**DATE:** April 23, 2014

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

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

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

Richard S. Lawrence, Senior Health Care Financial Analyst, DLRS

Barbara Rancourt, Management Analyst, DLRS

**SUBJECT:** Acquisition of Operations of Kindred-Westgate Manor Nursing Home

**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. BACKFROUND:**

Westgate Center for Health and Rehabilitation, LLC (“Westgate”) is a Delaware limited liability company (“LLC”) formed by Marvin Ostreicher, President of National Health Care Associates, Inc. (“NHCA”), as its manager. NHCA has offices in Lynbrook, New York and Wethersfield, Connecticut. Westgate will lease and operate Kindred Westgate Manor, a skilled nursing facility that Kindred Nursing Centers West, LLC (“Kindred”) now operates and leases from Ventas Realty, Limited Partnership (“Ventas”) in Bangor, ME.

The facility to be called Westgate Center for Health and Rehabilitation, LLC is currently operated as Kindred Westgate Manor, in Bangor, ME.

Westgate will replace Kindred as in Bangor upon receipt of the CON and other approvals authorizing the change.

NHCA, founded in 1984, now has 38 affiliated Skilled Nursing and Rehabilitation centers located throughout the Northeast. NHCA will provide needed support to Westgate.

**II. PROJECT DESCRIPTION:**

Kindred will enter into an Operations Transfer Agreement, and Ventas will enter into a Lease Agreement, with Westgate through which Westgate will become the new tenant operator and licensee of the Facility. Ventas will continue to own the land and building used to operate the Facility. Westgate will accept the current MaineCare limits in effect consistent with its most recently issued rate letter.

There will be no change in the type or location of licensed beds at the Facility. Westgate intends to continue to employ the facility administrator, director of nursing, and medical director, along with other staff who met NHCA screening standards and wish to continue as employees of Westgate.

**III. HIGHLIGHTS:**

Letter of Intent dated: December 27, 2013

Technical Assistance meeting held: Waived by Applicant

CON application filed: January 31, 2014

CON certified as complete: January 31, 2014

Public Hearing held: February 19, 2014

Comment Period Ended: March 21, 2014

Preliminary Analysis released: March 24, 2014

Record Closed: April 11, 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:**

As stated above National Health Care Associates, Inc. (NHCA) currently provides support services to 38 nursing centers in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, and New Jersey. Westgate Center for Health and Rehabilitation, LLC was formed for the purpose of leasing and operating Kindred Westgate Manor, This is a skilled nursing facility with 65 licensed SNF/NF beds and 39 Level IV PNMI beds located in Bangor, Maine. This facility is currently leased and operated by Kindred Nursing Centers West, LLC. The lessee is Ventas Realty, Limited Partnership. Marvin Ostreicher, President of NHCA will act as sole manager of the newly formed corporation. This applicant is currently licensed in the State of Maine. There have been no surveys of NHCA associated facilities in Maine since the company began operations in mid-2013. CONU looked at the most recent surveys available at Medicare.gov for NHCA run facilities elsewhere to evaluate the applicant’s ability to provide services at the proper standard of care.

Our review determined that 5 facilities of 19 evaluated (20.83%) had ratings of below average or much below average in 3 or more categories. These five facilities were:

* + Water’s Edge Center for Health and Rehabilitation
  + Ross Center for Health and Rehabilitation
  + The Pines at Catskill Center for Nursing and Rehabilitation
  + The Pines at Glens Falls Center for Nursing and Rehabilitation
  + The Pines at Utica Center for Nursing and Rehabilitation

The applicant has provided an overall description of NHCA’s approach to improving CMS ratings.

It should be noted in the prior preliminary analysis 3 of these facilities received a much below average or below average rating in 3 or more categories (Village Crest Center for Health and Rehabilitation, The Pines at Catskill Center for Nursing and Rehabilitation, and Pine Heights at Brattleboro Center). Only one facility, The Pines at Catskill Center for Nursing and Rehabilitation remains on this list. CONU has requested that the applicant submit a specific action plan for each of the five facilities sited above with particular emphasis on The Pines at Catskill Center for Nursing and Rehabilitation since that has remained on the list.

Mr. Kevin Prisco, Director of Operations, NE Region and Ms. Donna Megrey, Vice President of Clinical Operations responded to our request through a February 14, 2014 letter. The companies’ response is below:

“One of the new systems that we have put into place to assist in monitoring and improving the overall quality in our centers is the Abaqis program. We introduced this program in the fourth quarter of 2013 and we expect to see results over the next 6 months. Abaqis has four main elements to assist in improving the overall quality of each nursing facility. Abaqis helps to identify the root cause of issues, It helps prepares the facility for surveys, it provides a solid foundation for QAPI and it tracks and trends resident and family interviews. In addition, Abaqis will track the hospital re-hospitalization rates at each center. Not only will the program provide the tools needed for each center to improve their overall quality but the program allows for multiple users, which will allow Regional staff to view the data and assist in the development of appropriate interventions when needed. This tool will have a positive impact on the star rating of the health inspections and the quality measures which will in turn will drive the overall star rating for these facilities. While it will benefit each of the centers, it will yield particular benefits to those centers In need of Improvement, as we detail below.”

