BRIEFING MEMO

Genesis HealthCare of Maine, Inc.
Conversion of 20 RCF Beds to 20 SNF/NF Beds at Windward Gardens

DATE: December 3, 2012

TO: Mary C. 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: Conversion of 20 RCF beds to 20 SNF/NF beds at Windward Gardens located in Camden, Maine.

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:

Windward Gardens is a 78 bed facility located in Camden, Maine. Its' current bed complement consists of 38 licensed SNF/NF beds and 40 licensed residential care beds. Windward Gardens' operating company is Camden Operations, LLC which is a subsidiary of Genesis HealthCare of Maine, Inc. On December 5, 2006, Genesis ME was granted a Certificate of Need to lease and operate a number of other facilities, including Windward Gardens.

II. PROJECT DESCRIPTION:

Windward Gardens is seeking CON approval for the conversion of a 20 bed residential care unit to a 20 bed SNF/NF unit. Windward Gardens would go from 38 SNF/NF beds and 40 residential care beds (of which 20 residential care beds are MaineCare eligible) to 58 NF/SNF beds and 20 residential care beds (all beds would be MaineCare eligible). The applicant goal for Windward Gardens is to "right size" the mix of NF/SNF and residential care beds based on market conditions and demand for each service. This project is expected to incur capital costs of $218,250 ($208,250 for refurbishment of the space and $10,000 for bed rights acquired from Fryeburg Health Care Center).

MaineCare neutrality will be met because the applicant identified multiple sources of revenue for offsetting the project's annual expenses.

The Preliminary Review by CONU staff, dated October 26, 2012, concluded that the applicant met its burden to demonstrate that the application meets the criteria for approving the project.

III. HIGHLIGHTS:

Letter of Intent dated:	April 2, 2012 and August 21, 2012
Technical Assistance meeting held:	Waived
CON application filed:	May 1, 2012 and August 21, 2012
CON application certified complete:	May 1, 2012 and August 21, 2012
Public Informational Meeting held:	May 29, 2012
Public Hearing:	N/A
Preliminary analysis released:	October 26, 2012
Record Closed:	November 19, 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:

Windward Gardens has been under the same ownership and operating agreement since July 1, 2007 and has been a provider of SNF/NF level of care services at the same location to be utilized for the additional beds considered in this proposal. The services provided by the applicant are consistent with applicable licensing and certification standards.

ii. Economic Feasibility:

The applicant submitted a pro-forma cost report representing the proposed increase in SNF/NF beds. The pro forma demonstrates that the conversion of residential care SNF/NF beds would require different staffing levels but would generate additional revenue and would eliminate the 50% occupancy level of its residential care wing. Sufficient financial resources exist to make this project MaineCare neutral. 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. As evidenced by historical occupancy reports and county by county bed/population ratios there are excess Level IV PNMI beds in Knox County. There is also a demonstrated need for additional SNF/NF beds based on the Windward Garden's 15 + person waiting list. The addition of skilled services has been demonstrated to decrease healing time and allow patients in need of temporary skilled services to return home faster. This decrease in treatment time has a positive effect on health status indicators. 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.

iv. Orderly and Economic Development:

This project will better utilize the unoccupied space in the facility caused by a low residential care census. Twenty (20) excess residential care beds will be eliminated. This will benefit surrounding residential care facilities by increasing other facilities potential to reach a greater level of occupancy. More importantly, the change in service will improve patient's access to choice and limit restrictions of service caused by the lack of available SNF/NF beds in the area. This projects financial forecast demonstrates no increased costs to the Maine health care system.

v. Outcomes and Community Impact:

This project addresses the lack of available nursing home beds in the area and removes surplus residential care beds. Windward Gardens focus will be on rehabilitation with the goal of returning the patient to their homes and/or community-based services rather than placing residents permanently in a more costly long term care nursing bed. This reintroduction of a patient into the at-large community is consistent with the goals of the department and national trends of extending home-based services.

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 the record, 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:	$ 218,250
Estimated Operating Costs:	$ 1,100,030
MaineCare Neutrality Achieved:	YES

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

Paul R. LePage, Governor Mary C. Mayhew, Commissioner

Department of Health and Human Services
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December 13, 2012

ACTION REQUESTED

RE: CON Application Changing Bed Complement at Windward Gardens located in Camden, Maine by adding 20 SNF/NF beds.

Commissioner Mayhew:

Windward Gardens (operated by Genesis) located in Camden, Maine is requesting approval to change the service complement from 38 SNF/NF Beds and 40 Residential Care beds to 58 SNF/NF beds and 20 residential care beds due to low RCF utilization and a need for additional SNF/NF beds in the Knox County area. The applicant has described this as a conversion but legally the applicant will be delicensing 20 RCF beds while the CON would approve adding 20 SNF/NF beds.

Capital costs associated with this project are $218,250.

The project is MaineCare neutral because the applicant has identified multiple sources of revenue for offsetting the project's annual expenses. The CONU has determined that all the review criteria have been satisfied and recommends approval of the CON.

A briefing memo dated December 3, 2012 and a preliminary analysis dated October 26, 2012 are attached for your further review.

The applicant has expressed a desire to have a decision before the holidays so that they can prepare the area for patients by the end of the first quarter of 2013.

