

# **BRIEFING MEMO**

## **Amenity Manor** **Replacement Facility**

**DATE:** February 5, 2010

**TO:** Brenda M. Harvey, Commissioner, DHHS

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

**FROM:** Phyllis Powell, Manager, Certificate of Need  
Larry Carbonneau, Health Care Financial Analyst  
Richard April, Health Care Financial Analyst

**SUBJECT:** Proposal by Rousseau Management, Inc.; HLR Mar, LLC; and Horizons Living and Rehab Center, Inc. to build and operate a replacement facility for Amenity Manor in Brunswick.

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

**REGISTERED AFFECTED PARTIES:** None

### **I. BACKGROUND:**

- Mitchell A. Rousseau, the applicant, is the sole owner of Rousseau Management, Inc. and Horizons Living and Rehab Center, Inc. He has 100% of the membership interests in HLR MAR, LLC, which is the company that would own the real estate that Horizons Living and Rehab would rent.
- This project is part of the ongoing process of transferring ownership of the assets of Rousseau Enterprises, Inc. (owned by the applicant's father Richard A. Rousseau) to Rousseau Management, Inc. Transfers of the residential care facilities Dionne Commons and Skolfield House occurred during 2006 through 2008.
- Amenity Manor's last licensing review occurred on December 5, 2008. There were several findings related to relatively minor safety concerns as well as a finding related to the condition of a sewer pipe running through a linen closet. There was no corrective action plan required. The Amenity Manor facility was licensed on May 1, 2009 and its license remains effective until April 30, 2010.
- MaineCare neutrality for this project was achieved by the applicant utilizing the funding stream for 20 of the 57 nursing beds of Montello Manor in Lewiston.

- CONU released a preliminary analysis on October 22, 2009 that recommended disapproval. That recommendation was based on the applicant failing to meet the criteria specified for Public Need, Orderly & Economic Development, State Health Plan, and Outcomes & Community Impact. The applicant submitted a written response following the release of the preliminary analysis. CONU still had some concerns regarding this project's impact on the Lewiston/Auburn community. A public hearing was held in Lewiston on December 17, 2009. The public comment period ended January 19, 2010. The applicant presented additional information, which is included in the transcript of the public hearing, and on file at the Division of Licensing and Regulatory Services.

## II. PROJECT DESCRIPTION:

The applicant proposes replacing the 57-bed Amenity Manor facility in Topsham. The new facility in Brunswick will be a 65-bed dually-certified long-term care facility. The cost estimate to construct the new facility in Brunswick is \$8,500,000 or \$130,769 per bed. The total square footage of the new facility will be approximately 38,000 square feet. The applicant will provide \$288,000 from equity financing and the remaining (96.5%) will be bank financed. All personnel currently working at Amenity Manor will be transferred to the new facility.

The project will add 8 nursing beds to the Brunswick/Topsham area and reduce 20 nursing beds from the Lewiston/Auburn area. The applicant will continue to operate 37 of the 57 nursing beds along with the 44 residential care beds (licensed separately as Montello Commons) at the Montello Manor facility. A May 2009 Muskie survey indicated occupancy of the Lewiston/Auburn area is 93.5%. This indicates that 510 nursing facility beds were occupied. The elimination of 20 beds will lower the number of beds available in the Lewiston/Auburn area to 525. The Office of Elder Services, through its Lewin-group study, indicates the need for nursing beds in Androscoggin County ranges from 570-646 beds in 2010 and 511-672 beds in 2015.

## III. HIGHLIGHTS:

Letter of Intent dated January 6, 2009  
Technical Assistance meeting held February 6, 2009  
Application filed and certified as complete on June 19, 2009  
Public Informational Meeting held on July 8, 2009  
Public comment period ended August 7, 2009  
Preliminary analysis released on October 22, 2009  
Public comment period ended November 6, 2009  
Public Hearing held on December 17, 2009  
Public comment period ended January 19, 2010

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

A member of the public at the public hearing held December 17, 2009, expressed that they believed as a matter of operations that the facilities could operate at nearly 100% capacity. Additional comments from the public indicated that other providers were certain that the removal of twenty beds from the area would not be burdensome. Another provider commented on the importance of operating at a high occupancy. Concern for the quality of life of the residents was also mentioned. Comments were directed at the need to replace aged and inefficient facilities with new modern, more efficient facilities.