**“Water's Edge Center for Health and Rehabilitation - Middletown, CT** - Overall 2 star Health inspections are a 2 star as the facility received deficiencies with actual harm during its 2013 annual survey. These deficiencies were self-reported incidents to the department of health. Immediate actions were taken by the facility to correct the issues when the incidents were discovered and reported. Past surveys were above average for the facility. Overall staffing at the facility is a 2. The facility is currently recruiting for additional RN coverage which we anticipate will increase its staffing component to at least a 3.”

**“Ross Center for Health and Rehabilitation - Brentwood, NY** - Overall 2 star The facility had 14 deficiencies with no harm in 2013 which was above the state average of 7. The addition of the Abaqis program here will help those better Identify quality issues and put a plan in place which will result in a better survey outcome moving forward. Staff is a 1 star currently. There is a new Administrator in place who has adjusted some of the staffing ratios which should bring their staffing star rating up. In addition the facility is also trying to recruit more RN's.”

**“The Pines at Catskill for Nursing and Rehabilitation - Catskill**- Overall 1 star The health inspection star rating is a 1 which relates to poor survey outcomes in 2012. In 2013 the facility received only one no harm deficiency. The facility currently is closely monitoring its quality and outcomes and is working diligently to improve this rating over time. The staffing ratio for this facility is currently a 2 Star rating. We have increased our recruiting efforts in this rural area in order to attract additional staff especially RN's We have recently hired a new Administrator who is known to the area and is assisting in the recruitment efforts. Progress has been made at this center which we anticipate will translate into a higher star rating in the near future.”

**“The Pines at Glens Falls for Nursing and Rehabilitation - Glens Falls, NY** - Overall 2 star The health inspection rating is currently a 1. This past month the decision was made to replace the Director of Nursing. Currently we have a Regional Clinical Services director there as the Director of Nursing. She will remain at the facility until she feels comfortable that all systems are in place to address identified deficiencies, and the quality is at a more acceptable level. The Abaqis system will assist her in the identification process of where potential issues exist. Staffing at this center is at a 2 star rating which is also related to the challenge of attracting RN's to the area. With the CSC in the DNS position and working to address these several issues, we anticipate that the overall star rating will improve.”

**“The Pines at Utica for Nursing and Rehabilitation - Utica, NY**· Overall 1 star The health inspection rating is a 1 star rating, which is related to an immediate jeopardy citation in 2011. Since that time the facility has shown improvement year over year in its survey results. For the past 2 years it has had 5 deficiencies each year with no harm which is below the state average of 7 such deficiencies. With a good survey this year the facility's health inspection rating and overall rating will increase significantly. Currently the facility is at a 5 star rating for its quality measure. Staffing is at a 1 star currently. This is due to the recruitment issue of RN's in this very rural area. We are continuing to intensify our recruitment efforts for RN's for this facility.”

We appreciate this opportunity to set forth the several measures we are taking to improve the CMS Medicare Compare Star ratings at each of these facilities. Should the DLRS/CON staff have further questions or seek additional detail, we would be pleased to provide.

The applicant has demonstrated their ability to maintain services at the proper standard of care in other states. However, 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 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)** Westgate’s most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps Westgate 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 Westgate carried out by DLRS over the past year, and a description of the remedial measures taken to address the identified deficiencies.

**3)** An analysis prepared by the Clinical Operations Department of NHCA of key Abaqis trends at Westgate relating to quality measures, along with a review of the quality improvement steps being undertaken as a result of the monthly clinical reports from the Westgate Director of Nursing Services.

1. **Economic Feasibility:**

Westgate Center for Health and Rehabilitation, LLC (Westgate) is a newly formed Delaware limited liability company formed by Mr. Marvin Ostreicher, President of National Health Care Associates, Inc. (NHCA). As stated previously in this application Mr. Ostreicher and NHCA recently received approval to operate 7 Maine nursing homes through VK Health Facilities, LLC. Since these facilities only recently began operating in the State of Maine, CONU utilized five years of historical financial data (2008 through 2012) to assess the applicants past financial performance. NHCA operated twenty-four nursing homes located in Connecticut, New Jersey, New York and Vermont during this time frame. A review of the NHCA Combined Statement of Operations and Combined Balance Sheets verifies the applicant’s assertion that NHCA’s operating margins have increased from .87% in 2008 to 3.23% in 2012. This financial ratio is important because it shows NHCA’s ability to expand and bring new facilities under management. The applicant also states that NHCA has built a strong aggregate equity position. Shareholders/Members equity has increased from $31,275,420 in 2008 to $37,506,096 in 2012 an increase of approximately 20%. The average return on equity for this time period was 34.3%. The current ratio (Current Assets/Current Liabilities) has improved from .893 in 2008 to 1.02 in 2012 which demonstrates NHCA’s ability to meet its current short term obligations. NHCA has sufficient financial resources to assist the applicant in the event that financial projections are not met.

