

BRIEFING MEMO

First Atlantic Healthcare, Inc.
Addition of 14 NF/SNF beds at Marshall's

DATE: December 13, 2012

TO: Mary Mayhew, Commissioner, DHHS

THROUGH: Ken Albert III, Director, Division of Licensing and Regulatory Services

FROM: Phyllis Powell, Assistant Director, Medical Facilities
Larry Carbonneau, Senior Health Care Financial Analyst
Richard S. Lawrence, Senior Health Care Financial Analyst

SUBJECT: Reinstatement of 10 Reserved and the addition of 4 new SNF/NF Beds at Marshall's HealthCare.

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: None

I. BACKGROUND:

First Atlantic Healthcare, Inc. (FAH) currently operates 16 nursing and residential care facilities throughout the State of Maine. FAH received approval to purchase the real estate and assets of Marshall's Nursing Home, a 50 bed single level SNF/NF on November 14, 2007. FAH built an addition to the facility to house 15 Residential Care beds. The facility maintained the 50 bed SNF/NF, 15 bed RCF bed complement until the summer of 2012.

On June 6, 2012 FAH announced the closure of Atlantic Rehab and Nursing, a 52 bed SNF/NF located in Calais, ME effective July 6, 2012. An emergency CON was granted to Marshall Healthcare to change their bed complement to 60 SNF/NF beds and 5 RCF beds due to an expected shortage of SNF/NF beds in Washington County.

II. PROJECT DESCRIPTION:

FAH is seeking to close Marshall's residential care wing and reinstate 10 reserved SNF/NF beds and add 4 new SNF/NF beds. This project does not require any capital improvements since the existing structure is capable of housing the new beds without renovation or other equipment.

MaineCare neutrality is achieved by utilizing the revenue stream associated with the closure of 10 RCF beds to fund the additional \$184,354 required for the 4 additional SNF/NF beds. The 10 reserved beds were not factored in to this analysis because 22 M.R.S.A. § 333 (2) allows for the reinstatement of the beds without consideration of the additional costs since the applicant showed that the projected costs of the reinstate beds is consistent with the costs of the beds prior to closure, adjusted for inflation.

The Preliminary Review by CONU staff, dated November 6, 2012, concluded that the applicant had met its burden to demonstrate that the application meets the criteria for approving the project.

III. HIGHLIGHTS:

Letter of Intent filed:	May 9, 2012
Technical Assistance meeting held:	May 15, 2012
CON application filed:	August 6, 2012
CON certified as complete:	August 6, 2012
Public Information Meeting held:	August 27, 2012
Close of Public Record:	August 31, 2012
Preliminary Analysis Released	November 6, 2012
Close of Public Record:	December 3, 2012
Briefing Memo dated:	December 3, 2012

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:

i. Fit, Willing and Able:

FAH has managed nursing homes and residential care facilities in Maine since 1985. The services provided are consistent with applicable licensing and certification standards.

ii. Economic Feasibility:

The applicants pro forma cost report supports the applicant's assertion that this project is financially feasible and will improve the financial resources of the facility. In addition, sufficient financial resources exist to achieve MaineCare neutrality. CONU is unaware of any regulatory changes that would have an adverse effect on reimbursement.

iii. Public Need:

The project will have a positive impact on the health status indicators of the population to be served by providing a needed level of service with the addition of SNF/NF beds. The applicant will offer the services affected by the closure of Atlantic Rehab and Nursing Center to all residents of the service area and therefore will ensure accessibility to the service.

iv. Orderly and Economic Development

Increasing Marshall's SNF/NF bed capacity to 64 beds and discontinuing residential care services is in response to a demonstrated need for more SNF/NF level of care in Washington County. Repurposing the RCF wing for SNF/NF beds is a cost effective solution to a need and will not require any added construction or renovation.

v. Outcomes and Community Impact

The need for additional SNF/NF beds has been demonstrated and will not strain the resources of Marshall's or negatively affect the ability of other existing providers to maintain adequate levels of service. The proposal will ensure high-quality outcomes for the patients served.

vi. Service Utilization

The increase in the number of available SNF/NF beds in the service area does not represent an inappropriate increase in service utilization due to a documented need for the services.

vii. Funding in MaineCare Nursing Facility Funding Pool:

This project utilized no resources from the MaineCare Nursing Facility Funding Pool.

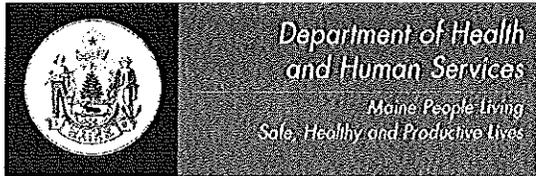
VI. CONCLUSION:

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 the approval of the CON.