Following release of the Preliminary Analysis, the Office of Elder Services (OES) provided additional comments on January 19, 2010 regarding two areas which OES had previously commented on August 5, 2009 during the open comment period. These January 19, 2010 comments reflected new information entered into the record at the public hearing on December 17, 2009.

OES recognized that developing a 65-bed facility by the "Green House" "multi-building design rather than the proposed single building design would add approximately \$1 million to the estimated site improvements cost." The additional costs would require additional MaineCare cash flow and would not maintain MaineCare neutrality. OES concluded their comments by stating, "Therefore, we are satisfied that the "Green House" model is not a feasible alternative for the proposed replacement facility." CONU concurs with this conclusion.

OES had previously expressed concern with the delicensing of 57 beds in Androscoggin County. OES concluded that the delicensing of 20 NF beds at Montello Manor will not adversely impact Androscoggin County residents that need MaineCare nursing services. CONU concurs with this conclusion.

**V. CONU ANALYSIS/APPLICANTS COMMENTS (condensed):**

The applicant provided information following the release of the CON preliminary analysis. This information included comments regarding Public Need, Orderly and Economic Development, State Health Plan and Outcomes & Community Impact. The applicant provided numerous supporting documents, including:

- Commitment letters from Bar Harbor Bank & Trust and Small Business Administration;
- A letter from Nason Mechanical Services;
- Completed Financial Projections from an independent CPA firm;
- Signed Financial Statements from Mitchell Rousseau, Dionne Commons, Skolfield House and Rousseau Management, Inc.;
- Replacement Facility expenses paid to date;
- Sources of Funds document from Mitchell A. Rousseau;

- A letter from Gawron Turgeon Architects; and
- A letter from Planning Insights, Inc. addressing the market study previously provided.

The applicant provided additional information at the Public Hearing including:

- A letter indicating Rousseau Management, Inc.'s intent to continue to operate 37 of the 57 nursing beds at Montello Manor after project implementation;
- A follow-up letter from Planning Insights, Inc. which includes the impact of reallocating 20 nursing beds from Montello Manor to Brunswick; and
- Revised pro forma financial statements for Rousseau Management, Inc.

i. Public Need

In the preliminary analysis, Office of Elder Services (OES) stated: "In conclusion, we do not oppose, in principle, the CON application to replace the existing Amenity Manor nursing facility. The replacement facility will be a better environment for residents and staff. However, we recommend that the applicant and his architect consider the "Green House" model as a "state of the art" replacement for the existing facility. And, we recommend that the applicant purchase "reserved" nursing beds rather than delicense Montello beds to cover the MaineCare shortfall."

In response to the concerns of Office of Elder Services, the applicant submitted a letter from Gawron Turgeon, their primary architect. The letter discusses how the proposed facility will incorporate concepts of the "Green House" model:

- Large resident room windows will receive natural sunlight at some point every day;
- Each resident room will contain a private bathroom;
- Each of the three wings or "neighborhoods" will have its own shared living area providing a fireplace, nutrition area, nurses' area, clinical support spaces and direct access to an exterior patio and garden area; and
- Décor and furnishings have been selected to create a warm and comfortable environment.

The application describes in detail the physical layout of the proposed Brunswick facility. In addition, the applicant documents how the new facility will be superior to the existing one in Topsham. The new facility is of traditional institutional design but utilizes design concepts derived from the "Green House" model.

The applicant suggested that further incorporation of "Green House" model tenants will have been prohibitively expensive and estimated the expense as greater than \$1.068 M. CONU accepted the rationale for the proposed facility's plan.

