

BRIEFING MEMO

VK HEALTH FACILITIES, LLC

Transfer of Operational Control of Seven Kindred Nursing facilities to VK Health Facilities, LLC

DATE: June 4, 2013

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, Manager, Health Care Oversight Program
Richard S. Lawrence, Senior Health Care Financial Analyst

SUBJECT: Transfer of Operational Control of Seven Kindred Nursing Facilities to VK Health Facilities, LLC.

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:

VK Health Facilities, LLC ("VK") is a Delaware limited liability company ("LLC") formed by Marvin Ostreicher, President of National Health Care Associates, Inc. ("NHCA"), as its manager. NHCA has offices in Lynbrook, New York and Wethersfield, Connecticut. VK is the sole member (parent) of seven recently formed LLCs that will lease and operate seven skilled nursing facilities that Kindred Nursing Centers West, LLC ("Kindred") now operates and leases from Ventas Realty, Limited Partnership ("Ventas") in each of seven locations: VK Augusta, LLC; VK Bangor, LLC; VK Bath, LLC; VK Brewer, LLC; VK Kennebunk, LLC; VK Norway, LLC; and VK Yarmouth (collectively the "VK LLCs").

II. PROJECT DESCRIPTION:

Seven Kindred facilities will be transitioned to the VK LLC's. They include: Kindred Transitional Care and Rehab-Augusta; Brentwood Rehab & Nursing Center; Kindred Transitional Care and Rehab-Brewer; Eastside Rehab & Living Center; Kindred Transitional Care and Rehab-Kennebunk; Norway Rehab & Living Center; and Winship Green Nursing

Center. The VK LLCs will undertake operations in place of Kindred at these seven Maine locations upon receipt of the CON and other approvals authorizing the change. The lease agreements now in place with Ventas are currently set to expire in April 2013. Kindred's operation of these facilities may be extended briefly, if needed, to complete required approval processes. Other VK related entities will also be taking over Kindred skilled nursing facilities – one in New Hampshire and six in Massachusetts – after necessary regulatory approvals are secured from these states.

To implement the transition, Kindred will enter into Operations Transfer Agreements, and Ventas will enter into Lease Agreements, with the VK LLCs through which the VK LLCs will become the new tenant operators and licensees of the Facilities. Ventas will continue to own the land and buildings used to operate the Facilities. The VK LLCs are not seeking MaineCare recognition of any additional costs in connection with the transaction. There will be no change in the type or location of licensed beds at any Facility, and the VK LLCs will continue to provide the high standard of programs and services that Facilities' residents and their families have come to expect. The VK LLCs intend to continue to employ all Facility administrators, directors of nursing, and medical directors, along with other staff who met NHCA screening standards and wish to continue as employees of the VK LLCs. In-depth training will be provided where necessary to assist employees in meeting the VK LLCs' review standards.

The Preliminary Review by CONU staff, dated April 16, 2013, 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 dated:	January 25, 2013
Subject to CON review letter issued:	January 28, 2013
Technical Assistance meeting held:	February 7, 2012
CON application filed:	March 15, 2013
CON application certified complete:	March 15, 2013
Public Informational Meeting held:	Waived
Public Hearing:	April 4, 2013
Preliminary Analysis Released:	May 14, 2013
Record Closed:	June 5, 2013

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:**

The services provided by the applicant are consistent with applicable licensing and certification standards as demonstrated by their ability to maintain services at the proper standard of care in other States.

ii. Economic Feasibility:

The applicants pro forma cost reports support the applicant's assertion that this project is financially feasible and will improve the financial resources of the facility. The facilities fixed costs are expected to decline while direct and routine rates paid to the facilities will remain the same. MaineCare neutrality has been achieved. 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. 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.

iii. Orderly and Economic Development:

The applicant is assuming control of existing facilities. This project is MaineCare neutral because there will be no increase in MaineCare reimbursement associated with this project. It is unlikely that a more effective, more accessible or less costly alternative technology or method of service delivery will become available.

iv. Outcomes and Community Impact:

The applicant is assuming control of seven existing nursing facilities. Continuing necessary services in the current geographic areas will have a positive impact on the quality of care. The existing scope of services will not be immediately changed and any future addition of services will be carefully aligned with the needs of the community. Existing service providers will not be negatively impacted.

v. Service Utilization:

The number of SNF/NF beds in the service area will remain the same which will not represent an inappropriate increase in service utilization due to an existing need for these services.

vi. 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:	\$ 4,999,674
Estimated Operating Costs:	\$ 3,627,729
MaineCare Neutrality Achieved:	YES