Windward Gardens has not been utilizing the beds under review as part of its RCF capacity so there will be no issues regarding the need to transfer patients from the facility. There were no public comments. The CONU contacted the appropriate legislative representatives and communities involved in the transfer of resources to ensure MaineCare neutrality.

If you have any questions or concerns please do not hesitate to contact me at (207) 287-9338.

Sincerely,

Phyllis Powell

Phyllis Powell
Assistant Director, DLRS

OK

PP/rl

Department of Health and Human Services
Division of Licensing and Regulatory Services
State House Station #11, Augusta, Maine
Preliminary Analysis

Date: October 26, 2012

Project: Add 20 Nursing Facility Beds

Proposal by: Windward Gardens

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

Directly Affected Party: None

Certificate of Need Unit Recommendation: Approval

	Proposed Per Applicant	Approved CON
Estimated Capital Expenditure	$ 218,250	$ 218,250
Maximum Contingency	$ 0	$ 0
Total Capital Expenditure with Contingency	$ 218,250	$ 218,250
Pro-Forma Marginal Operating Costs	$ 723,920	$ 1,100,030
MaineCare Neutrality Established		Yes

I. Abstract

A. From Applicant

"Windward Gardens is a 78 bed facility located in Camden and consisting of 38 licensed nursing facility beds and 40 licensed residential care beds. Windward Gardens' operating company is Camden Operations, LLC, which is a subsidiary of Genesis HealthCare of Maine, Inc. ("Genesis ME"). On December 5, 2006, Genesis ME was granted a Certificate of Need ("CON") to lease and operate, among other facilities, Windward Gardens. A new license for Windward Gardens was issued to Camden Operations, LLC on December 29, 2006, effective January 1, 2007. Please refer to Exhibit I-A for an Organization Chart related to Genesis ME and Camden Operations, LLC."

"Windward Gardens is seeking CON approval for the conversion of a 20 RC bed unit to a 20 bed SNF/NF unit. This unit is currently called Penobscot House Down. As a result of this change, Windward Gardens would go from 38 NF/SNF beds and 40 RC beds (of which 20 RC beds are MaineCare eligible) to 58 NF/SNF beds and 20 RC beds (all to be MaineCare eligible). *CONU COMMENT – (The 20 RCF beds will be retired from service. Since these 20 beds do not have MaineCare resources attached to them they will not result in any remaining RCF bed rights. The 20 SNF/NF beds will be transferred from eligible, acquired reserved beds from nursing facilities or residential care bed rights from other facilities that have closed residential care units. See Section III for CONU discussion regarding acquisition of bed rights.)*

"The 20 RC beds on the second floor (Penobscot House Up) will remain the same. The other two nursing units will also remain the same: Spring Gardens will remain as 23 SNF/NF beds and Windward Center will remain as 15 SNF/NF beds."

"It is the intention and goal of Windward Gardens to "right size" the mix of NF/SNF and RC beds based on market conditions and demand for each service. There is an oversupply of RC beds in the market area and a need for additional NF services. Recognizing the need to remain MaineCare neutral, the resources for this change will come from a variety of sources."

Source	Beds	Cost
Fryeburg Beds-Fryeburg	1 Reserved NF Bed	$ 10,000
Marshwood Center -Lewiston	16 RC Beds (now out of service)	No Cost
Pine Point Center-Scarborough	5 RC Beds (take out of services)	No Cost

"The total cost to acquire the reserved beds required to provide a sufficient Medicaid income stream is $10,000." *CONU COMMENT – (This acquisition cost is not reimbursable to the applicant.).*

I. Abstract

"Windward Gardens currently has only 18 of its 40 RC beds occupied. Thus, there will be no need to relocate residents."

"Windward Gardens' existing residential care units were both constructed to nursing facility standards and the conversion of Penobscot House Down from 20 RC beds to 20 NF beds requires no additional capital costs as a result of this proposed project. However, GHC has decided to use the opportunity of converting the unit to make refurbishments with a budget of $208,250. The total project cost including the acquisition of beds is $218,250."

"Attached as Exhibit I-B is a floor plan of the facility showing the location of the 20 RC bed unit to be converted to a 20 NF bed unit. This proposed change does not involve an increase in the total bed capacity. Thus, there is no requirement for approval by the Town of Camden to make this change."

II. Fit, Willing and Able

A. From Applicant

"Windward Gardens is an existing nursing home that has been operated by Camden Operations, LLC since January 1, 2007. Windward Gardens is located at 105 Mechanic Street, Camden, Maine."

"Prior to the transfer of operations and Camden Operations, LLC becoming the operator, Windward Gardens was operated by the Sandy River Health System ("Sandy River"). In order to accomplish the transfer of operations, a CON was obtained on December 5, 2006 by Genesis ME, a subsidiary of Genesis HealthCare Corporation. The CON determined that Genesis ME was "fit, willing and able to provide the proposed services at the proper standard of care" – i.e., appropriate to operate the 11 Sandy River nursing and long term care facilities. Genesis ME formed 11 separate limited liability companies ("LLCs") to operate the 11 facilities, including forming Camden Operations, LLC to operate Windward Gardens. As part of the CON review process, extensive information was provided regarding the extent of Genesis HealthCare Corporation's overall operations. This corporation has subsidiaries that lease or manage 236 healthcare facilities in thirteen states, including 208 skilled nursing, 25 assisted living, and 3 transitional care units, which total approximately 28,736 beds."