Additionally, the applicant must demonstrate the extent to which specific health problems are addressed by the new facility. The applicant did not identify any specific health problems that will be addressed by replacing the Topsham facility with a new facility in

Brunswick. The applicant infers and Office of Elder Services agrees that the project may have a positive impact on health status indicators by providing a more modern, cleaner environment. The applicant did not submit additional quantifiable public health information specific to this project.

A primary concern of CONU, as stated in the preliminary analysis, was that the applicant did not address the impact of removing 57 nursing beds from the Montello facility and the Androscoggin County area. The applicant now proposes transferring 20 beds from Montello Manor to the planned Brunswick facility. The applicant plans to continue to operate the remaining 37 nursing beds at Montello Manor after project completion. This scenario will result in a total of 525 nursing beds in the Lewiston/Auburn area; therefore, the number of nursing beds will remain above the 510 nursing beds which were occupied in the May 2009 Muskie market study.

CONU recommends the Commissioner find that the applicant has demonstrated that they meet the CON Public Need criteria.

ii. Orderly and Economic Development

Planning Insights, Inc. performed two studies analyzing three years of occupancy and payee data for six nursing care facilities, including Montello Manor in the Lewiston/Auburn area. The second study dated, December 8, 2009, is intended to supersede the first and incorporates two scenarios: the closure of all 57 beds at Montello Manor and the reallocation of 20 beds at Montello Manor.

In the first Planning Insights, Inc. analysis, dated November 3, 2009, the analysis made an incorrect assumption that bed capacity at Russell Park was 62 in 2008 when it was 50. Additionally, the analyst did not take into account that D'Youville Pavilion, though licensed for 280 beds, was staffed for 210 beds in 2007. The second Planning Insights, Inc. analysis, dated December 8, 2009, did incorporate the correct number of beds at Russell Park. The following charts (Chart A and B) were developed by CONU based on the data provided by Planning Insights, Inc.

**CHART A: Lewiston-Auburn Occupancy Rates with Closure of Montello Manor**  
(Assumes 25 displaced residents placed in the 5 remaining NF – Clover Manor +7, Marshwood +5, Russell Park +3, d'Youville Pavilion +10) – Based on data provided by Planning Insights, Inc.

	Clover Manor	Odd Fellows	Marshwood	Russell Park	d'Youville Pavilion	Total
Beds	110	26	92	50	210	488
Bed Days	40260	9516	33672	18250	76860	178558
Revised Resident Days	40586	9222	33456	18191	76522	177977
% Occupancy	100.81%	96.91%	99.36%	99.68%	99.56%	99.67%

- CONU believes it is not reasonable to assume the remaining nursing facilities will be able to operate at 100% capacity. Typically, CONU has used 95% as the upper limit for occupancy. Chart A indicates that if Montello Manor were to be closed

and all 57 nursing beds taken off the market, 25 individuals could be absorbed by the remaining providers putting them at or above 100% capacity. CONU concludes that the removal of 57 beds from the Lewiston/Auburn area would not result in “market equilibrium” as proposed by the applicant. Because the applicant has agreed to remove 20 nursing beds from the Lewiston/Auburn area and operate the remaining 37 nursing beds, CONU believes that chart B represents the impact that delicensing 20 beds would have on the occupancy of the Androscoggin nursing facilities.

**CHART B: Lewiston-Auburn Occupancy Rates with 37 Beds Remaining Open at Montello Manor (Assumes 20 Displaced Residents Placed in 5 Competing NF, Clover +4, Odd Fellows +1, Marshwood +1, Russell Park +3, d'Youville +8)**

	Clover Manor	Odd Fellows	Marshwood	Russell Park	d'Youville Pavilion	Montello Manor	Total
Beds	110	26	92	50	210	37	525
Bed Days	40260	9516	33672	18250	76860	13505	192063
Revised Resident Days	39491	9587	33091	18191	75792	13505	189657
% Occupancy	98.09%	100.75%	98.27%	99.68%	98.61%	100.00%	98.75%

- Chart B indicates that 20 individuals could be absorbed into the five competing nursing facilities if Montello Manor were to continue to operate 37 nursing beds.