VII. RECOMMENDATION:

CONU recommends this proposal be **Approved**.

Estimated Capital Expenditure:	\$	0
Estimated Operating Costs:	\$	184,354



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

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Licensing and Regulatory Services
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December 13, 2012

ACTION REQUESTED

RE: Reinstatement of 10 Reserved and the addition of 4 new SNF/NF beds at Marshall's HealthCare.

Commissioner Mayhew:

Marshall's Healthcare in Machias, Maine plans to close their RCF wing and reinstate 10 reserved SNF/NF beds and add 4 new SNF/NF beds to address a shortage of nursing home beds in Washington County. This shortage is due to the July 6, 2012 closure of Atlantic Rehab and Nursing, a 52 bed SNF/NF located in Calais, ME.

There are no capital costs associated with this project. The project is MaineCare neutral because the applicant will utilize the revenue stream associated with the closure of 10 RCF beds to fund the additional 4 SNF/NF beds. Per 22 M.R.S.A Section 333 (2) reinstatement of the 10 reserved beds is allowed after consideration of the additional costs as reasonable. The CONU has determined that all the review standards have been satisfied and recommends approval of the CON.

The applicant anticipates that that this decision will be forthcoming before December 31, 2012 as this CON was a requirement of the emergency CON signed in July 2012.

A briefing memo dated December 3, 2012 and a preliminary analysis dated November 6, 2012 are attached for your further review. If you have any questions or concerns please do not hesitate to contact me at (207)287-9338.

Sincerely,

Phyllis Powell
Assistant Director, DLRS

**Department of Health and Human Services
Division of Licensing and Regulatory Services
State House, Augusta, Maine
Preliminary Analysis**

Date: November 6, 2012

Project: Reinstatement of 10 Reserved and the addition of 4 new SNF/NF Beds

Proposal by: Marshall's HealthCare - First Atlantic Corporation

**Prepared by: Phyllis Powell, Assistant Director, Medical Facilities
Larry Carbonneau, Senior Healthcare Financial Analyst
Richard S. Lawrence, Senior Healthcare Financial Analyst**

Directly Affected Party: None

CON Recommendation: Approval

	Proposed Per Applicant	Approved CON
Estimated Capital Expenditure	\$ 0	\$ 0
Maximum Contingency	\$ 0	\$ 0
Total Capital Expenditure with Contingency	\$ 0	\$ 0
Pro-Forma Marginal Operating Costs	\$ 184,354	\$ 184,354
Maine Care Neutrality Achieved		YES

I. Abstract

A. From Applicant

“This application, as directed in the Emergency CON [dated June 13, 2012] seeks approval to permanently add 14 NF beds granted temporary status by the Commissioner by relicensing [reinstating] 10 reserved [SNF/NF] beds and adding an additional 4 [SNF/NF beds] at Marshall’s Healthcare located in Machias, Maine. This change would increase the current number of [permanently] licensed beds from 50 to 64 NF beds.”

“Currently the facility is licensed for 60 NF and 5 RCF beds under an emergency CON dated June 13, 2012. Before the emergency CON was granted, Marshall’s was licensed for 50 NF and 10 RCF. [A]s noted above the emergency CON is temporary and requires this filing [application] to permanently retain the new beds.”

“The need for the NF beds was demonstrated in the emergency CON and is reaffirmed in this application. The emergency CON was granted to expand NF services in Washington County in response to the closure of Atlantic Rehabilitation in Calais, Maine a 52-bed N[ursing] F[acility] in June [2012]. Atlantic Rehab’s 52 beds [rights were utilized by the applicant to fund, in part, a new nursing facility in Ellsworth, Maine. That CON application was] approved this past February and reaffirmed by the commissioner in May. The CON was approved to specifically build a replacement facility in Ellsworth. DHHS suggested that this closing might generate need for NF beds in Washington County and granted the Emergency CON to Marshalls based on the [analysis conducted by CONU] at that time. We are requesting the added capacity to Marshall’s be permanent through this application.”

“This project does not require any capital improvements. The existing [facility] structure is capable of housing the new beds without renovation or other equipment. Therefore this project provides a very economical pathway to add a nominal amount of needed NF beds to Washington County.”

“We believe the additional resources needed to add 14 beds will be provided by the value of the 10 reserved NF beds and from resources provided by the elimination of the 10 PNMI RCF beds. As far as the remaining [MaineCare resources], we intend to use at the Ellsworth facility to fund new PNMI beds”.