"Windward Gardens intends to continue providing both residential care services and NF/Skilled care services. This CON does not involve any significant physical change to the existing facility other than some cosmetic upgrades to the unit. It involves de-licensing 20 residential care beds and adding 20 nursing facility beds."

"Thus, Genesis ME and Windward Gardens will ensure the continuation of ongoing residential and nursing care operations at Windward Gardens"

Please refer to Exhibit II-A for resume of the facility Administrator.

Please refer to Exhibit II-B for a copy of the license to operate Windward Gardens.

B. Certificate of Need Unit Discussion

i. CON Standard

Relevant standards for inclusion in this section are specific to the determination that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

ii. Certificate of Need Unit Analysis

Camden Operations, LLC is licensed to provide two levels of care at its long-term facility operated as Windward Gardens. The license, currently, provides for 38 Skilled/Nursing beds and 40 Level IV residential care beds at 105 Mechanic Street in Camden, Maine. The administrator for all 78 beds is Carl L. Chadwick. The license was issued on October 17, 2011 and is valid until October 31, 2012.

A review of Windward Gardens last completed survey data, available from Medicare.gov website revealed the following ratings:

Windward Gardens Nursing Home Compare Ratings	
Category	**Rating**
Overall	Above Average
Health Inspections	Average
Staffing	Above Average
Quality Ratings	Below Average

Windward Gardens scored average or above average in 3 out of 4 categories rated by CMS with an overall rating of above average. During the last survey, completed on 6/28/11, four (4) deficiencies were found. These deficiencies were all Level 2 deficiencies which indicate minimal harm or potential for actual harm to some residents.

Inspectors determined that the facility failed to :

- Provide care by qualified persons according to each resident's written plan of care.
- Provide necessary care and services to maintain the highest well-being of each resident .
- Make sure that residents with reduced range of motion get proper treatment and services to increase range of motion.
- Safely provide drugs and other similar products available, which are needed every day and in emergencies, by a licensed pharmacist.

All deficiencies were corrected by 8/10/2011.

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

Deeming of Standard

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

Windward Gardens has been under the same ownership and operating agreement since at least July 1, 2007 and has been a provider of SNF/NF level of care services at the same location to be utilized for the additional beds considered in this proposal. The services provided by the applicant are consistent with applicable licensing and certification standards.

iii. Conclusion

Certificate of Need Unit recommends that the Commissioner find that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

III. Economic Feasibility

A. From Applicant

"Windward Gardens is seeking CON approval for the conversion of a 20 bed RC unit known as Penobscot House Down to a 20 bed SNF/NF unit. As a result of this change, Windward Gardens would go from 38 NF/SNF beds and 40 RC beds (of which 20 RC beds are MaineCare eligible) to 58 NF/SNF beds and 20 RC beds (all to be MaineCare eligible). It is the intention and goal of Windward Gardens to "right size" the mix of NF/SNF and RC beds based on market conditions and demand for each service. There is an oversupply of RC beds in the market area and a need for additional NF services. Recognizing the need to remain MaineCare neutral, the resources for this change will come from a variety of sources."

Source	Beds	Cost
Fryeburg Beds	1 Reserved NF Bed	$ 10,000
Marshwood Center	16 RC Beds (now out of service)	No Cost
Pine Point Center	5 RC Beds (take out of service)	No Cost

"The total cost to acquire reserved nursing facility beds required to provide a sufficient Medicaid income stream to add 20 nursing facility beds is $10,000. It is our understanding that DHHS will determine the actual number of beds that will need to be acquired to remain Medicaid neutral."

"Windward Gardens' existing residential care units were constructed to nursing care physical plant standards in 1994 and while it requires no additional capital costs to convert the residential care unit to nursing care, Genesis ME will use the opportunity to make some refurbishments and purchase new furniture for the converted unit budgeted at $208,250. The total project cost with the acquisition of beds is $218,250."

"Genesis ME and Windward Gardens are making a business decision to eliminate 20 residential care beds at Windward Gardens and add additional nursing facility beds in order to focus more appropriately meet current market demand and to focus more on the core business of delivering nursing care level services and expanding the Medicare skilled rehabilitative component of the facility."

"Attached as Exhibit III-A is Windward Gardens' Operating Statement for the past 12 months. Operating at 74.7% occupancy, Windward Garden's had a Net Loss of $992,445 for the most recent 12 month period. Windward Gardens financial performance has been severely impacted by changes in market conditions and the oversupply of RC beds and assisted living services."

"Attached as Exhibit III-B is a Pro Forma Operating Statement and a table with the proposed changes in census, bed type and utilization (including "Quality Mix" percent). The Pro Forma

Income Statement and related supplemental data show that proposed changes to Windward Gardens will stabilize financial operations of the facility with occupancy projected to increase to 89.74% and revenues increasing by $787,220 over the current FY 2012 budget. Expenses will also increase as a result of adding 20 additional NF/SNF beds."

Attached as Exhibit III-C is a pro forma MaineCare cost report. Attached as Exhibit III-D is the Historical Balance Sheet for Windward Gardens and Balance Sheet projections through 2015.

Attached as Exhibit III-E is the most recent completed MaineCare cost report for Windward Gardens for the year ending 12/31/2011.