CONU recommends the Commissioner find that the applicant has demonstrated that they meet the CON Orderly and Economic Development criteria.

iii. State Health Plan

The applicant initially did not provide measurements that they will collect to determine demonstrable quality improvements. In the applicant’s response to the preliminary analysis, they provided information regarding the establishment of a continuous Quality Improvement Committee. The committee will:

- Provide leadership and direction to the quality improvement process;
- Select issues to review for quality improvement activities;
- Review data to determine if quality improvement activities are necessary;
- Establish plans of action and follow-up; and
- Monitor progress of implementation of plans of action.

CONU believes the establishment of this committee is an important first step in ensuring continuous quality. The applicant did not provide a specific timeline for the implementation of this process. The applicant also did not define specific quality measurements and initiatives. The development and reporting of these metrics is included as a recommended condition of this CON.

The project proposes no increase in MaineCare costs. The State Health Plan states that projects should lead to lower costs of care and increase efficiency through such

approaches as collaboration or consolidation. The applicant does not address the increased cost per bed that the new facility will have. In the applicant's initial response to the preliminary analysis, a chart was presented which shows a four year savings to the MaineCare program of \$9,615,560. Now that the applicant proposes to keep the 37 beds at Montello Manor in operation, CONU has determined that there will be no savings in MaineCare costs as a result of this project. Statewide, nursing facility bed count will be reduced by twelve. MaineCare neutrality for the project will be achieved resulting in no additional costs to the MaineCare system.

The applicant also included new information that indicated that the proposed plan will allow the facility to improve the coordination of its electronic medical record. The close coordination of the new facility with the doctors offices in the same medical complex will allow for electronic record monitoring that will, as the applicant states, "greatly reduce the medical transcription error rate".

CONU recommends the Commissioner find that the applicant has demonstrated that the project is consistent with the State Health Plan criteria based on the priorities for public safety, increased efficiency through consolidation, electronic medical record and "green" best practices.

#### iv. Outcomes and Community Impact

The applicant states "the benefits of a replacement facility will allow the staff to fully embrace and pursue the culture change model of care that cannot be accomplished at the existing facility. Since this is a replacement facility for Amenity Manor which already serves the Brunswick/Topsham community – we feel the new facility will create no negative impact to the providers in our service area. The Muskie study for Androscoggin County point in time survey shows there were approximately 40 empty beds on May 15, 2009 (excluding Montello Manor). Therefore, we feel Montello's 57 beds will be absorbed in this service area."

CONU agrees with the May 15, 2009 Muskie study for Androscoggin County that there were 46 beds unoccupied at that specific point in time in the five facilities excluding Montello Manor. CONU does not believe that the reduction of 20 beds in the Androscoggin County market will result in a negative community impact as the competing facilities have the capacity to absorb more individuals.

CONU recommends the Commissioner find that the applicant has demonstrated that they meet the CON Outcomes and Community Impact criteria.

## VI. CONCLUSION:

For all the reasons set forth in the Preliminary Analysis and in this memorandum, CONU concludes that the review criteria have been satisfied. CONU recommends that the Commissioner approve a Certificate of Need for this applicant.

**VII. RECOMMENDATION:**

CONU recommends this proposal be **Approved with Conditions:**

1. The applicant shall continue to operate the 37 nursing beds at the Montello Manor facility for a period of at least three years following the implementation of this project.
2. The applicant shall present a plan that addresses quality metrics as presented in the STAR program, including current metrics at their facilities and their goals for all their facilities, as well as annual progress reports for three years in accomplishing these goals.
3. The applicant shall provide CONU with a final agreement detailing the operation of the 37 nursing beds at Montello Manor, which includes information on the delicensing of any beds.
4. The applicant shall provide a copy of the management agreement between Rousseau Management, Inc and Horizons Living and Rehab Center, Inc., the operating company, no less than 90 days before occupancy of the facility.

Estimated Capital Expenditure:	\$8,500,000
Estimated Operating Costs:	\$5,485,901