II. Fit, Willing and Able

A. From Applicant

“Facilities under the management of First Atlantic Healthcare have had isolated deficiencies that have been corrected in a timely manner. As of the submission date all facilities under our management are in compliance with State and Federal licensing standards.”

Ability to operate the proposed project

“First Atlantic has significant experience operating nursing facilities.”

Profile of First Atlantic Corporation:

“The following individuals comprise the senior executives at FAH:

Kenneth Bowden, CEO	21 years with FAH
Craig Coffin, COO	29 years with FAH
Tammy Rolfe, Corporate Compliance Officer	3 months with FAH
Wanda Pelkey, CFO	14 years with FAH

“The facilities managed by First Atlantic Healthcare are as follows”:

Woodlawn Rehabilitation and Nursing Center Skowhegan, Maine	Collier's Rehabilitation & Nursing Center Ellsworth, Maine	Colonial Healthcare Lincoln, Maine	Dexter Healthcare Dexter, Maine
Falmouth By the Sea Falmouth, Maine	Freeport Place Freeport, Maine	Hawthorne House Freeport, Maine	Katahdin Healthcare Millinocket, Maine
Portland Center for Assisted Living Portland, Maine	Marshall's Healthcare Machias, Maine	Ross Manor Bangor, Maine	Seal Rock Healthcare Saco, Maine
The Inn at Atlantic Heights Saco, Maine	Seaside Healthcare Portland, Maine	Stillwater Healthcare Bangor, Maine	Washington Place, Calais, Maine

“The applicant refers the Certificate of Need Unit to the Division of Licensing and Regulatory Services for confirmation that the above named entities have had isolated deficiencies that have been corrected on a timely basis.”

“Neither First Atlantic nor any of the principals of either organization have been barred from participation in the Medicare or Mainecare programs at any time or found guilty of any infractions that would eliminate their participation in this project.”

“Principal profiles for First Atlantic Corporation are as follows:

Ronald C. Coffin.

"Mr. Coffin is Founder and President of First Atlantic Healthcare. He has been involved in healthcare services since 1964. A graduate of University of Maine and Boston University School of Law, Coffin has strong ties with Maine's long-term care community. From 1968 through 1984 he was the owner and operator of First Allied Corporation, which owned and operated nursing facilities in Maine, Massachusetts, Florida and California. First Allied was sold to Hillhaven corporation in 1984. One year later Mr. Coffin started First Atlantic Corporation the successor to First Allied."

"In the intervening years of 1985 through 2003, Mr. Coffin and First Atlantic Corporation/Healthcare have acquired and managed all of the facilities named above and additionally have operated and owned an institutional pharmacy known as Downeast Pharmacy and First Allied Home Health, a twelve office home health company which operated in Maine."

"Mr. Coffin's operations have a reputation for quality and sound fiscal management. Today, his enterprises employ nearly 1,500 individuals ranking on a combined basis in the top fifteen employers in Maine."

Kenneth W. Bowden

"Mr. Bowden serves as First Atlantic Corporation's Chief Executive Officer and is responsible for overall First Atlantic activities including management, consulting, development and regulatory compliance."

"A graduate of Ellsworth High School in 1973, he continued his education at the University of Maine at Orono, earning a Bachelor's degree in Accounting in 1977 and an M.B.A. in 1979. Employed by Ernst & Whinney from 1979 to 1981 in public accounting, many of his audit clients were from the health care field; including St. Mary's General Hospital, Penobscot Bay Medical Center and Northern Maine Medical Center to name a few."

"In 1981, Bowden joined St. Mary's as their Cost and Reimbursement Specialist where he had responsibility for preparation of that organization's annual operating budget and all cost reports. In addition to hospital operations he also had responsibility for Marcott Nursing Home, a 350-bed facility owned and operated by the Sisters of Charity. In 1984, Bowden became the first Chief Financial Officer at Jackson Brook Institute, a newly opened Psychiatric and Drug Rehabilitation Hospital located in South Portland, Maine. In 1991, he joined First Atlantic Corporation as Chief Financial Officer where his duties included financial oversight of the nursing, pharmacy and home health divisions. Promoted to Chief Executive Officer in 1995, he continues to serve in this capacity today."

"For more than 20 years, Mr. Bowden has been involved with healthcare services. He is a past board chair of Maine Healthcare Association and Goodwill Northern New England. Bowden is currently a member of the Council of Ministries at the Falmouth Congregational Church."