The applicant provided operating results for the related Maine-based facilities for July through November of 2013. Due to a one-time charge of $627,000 and a lower than expected occupancy level, net income is running below projections. The applicant plans to utilize an extensive marketing program to enhance occupancy. The facility will also strive to shift their payor mix and attract more Medicare patients to align with regional averages. Additional efforts at staff recruitment will be taken to reduce overtime pay. Even using conservative occupancy projections (90%) the applicant believes that they can achieve net income of $1,336,931.

The applicant submitted 3-year financial projections for the operation of Westgate Center for Health and Rehabilitation, LLC. Net income is expected to rise from $448,897 in year 1 to $882,823 in the third year of operation which is sufficient to support the operation of the facility. CONU examined the underlying assumptions used to prepare these projections (Exhibit IV-A of the CON application) and believe they are reasonable. These assumptions include no inflation-based increases in either Medicare or MaineCare reimbursement and a small 1.5% increase in private pay rates. As stated earlier a shift in payor mix toward more Medicare patients is anticipated. Wage and benefit expenses are anticipated to rise by 1% annually with the exception of health insurance costs which is anticipated to increase by $85,000. Facility related costs are estimated to rise by 1-2%.

**MaineCare Neutrality**

The applicant included a pro forma cost report for the first year of operation for Westgate Center for Health and Rehabilitation, LLC. Based upon our review this cost report was prepared in accordance with the Principles of Reimbursement for Nursing facilities and is based on the most recent rate letter. The applicant is assuming control of an existing facility. There are no plans for significant capital expenditures or the need to borrow additional funds. Fixed costs are expected to decline due to a decrease in lease costs and management fees. The current staffing patterns and benefit packages will remain consistent with the facilities historical operations. The current MaineCare direct and routine rates paid to the facilities will remain the same. MaineCare neutrality has been achieved.

**Changing Laws and Regulations**

Certificate of Need Unit staff 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.

Due to the applicant’s limited history operating health care facilities in the State of Maine and recent operating results which failed to meet financial projections 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. **Public Need:**

This transaction involves the applicant assuming operational control of an existing nursing facility which has provided services for many years. The applicant analyzed historical occupancy patterns for 2010 through 2012 based on “as filed” cost reports submitted to the DHHS Office of Audit. These trends show that this facility has an overall occupancy of 98%. This demonstrates a continuing health need in the areas served by these facilities and demonstrates that these facilities will continue to address specific health problems in the areas served.

The applicant plans to increase Medicare utilization at this facility. This reflects the market attractiveness of skilled rehabilitation services. Skilled services decrease healing times and allow patients to return home faster which has a positive impact on health status indicators of the population served.

The services affected by the project will be accessible to all residents of the areas proposed to be served. The applicant states that this facility will maintain accessibility and have admissions policies that are consistent with state regulations and standards and will accept residents who are medically qualified for these services.

The applicant intends to implement several initiatives to align services with the needs of the community and other health care providers to improve occupancy. These initiatives include implementing a Passport Rehabilitation Program which provides physical, occupational and speech therapies to a wide-range of residents and patients, customized to meet their specific needs, for the best possible outcomes. Each center will employ a Director of Admissions and Marketing, who will be dedicated to implementing a quarterly marketing plan to enhance the center’s occupancy. A Regional Marketing & Census Development Director will be responsible for consulting and directing the centers to searches for new business opportunities. Each facility will be monitored to ensure that they are meeting the needs of patients from referring hospitals.

CONU believes that these initiatives will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

1. **Orderly and Economic Development:**

The applicant is assuming control of an existing facility. Area capacity is not great enough to suggest a benefit from eliminating these services or substantial opportunities to modify services to reduce total healthcare expenditures.

This project is MaineCare neutral because there will be no increase in MaineCare reimbursement associated with this project. No additional State funding is required.

Due to these factors it is unlikely that a more effective, more accessible or less costly alternative technology or method of service delivery will become available.

1. **Outcomes and Community Impact:**

The applicant is assuming control of an **existing** nursing facility. Westgate Center for Health and Rehabilitation will adopt practices currently in place at NHCA run facilities in other states. These practices provide program enhancement, policy development, care audits and inspection, regional clinical service nurses, compliance monitoring with Federal and State regulations along with on-site professional staff training. This leads to the development of policies and procedures which will ensure high quality outcomes. Continuing necessary services in the current geographic areas will have a positive impact on the quality care. The existing scope of services will not be immediately changed and any future addition of services will be carefully aligned with the needs of the community. Existing service providers will not be negatively impacted.

1. **Service Utilization:**

The applicant described aspects of NHCA supported facilities that ensure appropriate utilization and a proper scope of service. No additional beds and no new services are proposed in this application.

**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 with conditions.

**VII. RECOMMENDATION:**

CONU recommends this application 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)** Westgate’s most recent standing under the CMS Medicare Compare 5 Star Quality Rating and steps Westgate has taken or will take to maintain positive indicators and improve average or below average indicators.

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