Attached as Exhibit III-F is the proposed CON Capital Budget.

B. Certificate of Need Unit 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. Certificate of Need Unit Analysis

Financial Feasibility and Staffing

The applicant provided a pro-forma cost report that represented the change in the provided service level for twenty beds. The pro-forma demonstrated that the applicant is aware that there will be different staffing levels required to perform the services required by the occupants of the additional SNF/NF beds. The applicant has had an ongoing census level below 50% occupancy of its two RCF wings (20 beds each). The change over to SNF/NF care as well as the analysis of need located in Section IV of this analysis should buttress the applicants assertion that this project is financial 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 Windward Gardens' current 38 Skilled Nursing/Nursing (SNF/NF) nursing home bed capacity and the proposed 58 SNF/NF nursing bed capacity. The current calculated MaineCare utilization is $2,845,520. The proposed calculated MaineCare utilization is $3,945,550. This increase in MaineCare utilization is $1,100,030 which is based on a 95% occupancy.

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

Table 1: Sources and Uses of MaineCare Funding:

Source	Facility	# of Beds	$ Value	Allocated Beds	$ Value
	Marshwood	16	$887,347	16	$887,347
	Fryeburg	1	$23,165	1	$23,165
	Pine Point	12	$457,876	5	$190,781
	Total	**29**	**$1,368,388**	**22**	**$1,101,293**
Uses	Windward	20	$1,100,030	20	1,100,030
	Gardens				
Excess Resources			$268,358		$1,263

The chart indicates that the revenue stream from 22 beds would offset the potential costs of the 20 new SNF/NF beds. The value of the revenue stream is $1,101,293. The expected costs to the MaineCare program are calculated to be $1,100,030. The excess, $1,263, in resources from the transaction would be placed in the MaineCare Nursing Facility Funding Pool. The resources identified with the 7 remaining beds would be retained as an asset by the operating entity at Pine Point, the source facility.

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 78 beds (38 SNF/NF and 40 Level IV PNMI RC beds). If this application were to be approved the applicant would be operating a mixed level of care facility with a total of 78 beds (58 SNF/NF and 20 Level IV PNMI RC beds). The operations are of a similar size and scope. Schedule L of the applicant pro forma cost report demonstrates the need for additional nursing staff to handle the increase of SNF/NF census.

v. Conclusion

Certificate of Need Unit staff recommend 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

"This proposal involves taking out of service 20 residential care beds at Windward Gardens. Knox County has approximately 259 licensed residential care beds."

"Windward Gardens proposes to acquire the Medicaid income stream of appropriately reserved nursing facility beds as well as transfer existing nursing beds from other Genesis facilities in Maine, and utilize the associated income stream to add back 20 licensed nursing care beds in the unit that occupied the 20 residential care beds."

"An increase of 20 nursing facility beds will increase the total number of licensed NF beds in Knox County from 161 beds to 181 beds."

Knox County Level IV PNMI RC Facilities

Facility	Location	Beds
Ivan Calderwood	Vinalhaven	8
Janus Supportive Living	Washington	34
Lucette RCF	Thomaston	18
Seven Tree	Union	37
The Courtyard	Camden	24
The Terraces (Quarry)	Camden	62
Woodlands	Rockland	36
Windward Gardens	Camden	40
TOTAL		259

Knox County NF Facilities

Facility	Location	Beds
Knox Center	Rockland	84
The Gardens (Quarry)	Camden	39
Windward Gardens	Camden	38
TOTAL		161

Occupancy History and Market Changes

"Windward Gardens was originally constructed in 1994 to included 30 residential care units (beds), a 12 bed skilled care (SNF) unit, and a 20 bed long term care NF unit. In response to market conditions in the late 1990's, Windward Gardens increased the number of RC beds from 30 beds to 40 beds (providing shared rooms); and increased the number of NF/SNF beds from 32 to 38 beds."

"Since the construction of Quarry Hill in Camden in 2004, a hospital-owned campus that includes IL units, assisted living units and NF beds, Windward Gardens census has struggled. Quarry Hill added 62 AL units to the market and reduced NF market capacity by 39 NF beds. The subsequent closing of Shore Village removed an additional 60 NF beds and added 36 residential care beds."

"Furthermore, the private pay facility assisted living (AL) supply has increased in the market area with Bartlett Woods in Rockland constructing 24 new "Level 1" AL apartments. Additionally, the opening of Camden Villas, a new retirement community in the old Knox Woolen Mill in downtown Camden has added 25 assisted living beds with 16 currently empty."

"There is clearly an oversupply of RC/Assisted Living beds in the market area. Windward Gardens private pay census has dropped steadily over the last several years as new AL competition enters the market area providing full apartments. Additionally, IL (Independent Living) apartments have continued to expand their service options allowing residents to avoid moving into assisted living facilities. And over the past year, private census has further deteriorated with resident conversions to RC MaineCare and/or NF MaineCare."

"In 2010, Windward Gardens began the year at 32 out of 40 RC beds filled with a mix of 14 private pay residents and 18 MaineCare residents. By the end of the year, the facility had 8 private residents and 17 MaineCare residents. In 2011, the number of MaineCare RC residents remained steady and the number of private pay residents decreased to 5 residents and an overall occupancy of 63% in the RC units. At the time of submitting this application, Windward Gardens has 15 MaineCare RC residents and 3 private pay residents with a current occupancy of only 45% in the RC units. (Refer to Exhibit IV-A Windward Garden's Average Daily Census and Payer Mix for 2010, 2011, and YTD 2012)."