Craig G. Coffin

“Mr. Coffin is the company’s Chief Operating Officer and as such he oversees all operational and development aspects of the company. A licensed Nursing Facility Administrator in Maine (license number AD 523) and Florida, Mr. Coffin began working in the field of geriatric healthcare in 1985. He has run several nursing facilities including the flagship facility Falmouth by the Sea from 1990 to 1993. He was instrumental in the development and construction of First Atlantic HealthCare a 119 bed facility with 83 skilled and long term care beds, 24 Residential Alzheimer’s beds and 12 Assisted living beds. In 1994 he joined the company’s corporate offices and held the position of Vice-President. Promoted again in 1995 to the position of Chief Operating Officer, Coffin is responsible for all land acquisition, permitting, development and operations of the company. Most recently, he oversaw our development in Saco Maine.”

“Born in Massachusetts and educated at Proctor Academy, Dean College and the Florida State College of Healthcare for his AIT program, he has for nearly 20 years, been involved with the provision, direction and management of healthcare to the elderly.”

B. CONU Discussion

i. CON Review Standard

The relevant standard included in this section is 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.

ii. CON Analysis

First Atlantic Healthcare received approval to purchase the real estate and assets of Marshalls Nursing Home, a 50 bed single level SNF/NF, on November 14, 2007. First Atlantic built an addition to this facility in order to provide services for 15 Residential Care beds that were located in a separate building at a contiguous site which was not part of the First Atlantic purchase. The resulting capacity was a multi-level 50 bed SNF/NF and a 15 bed RCF. The facility stayed with this bed mix until the summer of 2012.

On June 6, 2012 First Atlantic announced the closure of Atlantic Rehab and Nursing, a 52 bed SNF/NF located in Calais, ME effective July 6, 2012. Based on an expected shortage of nursing beds in Washington County an emergency CON was granted to Marshall Healthcare and Rehabilitation Center on June 12, 2012 temporarily changing their bed complement to 60 SNF/NF beds and 5 RCF beds.

Marshall’s Healthcare, LLC is licensed to provide two levels of care at its long-term facility operated as Marshall Healthcare and Rehabilitation Center. The license provides for 60 Skilled/Nursing beds and 5 Level IV residential care beds at 16 Beal Street in Machias, Maine. The Administrator for the 60 NF beds is Debra Murphy and the Administrator for the 5

residential care beds is Adrienne Strosnider. The license was issued on October 11, 2012 and is valid until June 30, 2013.

A review of Marshall Healthcare's last completed survey data, available from the Medicare.gov¹ website revealed the following ratings:

Marshall Healthcare Nursing Home Compare Ratings	
Category	Rating
Overall	Average
Health Inspections	Below Average
Staffing	Above Average
Quality Ratings	Above Average

Marshall Healthcare scored average or above average in 3 out of 4 categories rated by CMS with an overall rating of average. During the last survey completed on 3/8/2012, one (1) deficiency was found. The deficiency was a Level 2 deficiency which indicates minimal harm or potential for actual harm to some residents.

Inspectors determined that the facility failed to:

- Have a program that investigates controls and keeps infection from spreading.

All deficiencies were corrected by 3/28/2012.

Deeming of Standard

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

First Atlantic Corporation has managed nursing homes and residential care facilities in the State of Maine since 1985. The services provided by the applicant at Marshall Healthcare and other facilities under their management are consistent with applicable licensing and certification standards. The applicant provided a pro-forma operating report that included additional allocations for nursing staff.

¹ MaineCare.gov Retrieved from website 11/1/2012. Online: <http://www.medicare.gov/nursinghomecompare/profile.aspx#profTab=0&ID=205109&loc=Machias%2C%20ME&lat=44.71507889999999&lng=-67.46137599999997&bhcp=1>

Since the applicant has been a provider of healthcare services that are substantially similar to those services being reviewed, is licensed in the state and provides services that are consistent with applicable licensing and certification standards, the standard is being deemed as met.

iii. Conclusion

CONU 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

A. From Applicant

“Our enclosed proforma financial statement demonstrates feasibility of the proposed project now and in the near future. Historically, rates have kept pace with inflation and while in any given year or few years NF funding lag the rate of increasing costs, Maine’s legislature has shown a willingness to provide inflation adjustments and rebase NF rates periodically.²”The facility at 60 beds (50 NF and 10 RCF) is financially feasible now and adding more beds with little incremental cost only strengthens its ability to remain so despite the high dependence on MaineCare payments to support operations.”

“Based upon our proforma and integral assumptions we have shown feasibility and assert that our firm’s track record of compliance, ability to manage costs and maintain high occupancy in our facilities fits well for this project, now and in the foreseeable future.”

