford County is located in western Maine. According to the 2010 census it has a population of 57,833. Approximately 18.8% of the population is 65 and over. The 65 and over population is expected to experience a 56% increase by 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 Victorian Villa and other Oxford County nursing and residential care facilities using the latest data available (4/15/2015 for nursing facilities and 7/15/2015 for residential care facilities):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Nursing Facilities: Oxford County** | **Town** | **Total Beds** | **Total Occupancy** | **Occupancy %** |
| Victorian Villa | Canton | 47 | 45 | 95.74% |
| Rumford Community Home | Rumford | 32 | 33 | 103.13% |
| Fryeburg Health Care | Fryeburg | 30 | 30 | 100.00% |
| Market Square | South Paris | 76 | 70 | 92.11% |
| Ledgeview Living Center | West Paris | 81 | 68 | 83.95% |
| Norway Center for Health and Rehab | Norway | 42 | 37 | 88.10% |
| Maine Vets Home | South Paris | 62 | 62 | 100.00% |
|  |  |  |  |  |
| **Residential Care: Oxford County** | **Town** | **Total Beds** | **Total Occupancy** | **Occupancy %** |
| Victorian Villa | Canton | 67 | 63 | 94.03% |
| Fryeburg Health Care | Fryeburg | 44 | 38 | 86.36% |
| Ledgeview Living Center | West Paris | 24 | 23 | 95.83% |
| Maine Vets Home | South Paris | 28 | 26 | 92.86% |
| Market Square | South Paris | 22 | 22 | 100.00% |
| Norway Center for Health and Rehab | Norway | 28 | 28 | 100.00% |
| Rumford Community Home | Rumford | 17 | 17 | 100.00% |
| Rumford Community Home II | Rumford | 36 | 33 | 91.67% |

Victorian Villas occupancy rates for both Nursing and Residential care services compare favorably with other providers at 95.74% occupancy for Nursing and 94.03% occupancy for Residential care services. Data submitted by the applicant shows an occupancy rate exceeding 90% for both Nursing and Residential care services for the past three years at Victorian Villa. The Oxford County average occupancy is 94.72% for Nursing and 95.09% for Residential care. The demographics and occupancy data from Oxford County clearly demonstrate a need for Nursing and Residential care services in this service area.

Retaining needed SNF/NF and Residential Care 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 both Nursing and Residential services will be accessible to all residents in the area.

This facility has consistently achieved high rankings in the CMS nursing home compare ratings. Although there will be a change in ownership current management will remain in place.

1. **Conclusion**

CON 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

**A. From Applicant**

“The proposed change in ownership of Victorian Villa will meet budget neutrality standards for nursing homes as discussed in the Economic Feasibility section.”

“The facility will continue to operate at its existing licensed capacity of 47 NF beds and 67 RC beds with a total of 114 beds. Given this size, the facility provides economies of scale and it is not likely “that more effective, more accessible or less costly alternative technologies or methods of service delivery will become available.”

“As discussed above in the Needs Section, Victorian Villa plays a vital role in providing both NF and RC services in Oxford County as well as extending into both Franklin County and Androscoggin County. And the need for these services remains strong and will continue to do so as the population within this service area continues to age. The continued operations of the facility is consistent with the orderly and economic development of health facilities and resources for the State.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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 transaction involves changing ownership of an existing facility. No major changes to services or to bed licenses are anticipated. There will be a step up in cost basis of the facilities assets resulting in depreciation recapture. Increased borrowing will result in increased fixed costs. MaineCare neutrality will be achieved through a reduction in licensed Residential Care beds.

MaineCare reimbursement rates for fixed costs will increase. Direct care and routine costs are subject to existing peer group cost caps for reimbursement.

Victorian Villa is an existing facility providing necessary services in the Oxford County area. It is unlikely that a more effective, more accessible or less costly alternative technologies or methods of service delivery will become available.

1. **Conclusion**

CON 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

**A. From Applicant**

“Victorian Villa has an outstanding reputation and track record with high-quality outcomes and regulatory compliance. The facility is currently a 5 star rated facility in both Quality measures and Overall rating (CMS 5/4/15). The applicant intends to facilitate the continuation of the administration and staff’s excellent work which has resulted in the favorable star ratings and outcomes. The applicant does not intend to make any significant changes to programs.”

“Again, please note that Mark Jacobs, the current licensed Administrator of Victorian Villa, has agreed to continue in this capacity. The members of his facility management team will also remain in place including Mark Jacobs, the current licensed Administrator. Mark, and his management team have a long history in successfully operating Victoria Villa with a commitment to providing excellent care and services.”

“The applicant has also reviewed the past 3 years of State survey results with the facility management team in order to gain an understanding of what still may be improved upon. Recent Statement of Deficiencies (SOD) for Victorian Villa have indicated a need to focus on the administration and management of anti-psychotic pharmaceuticals in the management of residents with dementia. As the population of the facility contains a sizeable cohort with this or related diagnoses, the applicant sees a necessity to address the needs of this population.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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 minimal change in the number of licensed Residential Care beds, existing service providers will not be negatively impacted.

1. **Conclusion**

CON Unit recommends that the Commissioner find that the applicant 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

1. **From Applicant**

“The Maine Quality Forum has not adopted any principles of evidence-based medicine applicable to nursing homes. Rather, it is targeted to Hospital and Physician based healthcare.”

“That said, Victorian Villa is dedicated to providing excellent care to its short stay, rehabilitation and long term care residents. The facility offers each of its patients/residents outstanding clinical care, delivered by highly skilled practitioners in a warm and comfortable setting. The facility also provides opportunities for professional development and clinical training in order to ensure that its clinical practice aligns with the changing needs of the patient population.”

“Please note that residents/patients who are seeking admission must meet the medical eligibility requirements of DHHS and qualify for MaineCare. Medicare also has medical eligibility necessity standards. Without the strong rehab programs of facilities such as Victorian Villa, there would undoubtedly be increased usage of acute care beds as well as NF MaineCare beds and a decrease in positive outcomes for Maine’s seniors who benefit from being able to return home following an acute event.”

**B. Certificate of Need Unit Discussion**

1. **CON Standard**

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. Timely Notice

**A. From Applicant**

**B. Certificate of Need Unit Discussion**

|  |  |
| --- | --- |
|  |  |

Letter of Intent filed: March 31, 2015

Technical Assistance meeting held: April 1, 2015

CON application filed: June 30, 2015

CON certified as complete: June 30, 2015

Public Information Meeting held: N/A

Public Hearing: N/A

Close of Record: July 30, 2015

# IX. 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) Victorian Villa’s most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps Victorian Villa 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 Victorian Villa 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 Victorian Villa 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.