"Windward Gardens proposes to take out of service 20 RC beds and continue to meet its current MaineCare RC occupancy by maintaining one of the two 20 bed RC units. The other 20 bed RC unit is completely unoccupied. Furthermore, Windward Gardens proposes to convert the unoccupied 20 bed RC unit to 15 NF beds with all private rooms. <u>There is a compelling financial and market need to "right size" the facility just as quickly as possible."</u>

"Please note that Windward Gardens has a wait list of 15+ long term care residents and Penobscot Bay Medical Center has indicated to facility marketing staff that NF placement is challenging in the entire Mid-Coast area from Damariscotta to Belfast."

Maine's Population Trends

"In referencing 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*, please note the following:

- The number of case mix RC beds in Knox County is 30 beds per 1,000 person age 65+ which is significantly higher than the state average or 21 beds per 1,000.
- The number of NF beds in Knox County is 22 beds per 1,000 persons age 65+ which is significantly lower than the state average of 35 beds per 1,000.

Based on this report, it appears that there is an oversupply of RC beds and an undersupply of NF beds in Knox County. This is further supported by current market conditions as previously discussed. The mix of RC and NF licensed beds seems to be out of balance in Knox County. This proposal addresses market reality and possibly further addresses the State's desire to convert more nursing home based RC beds to NF beds to meet MaineCare payment source considerations."

Effect of Transferring/Relocating NF and/or RC Beds (Associated Income Stream)

"The applicant proposes to meet the MaineCare neutrality requirements and facilitate the addition of 20 NF beds at Windward Gardens from a variety of internal and external sources."

Source	Beds
Fryeburg Beds	1 Reserved NF Bed
Marshwood Center	16 RC Beds (now out of service)
Pine Point Center	5 RC Beds (take out of service)

Fryeburg Beds

"There was one (1) remaining reserved bed not utilized as part of the Springbrook Center CON approval. As discussed in the Springbrook Center application, the banked beds in Fryeburg were a result of closing the Hicks Assisted Living Center (20 beds) and moving their residential care beds into Fryeburg Nursing Care Center (FHCC). This last reserved bed will have no impact on the Fryeburg service area."

Marshwood Center, Lewiston

"As part of the approved Marshwood CON to convert a 16 RC bed unit to 16 NF beds, the 16 RC beds were taken offline and the income stream remains available to be transferred/utilized at Windward Gardens.

Pine Point Center, Scarborough

"On behalf of Scarborough Operations LLC and Pine Point Center, one of the Genesis Healthcare of Maine facilities, a letter was sent to DHHS on April 2, 2012 to confirm and clarify that an elimination of 12 RC beds would not require a Certificate of Need ("CON") review process. Pine Point Center proposes to eliminate its 12 RC beds. The letter also indicated that the eliminated 12 RC beds at Pine Point Center would be reserved and associated MaineCare income stream utilized to add addition NF/SNF beds at Windward Gardens in Camden."

"In a letter response from DHHS, dated April 26, 2012, it was determined that this change would not be subject to a Certificate of Need review and that the value of the beds would be determined once Genesis Healthcare begins a project to relocate the beds to another facility. It is proposed that the value of 5 of these beds be used for Windward Gardens and this proposal."

Proposed Programs as a Result of Change

"Windward Gardens will continue to have a 23 bed SNF/NF unit on the first floor known as Spring Gardens. Spring Gardens is currently a short-stay/LTC blend which will become primarily a Long Term Care unit. Windward Center, located on the second floor will remain a 15NF bed Long Term Care unit."

"The proposed new 20 bed NF unit that replaces the now unoccupied 20 bed RC unit will become a "Short Stay Unit" with private rooms that will allow the facility to admit those w/ DRO (drug resistant organisms). Windward Gardens will be able to more effectively admit the ever increasing number of patients with infection control issues. Also this change will offer private rooms for clinical complex patients requiring space for equipment, not possible in the present configuration. A Short Stay Unit focuses on providing services to persons who have had an acute event and with appropriate rehabilitation services, can return back home or to the community."

Effect on Quality and Outcome Measures

"Regarding effect on quality and outcome measures, Genesis has been, and continues to be, a leader in Culture Change nationally and in states where it operates. In the Northeast, select Genesis HealthCare administrators and regional staff serve on state Culture Change coalitions, offer Center tours for organizations pursuing culture change, and present on culture change topics to hospitals. Genesis leaders have served on the RI DPH pilot to use the survey process to impact culture change, the CARF standards for Person-Centered Long-Term Care Communities, and the Hartford Foundation's study on nurses in culture change. Genesis Centers have been featured in the CMS DVD series on Culture Change."

"Genesis Centers participate in monthly Culture Change conference calls targeted to teams working on making change in the Centers. Topics rotate each month and calls consist of research or other descriptive material on the practice and examples of success from Genesis Centers. The calls are transcribed and posted, with their attachments, to an electronic site where any Genesis employee can read and download. Past topics have been consistent assignments, building community, creating neighborhoods, bathing approaches, eliminating noise in the environment, staff self-scheduling, reducing unnecessary medications and streamlining the med pass, customizing daily routines."