B. CONU Discussion

i. CON Standard

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.

ii. CON Analysis

Financial Feasibility and Staffing

The applicant provided a pro-forma cost report representing the first year of operation of the proposed 64 bed NF. Schedule L of the pro-forma demonstrates that the applicants proposed staffing levels to meet the needs of the additional SNF/NF beds. The increased reimbursement rates resulting from the change to all SNF/NF care as well as the analysis of need located in

² The last rebasing occurred in 2008. This past session a small increase was budgeted to reflect the increase in the provider tax to Federal levels.

Section IV of this analysis supports the applicant's assertion that this project is financially feasible and will improve the financial resources of the facility.

MaineCare Neutrality

This project is subject to MaineCare neutrality. MaineCare neutrality is computed by comparing the utilization of MaineCare resources between Marshall's 50 beds SNF/NF and 10 beds RCF configuration and their proposed 64 bed SNF/NF configuration. (For purposes of this calculation, the current 60 bed SNF/NF and 5 beds RCF granted by the June 12, 2012 Emergency Certificate of Need was not considered since this was a temporary approval.) The current calculation of MaineCare utilization is \$3,191,757. The proposed calculated MaineCare utilization is \$3,836,997, an increase in potential costs to MaineCare of \$645,240.

When requesting a reinstatement of previously reserved SNF/NF beds at the same facility 22 M.R.S.A. § 333 (2) allows for the reinstatement of the beds without consideration of the additional costs if the applicant can show that the projected cost of the reinstated beds is consistent with the costs of the beds prior to closure, adjusted for inflation. There have been no substantial changes to the operating system or cost of the beds absent inflation and the change in case mix.

For the purposes of this analysis only the incremental cost of the 4 additional beds will be considered

The resources available for the project are listed in Table 1: Sources and Uses of MaineCare Funding. The applicant identified two sources of revenue for offsetting the project's annual expenses.

Table 1: Sources and Uses of MaineCare Funding:

Sources	Facility	Available	
		# of Beds	\$ Value
	Marshall's NF Reserved	10	201,635
	Marshall's RCF	10	341,737
	Total	20	543,372
Uses	Marshall's +14 new NF		
	Marshall's RCF bed rights	4	184,354
	Marshall's Reinstated Beds.	10	201,635
	Used in Project	14	385,989

	Remains Marshall's Property (RCF)	4	136,695
	Allocated to MaineCare Funding Pool	2	20,688
		20	543,372
Maine Care Neutrality		-	-

The chart indicates that the revenue stream from the closure of 10 RCF beds would offset the potential costs of the 4 new SNF/NF beds. The value of the revenue stream is \$341, 737. The expected costs to the MaineCare program for the four additional beds are calculated to be \$184,354. The remainder of the RCF MaineCare cash flow has been included in the potential resources needed for CON projects applied for by First Atlantic in Ellsworth and Bucksport. The balance of the MaineCare Funding Pool will be increased by \$20,688 because of this transaction.

The applicant has requested reinstatement of 10 Reserved beds and is in compliance with 22 MRSA Section 333 (1). 22 MRSA Section 333 (2) A requires MaineCare Neutrality to be considered as met. As a consequence, for calculation purposes the value of the reserved beds add 1st criteria and its sources value are equal.

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.

Deeming of Standard

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

The applicant has operated a mixed level of care facility with a total of 60 beds (50 SNF/NF and 10 Level IV PNMI RC beds until an emergency CON was issued on 6/13/2012 when the facility changed to a 60 bed SNF/NF and a 5 bed Level IV PNMI RC bed). If this application were to be approved the applicant would be operating a single level 64 bed SNF/NF facility. The operation parameters being reviewed are similar in size to facilities recently approved to operate in Ellsworth and are similar to the size of operations the applicant operates in Lincoln, Maine at Colonial HealthCare. Colonial is licensed for 60 beds. The applicant operates eleven other

health care facilities that have the same aim, to provide long term care in Maine Residents and thus provide for the same scope of activities.

v. **Conclusion**

CONU 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

“The project will have a positive impact on the health status of individuals who will be served by this project. Specifically, Atlantic Rehab was scheduled for replacement and had significant physical problems that do not exist at Marshalls. Residents admitted from Atlantic Rehab and their families have positive responses to the care and quality of services they have received at Marshalls.”

“Services will be available to all residents in the planned service areas who qualify for nursing facility services based on clinical and financial eligibility criteria. All facilities will have and will follow non-discrimination practices for admission and employment at the facilities.”

Maine’s Population Trends and Implications for Proposed Projects

“The 2010 U.S. Census report and a 2010 report by the Muskie School of Public Service titled Older Adults and Adults with Disabilities: Population and Service Use Trends in Maine 2010 are referenced in this section and each provides unique insight helpful in understanding the projects expected contribution to health problems as measured by health needs in the areas to be served.” Pertinent findings include:

- Maine has one of the oldest populations in the country, ranked 4th in 2008 and is projected to rank 2nd by 2020
- Rural Maine has a higher proportion of older adults ~ approximately 80% of Maine’s towns are classified as rural by CMS
- The number of working age adults available to care for older adults is declining
- Older adults in Maine often live in poverty and with a disability, particularly in rural areas resulting in poor health status
- In 2007, Maine ranked 38th among states in the number of nursing facility beds per 1,000 persons age 65-and –above
- Nearly two-thirds of the 14 nursing facility closures or conversions in Maine between 2001 and 2008 were among the smaller facilities, those with fewer than 50 beds
- In 2008, nearly half of Maine’s nursing facilities were larger than 60 beds
- Between 2008 and 2020 forecasted change in population in Washington county is 1,714 persons age 65+
- In 2008, Washington County had 37 NF beds per 1,000 persons age 65+ only slightly higher than the state-wide average of 35
- In 2008, Washington County had 37 NF beds per 1,000 persons age 65+ only slightly higher than the state-wide average of 35
- In 2008, Washington County had 222 NF beds.

“The closure of Atlantic Rehab beds removes 52 of 222 NF beds (23%) from Washington County. This closure eliminated 23% of the 37 beds/1,000 persons ages 65+ in 2008 in Washington county, leaving 28.5 beds/1000 ages 65+ (based on 2008 populations). This is 29% lower than the state average of 35 beds per 1,000.”

“Analyzed another way demonstrates an immediate need of approximately 25 NF beds in:

Age Grp	2010 Population*	% persons using using NF services	NF Bed Need
65-74	3,276	0.8%	26.2
75-84	2,103	3.6%	75.7
85+	811	11.5%	93.3
Estimated number of residents			195.2
Washington County Beds without Atlantic Rehab***			170.0
Excess (deficit)			(25.2)
* - based on Woods and Poole Economics Inc data			

B. CONU Discussion

i. CON Standards

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.

ii. CON Analysis

On July 6, 2012 Atlantic Rehab and Nursing Center closed its nursing home in Calais, Maine. As a result, 52 of the 222 NF beds (or 23%) in Washington County were taken offline. On January 1, 2012 data from the Muskie school monthly census of nursing facilities in the state indicated that there were 194 patients in the 222 beds or an occupancy of 87.8% in Washington County. This is compared to the State Average for that month of 93.23%. The applicant announced the intended closure of the Calais facility and began to limit new admissions shortly after January 1, 2012, which affects the comparability of more recent data for the County.

In the Certificate of Need application for developing a replacement facility for the Ellsworth area the analysis of need concluded that there was an immediate need for 10 beds in the Calais area. These beds located 45 miles away will only partially meet that need. The most direct route between the two municipalities is 45 miles. Taking U.S. Route 1 is a 60 mile trip.

The U.S Census Bureau³ indicates that 19.9% of residents in Washington County are 65 and older. This means that of the 32,637 residents of Washington County there are approximately 6,500 residents age 65 or older. Washington County residents are three times less likely to live in a multi-unit structure than the rest of Mainers. Per capita income is only 76.4% of the statewide average. Residents of Washington County live in a much more rural environment than the state average. The number of persons per square mile for Washington County is 12.8 compared to 43.1 persons per mile.

Based on demographic data from the Muskie School of Public Service and the 2010 U.S. Census report the applicant calculates that there is an immediate need for 25 additional NF beds in Washington County. There are several problems with this analysis. The first problem is that report is reporting on data trends. The report is based on 2008 data that is then compared to population estimates from the 2010 census. The report itself makes no differentiation between Washington County needs and State use data. The second issue is that it supports the idea that 35 SNF/NF beds for every 1,000 adults aged 65 or older in Maine is the correct number. CONU is relying on the documented fact that there are individuals who have needed to be transferred as far away as Bangor to meet their needs for a SNF/NF bed. The applicant also is attempting to address current federal concerns about the Assisted Housing programs in the State and the reimbursability of those services when provided in a mixed-use facility such as Marshall's. CONU concludes that based on the current conditions in Machias and Washington County that the applicant has demonstrated that there is a need for this service. This project will substantially address specific health problems as measured by health needs in the area to be served by the project by increasing the supply of nursing home beds in the County.

The project will have a positive impact on the health status indicators of the population to be served by providing a needed level of service with the addition of SNF/NF beds.