"Genesis believes culture change must be supported by the relationship between supervisors and direct care workers. To strengthen that key relationship, Genesis contracts with PHI for Coaching Supervision and has trained 80 leaders to be trainers for the 2-day program. All Department Heads and a portion of the nursing staff complete this 2-day skills training. Genesis Northeast has trained nearly 2000 supervisors over the last three years – the Maine Centers have access to training every other month in either the Portland or Augusta area."

"Genesis uses the Learning Collaborative model to advance culture change and provides conferences, on-site learning sessions and written resources to support Center-level change. Genesis still uses the RI QIO's holistic framework of People, Care, and Environment as its guiding model and continues to support learning through the RI QIO's materials. Genesis centers pursue change at their own pace, but are expected to use consistent assignments, offer choice in meals and dining, minimize environmental noise, offer choice for waking and sleeping, and provide respectful options for bathing. Genesis offers training to Centers who wish to convert to a neighborhood model for their long-term care communities and supports use of this model for long-term care."

"The same elements apply for our short stay patients, with additional emphasis on a stimulating and responsive environment for regaining function to return home successfully."

"All Genesis Centers, including Windward Gardens, participated in Advancing Excellence. The Quality Department supports all qualifying Centers to pursue the AHCA Quality Award application process."

"Windward Gardens' resources will continue to be focused on strengthening Windward Gardens' commitment to outstanding clinical services and culture change."

B. Certificate of Need Unit Discussion

i. CON Standard

Relevant standards for inclusion in this section are specific to the determination there is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

- Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
- Whether the project will have a positive impact on the health status indicators of the population to be served;
- Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
- Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

ii. Certificate of Need Analysis

When the applicant first proposed this project they identified additional potential resources. These were resources that were available to them to offset the MaineCare costs of adding the proposed new beds. Once a preliminary calculation of the MaineCare costs was communicated to the applicant by The Certificate of Need Unit, the applicant made the determination that the bed resources from the Fryeburg, Lewiston and Scarborough facilities would be utilized to make this proposal MaineCare neutral.

Knox County has 259 Level IV PNMI Residential care beds. The applicant states that it is their contention that there is "clearly an oversupply of residential care beds in the area". The applicant references the Muskie School Study (*Older Adults and Adults with Disabilities: Population and Service Use Trends in Maine 2010)* which states that the number of available Level IV PNMI residential care beds in Knox County for people over 65 is significantly higher than the State average. Increased capacity and the addition of new 100% private pay facility beds in the area have had a negative impact on Windward Gardens' census figures. The facility's residential care census dropped from an average of 80% occupancy at the beginning of 2010 to an average of 45% occupancy by the end of 2011. This negatively impacts the facility's finances. While the number of available residential care beds has increased in the service area, the number of available nursing home beds has decreased. This is particularly with the closure of Shore Village which took 60 NF beds offline. The Muskie study also indicates that the number of available nursing home beds in Knox County, for people over 65, is significantly below the State average. The 2010 Muskie study which the applicant relied upon was compared by CONU to both the Lewin Study, which utilized 2006-2008 statistics, and current occupancy and capacity information available to CONU that is updated monthly. Allowing for some small changes

related to timing and other CON projects the conclusion that there are less SNF/NF beds than the state average is true and verifiable. Currently, Windward Gardens reports having a wait list of 15 or more potential SNF/NF residents.

The applicant proposes that the project will substantially address specific health problems as measured by health needs in the area to be served by the project because they have demonstrated that there is a need for additional SNF/NF services in the area. The applicant states that they have a waiting list and also provided information to show that the area has less SNF/NF beds than the state average. The applicants further states that Penobscot Bay Medical Center has indicated that the placement of individuals needing nursing home care is extremely difficult due to the lack of available resources in the service t area served by Windward Gardens.

The applicant has demonstrated that there is a need for additional long term care beds at the SNF/NF level of care in the service area. This projects involves reducing the number of Level IV PNMI beds in the area. The applicant has demonstrated that the facility has an economic need to provide services it is licensed and certified to provide to individuals needing that care in this area.

The project will have a positive impact on the health status indicators of the population to be served. The applicant will be providing a service that has been demonstrated to be needed. Needed services positively impact health status indicators. Furthermore, the addition of skilled services has been demonstrated to decrease healing time and allow patients to return home faster. This decrease in treatment time is a positive impact on health status indicators.

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.

The project will provide demonstrable improvements in the outcome measures for patients that are requiring skilled services.

v. Conclusion

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to show that there is a public need for the proposed project.

V. Orderly and Economic Development

A. From Applicant

"Windward Gardens has made a business decision to "right size" the mix of RC and NF beds to meet current market conditions and to dramatically improve the financial viability of the facility. Windward Gardens is proposing to de-license 20 residential care beds and add 20 nursing facility beds. Alternatives considered include: 1) continuing the existing configuration of nursing facility and residential care beds as is; 2) closing down both residential care units and no longer offer residential care services; or 3) close down one of the 20 beds residential care units and add 20 nursing facility beds by acquiring appropriately reserved nursing facility beds and/or relocated NF/RC beds (associated income stream) from other Genesis of Maine facilities."