³ U.S. Census Bureau Retrieved from website 10/30/2012. Online:
<http://quickfacts.census.gov/qfd/states/23/23029.html>.

The applicant will offer the services affected by the project to all residents of the area proposed to be served and therefore will ensure accessibility of the service.

Atlantic Rehab and Nursing Center was an aging facility with significant structural problems that do not exist at Marshall's. Relocating residents to a newer facility will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

v. **Conclusion**

CONU 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 project will not require any added construction or renovation cost to complete. The expansion of a total of 4 additional beds (conversion of 50 NF and 10 RCF to 64 NF) will be accomplished by repurposing the RCF wing for NF services. Marshall’s is able to accommodate the total 14 NF beds because it relicenses the residential care beds as was their original status prior to bed conversion per DHHS regulations. Adding beds to the existing building footprint will maximize the building’s capacity and enhance cost efficiencies thus providing DHHS a very economical alternative to service MaineCare NF residents in Washington County.”

“Our project will incorporate and meet the budget neutrality standard set for nursing facility projects. However, it is worth noting that project costs while limited to currently available resources, are also further constrained by reimbursement regulations governing nursing facilities in Maine. This further consideration is taken into account in our pro-forma filing.”

“The cost report proforma assumes that in today’s dollars and current payment limits and case-mix the MaineCare NF rate will be approximately \$172.90. This rate is less than the current MaineCare average payment rate for NF’s which approximates \$185 per day. Combined with the knowledge that no renovations or new construction is required this is a prompt solution to provide needed NF beds to the community; it’s unlikely that a lower cost alternative is available.”

“Assuming the current value of the reserved beds equals the proforma resources needed to support them, the additional [expenditures] for 14 beds amounts to \$181,424. Marshall’s currently has resources available from its RCF beds which we request be applied towards this deficit. Detailed calculations supporting this schedule follow this report. Further we request the remaining resources identified be used in our Ellsworth project.”

B. CONU Discussion

i. CON Standards

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;

V. Orderly and Economic Development

- 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.

ii. CON Analysis

The decision to increase Marshall's NF bed capacity from 60 to 64 beds and take the 5 residential care beds offline addresses the demonstrated need for more SNF/NF level of care beds in Washington County. Repurposing the RCF wing for SNF/NF beds will not require any added construction or renovation. Adding beds to the existing footprint will maximize the building capacity. It is unlikely that a more effective, more accessible or less costly alternative to providing SNF/NF services is available at this time or in the near future for residents of the area based on the more rural nature of the service area. This project is MaineCare neutral so there is no impact on the total health care expenditures of the area.

The increased allowable operating costs of \$184,354 will be offset by the identified MaineCare revenue stream source which will make the project MaineCare neutral. This project will result in no increased costs to the Maine health care system or require any additional State funding. Because of this, the availability of State funds to cover the increased costs of this project is deemed to be available.

The applicant cited the Muskie report⁴ that indicated that between State Fiscal Year 2000 and State Fiscal 2008 the average number of MaineCare LTC users of SNF/NF services decreased as a percentage of LTC users from 43% to 39%. At the same time, there was an increase in RCF users from 17% to 26%. Currently, there are less costly alternatives available than SNF/NF care. For this given population and the fact that residents in the area are further apart and more likely to live alone, it is unlikely that other service delivery models will be available in the near future to meet this demand.

v. Conclusion

CONU 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.

⁴ Muskie School of Public Service (2010) Older Adults and Adults with Disabilities: Population and Service Use Trends in Maine. P.63.

VI. Outcomes and Community Impact

A. From Applicant

“Due to forecasted population growth in the age 65+ cohort for Washington County and the current bed need as demonstrated in Section IV above, competition is not expected to be adversely impacted as a result of the project. Adding beds to Marshall Healthcare will partially replace beds lost from the closure of Atlantic Rehab in Washington County.

Atlantic Rehab ha[d] long been identified as in need of replacement. In contrast, Marshall’s physical structure is more modern and comfortable providing for a beneficial impact to NF residents in the community.

Marshall’s currently holds an overall 3-star rank using CMS 5-star ranking system. Additionally it achieved a 4 star rank on the system’s subcategories of staffing and quality. This project is not expected to negatively impact this facility’s quality outcomes now or in the future.

The implementation of this project will result in the loss of 10 PNMI residential care beds in the community. However currently only five residents reside in the facility, three of which we believe are clinically eligible for NF level of care. The remaining two RCF residents will be expected to relocate to one of several areas PNMI residential care facilities.”