"This plan allows Windward Gardens the opportunity to utilize reserved nursing facility beds and increase the number of nursing facility beds from 38 to 58. The increase in 20 nursing facility beds will be located in an unoccupied 20 bed residential care unit at Windward Gardens."

"This unit was originally constructed to nursing facility standards and offers an excellent environment for Windward Gardens to expand its nursing care business with a primary focus on "short stay" Medicare skilled rehab services. This proposal will also improve the operating efficiencies of Windward Gardens' nursing care business with more focus on nursing care services. It is also an efficient way to bring reserved nursing facility beds back into the system as the need for nursing facility beds continues to increase, while removing RC beds in an oversupplied market, thus benefiting other RC facilities in the service area."

"Given that the availability of the MaineCare income stream is being used to offset any increase in costs from adding 20 NF beds at Windward Gardens, there will be no overall increase in costs to the Maine healthcare system and health care expenses. This proposal will be Medicaid neutral and add no additional cost to the State's Medicaid program."

"Furthermore, these 20 NF beds are being used to expand Windward Gardens' skilled rehab program which focuses on providing services to persons who have had an acute event and with appropriate rehabilitation services, can return back home or to the community. Without the strong rehab programs of facilities such as Windward Gardens, there would be increased usage of NF MaineCare beds and increased financial pressure on Maine's health care expenses. Patients with high acuity care needs would either remain in the acute care sector longer, or be admitted inappropriately to a traditional long term care setting within a nursing home. Allowing Windward Gardens to focus more of its resources on the core business of providing rehabilitation services benefits Maine and its overall NF program and resources, and is a positive use of the income stream from the banked beds. Windward Gardens' focus on a strong transitional care unit and program actually saves the State resources by transitioning acute care residents through specialized rehab programs and returning them back home. Without such programs, the percentage of seniors with an acute episode/event who would end up in long term care within a nursing home could be much higher."

"Finally, there would be a reduction in the marginal costs of NF care. By increasing the number of NF beds from 38 to 58, there would be gains in operational efficiencies. This is demonstrated in the financial forecast. Current unoccupied RC space will be more properly utilized by this conversion."

B. Certificate of Need Unit Discussion

i. CON Standard

Relevant standards for inclusion in this section are specific to the determination that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

- The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

- The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

- The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available.

ii. Certificate of Need Analysis

The decision to increase Windward Gardens NF bed capacity from 38 to 58 beds and downsize the residential care bed capacity from 40 to 20 beds addresses the demonstrated need for more SNF/NF level of care beds in Knox County. In addition, better utilizing the space by eliminating 20 excess residential beds will benefit surrounding residential care facilities by increasing other facilities potential to reach a greater level of occupancy. More importantly, the change in service will improve patients access to choice and limit restrictions of service caused by the lack of available beds in the area.

The increased allowable operating costs of $1,100,030 will be offset by 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. Since total health care expenditures are zero thanks to the MaineCare neutrality provisions, this project will not impact the availability of care.

This project will not increase total healthcare costs and therefore state funds related to any increase requirement for state funds because of this project are available.

The applicant states that Windward Gardens new SNF/NF beds will be focused on rehabilitative care. This aids in transitioning seniors back to their own homes. This is in contrast to a more institutional model of care whereupon seniors remain in a long term care facility for what can be lengthy and costly stay. Currently underutilized and unoccupied residential care space can be properly utilized by the addition of SNF/NF services that were identified as needed in Section IV of this analysis. The proposed services are the most effective and accessible standard of care for SNF/NF services available at this time.

v. Conclusion

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met its burden to demonstrate that the proposed project is consistent with the orderly and economic development of health facilities and health resources for the State.

VI. Outcomes and Community Impact

A. From Applicant

"This proposal for CON approval will have minimal community impact. Windward Gardens will not have to transfer any residents as a result of this proposal."

"Windward Gardens proposes to acquire the Medicaid income stream of reserved nursing facility beds such that it will allow the existing space of the residential care unit to be used for the 20 nursing facility beds."

"Windward Gardens will change its licensed capacity from 40 licensed residential care beds and 38 licensed nursing facility beds to 20 licensed residential care beds and 58 licensed nursing facility beds."

"These 20 NF beds are being used to expand Windward Gardens' skilled rehab program which focuses on providing services to persons who have had an acute event and with appropriate rehabilitation services, can return back home. It will also provide private rooms for clinically complex patients. Without the strong rehab programs of facilities such as Windward Gardens, there would undoubtedly be increased usage of NF MaineCare beds and a decrease in positive outcomes for Maine's seniors who benefit from being able to return home following an acute event."

"Windward Gardens has a strong reputation as a rehabilitation provider and hospital discharge option in the service area. Most admissions for the facility come directly from a hospital for rehabilitative services following an acute event, which is typical for a nursing facility with such a strong Medicare skilled program. The best measure of outcome is that patients complete appropriate sub-acute rehab and end up returning home, sometimes with the support of home and community-based services, rather than placed as residents in long term care beds in nursing homes."

"Please also refer to the response in the Public Need section above."

"As mentioned in the Public Need section, the elimination of the 20 RC beds at Windward Gardens would only serve to strengthen the census and payer mix at other facilities and not have a negative impact on quality and outcome of their services."

B. Certificate of Need Unit Discussion

i. Standard

Relevant standards for inclusion in this section are specific to the determination that the project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

ii. Certificate of Need Unit Analysis

The addition of 20 nursing home beds and the subsequent reduction of 20 residential care beds in the Knox County area will have a positive effect on the quality of care delivered by existing service providers. Seniors needing SNF/NF care will be have a greater likelihood of finding the services offered in the area they reside. Seniors needing residential care services will not be as exposed to the possibility that the facility has as many vacancies.

This proposal addresses the lack of available nursing home beds in the area and removes surplus residential care beds. This will allow other service providers in the area to experience greater occupancy in their residential care beds. Windward Gardens' focus will be on rehabilitation with the goal of returning the patient to their homes and/or to community-based services rather than placing residents permanently in a more costly long term care nursing bed. This reintroduction of a patient into the at-large community is consistent with the goals of the department and national trends of extending home-based services.

iii. Conclusion

Certificate of Need Unit 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

A. From Applicant

Windward Gardens would like to convert a 20 bed RC unit to a 20 bed NF unit. Increasing the number of nursing facility beds will complement the nursing care services already offered at the facility. The applicant will continue its ongoing nursing care and residential care operations of Windward Gardens and continue to be part of the strong tradition of Genesis HealthCare, which is very proud of its quality care record and ranks among the top providers for overall customer satisfaction and quality medical care according to national independent research.

Genesis has some of the best staff retention rates in the long-term care industry. As part of the Genesis HealthCare system, Windward Gardens is dedicated to providing excellent care to its short stay, rehabilitation and long term care residents. Windward Gardens provides opportunities for professional development and advanced clinical training in order to ensure that its clinical practice aligns with the changing needs of the patient population.

Windward Gardens tracks and measures 19 Quality Measures as well as its own internal clinical benchmarks as part of a commitment to "Advancing Excellence," a voluntary initiative focused on continuous quality improvement practices and consistent measurement in order to support better quality care.

Genesis and Windward Gardens maintain a dynamic customer satisfaction focus, putting the patient/resident at the center of the care process. In order to continuously understand the changing needs of its customers, Genesis HealthCare routinely measures patients/resident and family satisfaction and participates in a survey process provided by My InnerView, an independent research organization that benchmarks satisfaction data in the long-term care industry.

Genesis offers each of its patients/residents outstanding clinical care, delivered by highly skilled practitioners in a warm and comfortable setting. The organization is focused on becoming the recognized leader in clinical quality and customer satisfaction in every market it serves, including at Windward Gardens. Windward Gardens also continues to be a leader in rehabilitative skilled services.

Below are the Mission Statement, Vision Statement, and Core Values of Genesis HealthCare and Windward Gardens:

Our Mission
We improve the lives we touch
through the delivery of high-quality health care and everyday compassion.

Our employees are the vital link between Genesis HealthCare and our patients/residents. They are the service we provide and the product we deliver – they are our most valuable resource.

Achievement of our vision comes only through the talents and extraordinary dedication our employees bring to their jobs each and every day.

Vision
Genesis HealthCare will set the standard in nursing and rehabilitative care through clinical excellence and responsiveness to the unique needs of every patient/resident we care for. We will be the recognized leader in clinical quality and customer satisfaction in every market we serve.

Core Values

- Care & Compassion for every life we touch.
- Respect & Appreciation for each other.
- Teamwork & Enjoyment in working together.
- Focus & Discipline on improving quality of care.
- Creativity & Innovation to develop effective solutions.
- Honesty & Integrity in all dealings.

The change proposed in this CON will only serve to strengthen Windward Gardens' core business of providing high quality skilled rehabilitative and nursing care services in the Lewiston/Auburn area.

B. Certificate of Need Unit Discussion

i. CON Standard

Relevant standards for inclusion in this section are specific to the determination that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application.

ii. Certificate of Need Unit Analysis

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

iii. Conclusion

Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to demonstrate that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

VIII. Funding in MaineCare Nursing Facility Funding Pool

A. From Applicant

"N/A"

B. Certificate of Need Unit Discussion

i. CON Standard

Relevant standards for inclusion in this section are related to the needed determination that the project can be funded within the MaineCare Nursing Facility Fund.

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 costs 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.

iii. Conclusion

Certificate of Need Unit has determined that there are no incremental operating costs to the healthcare system. No funds from the MaineCare Nursing Facility Funding Pool will be utilized in this project.

IX. Timely Notice

A. From Applicant

"The applicant fully intends to follow the appropriate procedures outlined in the CON Procedures Manual to include all requirements for public meetings."

B. CONU Discussion

Public Hearing Held: N/A	
Letter of Intent files:	April 2, 2012 & August 21, 2012
Technical Assistance meeting held:	Waived
CON application filed:	May 1, 2012 & August 21, 2012
CON certified as complete:	May 1, 2012 & August 21, 2012
Public Information Meeting held:	May 29, 2012
Public Hearing:	N/A

X. Findings and Recommendations

Based on the preceding analysis, including information contained in the record, the Certificate of Need Unit recommends that the Commissioner make the following findings:

A. 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;
2. The availability of State funds to cover any increase in state costs associated with utilization of the project's services; and
3. The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available was demonstrated by the applicant;

E. The 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 within the Nursing Facility MaineCare Funding Pool.

For all the reasons contained in this preliminary analysis and based upon information contained in the record, Certificate of Need Unit recommends that the Commissioner determine that this project should be **approved.**