B. CONU Discussion

i. CON Review Standard

The relevant standard for inclusion in this section is 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.

ii. CON Analysis

The applicant has met the standard for demonstrating need for the requested beds. That the applicant’s assessment demonstrated that the area could use the additional capacity and would not strain the resources of the facility or negatively affect the ability of other existing providers to maintain adequate levels of service. The proposal will ensure high-quality outcomes for the patients served in the enlarged facility.

iii. Conclusion

CONU recommends that the Commissioner find that the applicant has 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

From Applicant

“The Maine Quality Forum is geared towards Hospital and Physician based healthcare and thus its evidence-based medicine principals are generally not applicable to this application. Yet the underlying theme of inappropriate admissions, services or testing is very pertinent in all healthcare delivery settings; nursing facility included.”

“There is a combination of ways inappropriate NF and residential care utilization is mitigated.”

“Consumers seeking NF admission and who will rely on MaineCare to pay for their care must have a physician’s order, meet the strident medical eligibility standards of DHHS and qualify based on an assessment of their income and assets. They must also receive a Goold (Goold is independent organization contracted with DHHS to perform assessments using DHHS criteria) assessment that documents NF level of care is needed based on DHHS medical eligibility standards. Generally speaking, MaineCare consumers who seek NF admission must have a three ADL loss or have cognition challenges which qualify them under Maine’s eligibility standards. The assessments continue on a set schedule to assure continuing need for NF level of services.”

“Medicare also establishes medical necessity standards for skilled care thus insuring only appropriate cases are served. Prior to the expansion of skilled care in nursing facilities most cases were treated in hospitals at significantly higher cost.”

“Lastly, First Atlantic Healthcare has written corporate compliance policies that require all employees to follow State and Federal laws governing the provision of nursing facility and residential care services. We offer employees a compliance hot line whereby they can anonymously contact Vicki White, our corporate compliance officer, who follows up on all reports. The hot line is a vital component for learning of and stopping inappropriate practices that do not comply with laws and regulations.”

B. CONU Discussion

i. CON Standard

The relevant standard for inclusion in this section is 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.

ii. **CON Analysis**

The applicant has met the standard for demonstrating need for the requested beds. The applicant's assessment demonstrated that the area has need for the additional capacity and would not strain the resources of the facility. The Maine Quality Forum has not adopted any principles for nursing facilities that are applicable to the facility for this particular application.

iii. **Conclusion**

CONU 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. Funding from the MaineCare Nursing Facility Funding Pool

VIII. Funding from the MaineCare Nursing Facility Funding Pool

A. From Applicant

“As discussed in Section V above we believe this project meets the constraints of MaineCare neutrality by accessing the value of 10 active RCF and 10 NF reserved beds at Marshall’s”

B. Certificate of Need Unit Discussion

i. CON Standard

The relevant standard for inclusion in this section is related to the needed determination that the project can be funded within the MaineCare Nursing Facility Funding Pool.

ii. Certificate of Need Unit Analysis

This project utilizes resources from bed rights that the applicant has identified as being available to them. The applicant or the facilities providing the resources identified to offset the cost of this project have complied with the requirements for reinstating reserved beds as provided in 22 M.R.S. 333 (1)

Under 22 M.R.S. 334-A (2) Certificate of Need projects to relocate beds are not subject to or limited by the MaineCare nursing facility funding pool.

There are no funds being requested from the MaineCare funding pool. This proposal demonstrates MaineCare neutrality.

iii. Conclusion

CONU has determined that there are no incremental operating costs to the healthcare system there and will be no MaineCare Nursing Facility Fund dollars needed to implement this application.

IX. CON Findings and Recommendations

Based on the preceding analysis, including information contained in the record, the CONU recommends that the Commissioner make the following findings and recommendations subject to the conditions below:

A. 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.

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. The applicant has demonstrated that 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 applicant has demonstrated that 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;

IX. CON Findings and Recommendations

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;

In making a determination under this subsection, the commissioner shall use data available in the state health plan under Title 2, section 103, data from the Maine Health Data Organization established in chapter 1683 and other information available to the commissioner. Particular weight must be given to information that indicates that the proposed health services are innovations in high quality health care delivery, that the proposed health services are not reasonably available in the proposed area and that the facility proposing the new health services is designed to provide excellent quality health care.

E. The applicant has demonstrated that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;

F. The applicant has demonstrated 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; and

G. The project does not need funding from the Nursing Facility MaineCare Funding Pool.

CON RECOMMENDATION: For all the reasons contained in this preliminary analysis and based upon information contained in the record, CONU recommends that the Commissioner determine that this project should be **approved**.