BRIEFING MEMO
Northeast Rehabilitation Hospital Network
Inpatient Rehabilitation Facility

DATE: November 5, 2018

TO: Bethany Hamm, Acting Commissioner, DHHS

THROUGH: Sarah Taylor, Director, Division of Licensing and Certification

FROM: Larry Carbonneau, Manager, Health Care Oversight

SUBJECT: Certificate of Need for Northeast Rehabilitation Hospital Network


REGISTERED AFFECTED PARTIES: New England Rehabilitation Hospital of Portland

I. PROJECT DESCRIPTION:

Neuro-Rehab Associates, Inc. d/b/a Northeast Rehabilitation Hospital Network (NRHN), a New Hampshire domestic for-profit corporation in good standing, is proposing to create a new Inpatient Rehabilitation Facility (IRF) on the campus of York Hospital (York), which is located at Loving Kindness Way, York, Maine. The new facility will be part of NRHN and will be known as Northeast Rehabilitation Hospital at York (referred to in this Application as “NRH @ York”). It will provide a comprehensive rehabilitation program for inpatients who must be able to tolerate three hours of intense rehabilitation services per day, and will be the type of facility that the Centers for Medicare & Medicaid Services (CMS) has defined for this level of post-acute care. The major goal of this project is to provide the population of York County with access to comprehensive IRF services. Currently there are no IRF level beds within York County.

The project includes the construction, by York, of a single story, 20,030 square foot facility abutting York’s Strater Wing, which will allow direct access to York from the IRF. Site plans and floor plans for the project are attached. (See Exhibit 1) York’s cost for site work and constructing the core and shell of the new building is estimated to be $7.1 million. York will own the new addition and lease it to NRHN in accordance with the terms of a long term, fair market value lease. NRHN will invest approximately $6.4 million on interior design, fit-up, fixtures, furniture and equipment in order to implement the project. For planning purposes, NRHN anticipates that this new health service will commence on April 1, 2020.

York and NRH @ York will maintain their separate and distinct facilities, from both an operational and a governance perspective. NRH @ York’s medical staff, rehabilitation staff,
and nurses will be credentialed and under the complete control of NRHN. NRHN and York will develop contracts for ancillary and support services, similar to the contractual relationships that NRHN has developed with host hospitals at its two other satellite IRF facilities in Nashua and Manchester, NH.

II. PROJECT DESCRIPTION:

NRHN was founded in 1981 to establish an inpatient rehabilitation hospital in Southern New Hampshire and the Merrimack Valley. NRHN’s first IRF opened in Salem, New Hampshire, with 102 beds in 1984. NRHN currently operates four IRFs in New Hampshire, over twenty (20) outpatient clinics in both New Hampshire and Massachusetts, and a CMS certified home care agency. NRHN’s goal is to span the continuum of post-acute rehabilitation care.

NRHN employs over 1,100 individuals. Licensed personnel include more than 20 physicians, 200 nurses and 300 therapists (physical, occupational, speech, and others). Each IRF maintains physicians who specialize in physical medicine and rehabilitation (physiatrists) and hospital medicine (hospitalists), therapists, and specially trained and Certified Rehabilitation Registered Nurses. NRHN IRFs feature therapy gardens and mobility parks, where patients can practice navigating the varied terrain that they will encounter once discharged. All NRHN inpatient facilities have an activities of daily living (ADL) kitchen and bedroom for patients to practice critical skills to support their independence after discharge. Over 900 individuals receive care through NRHN’s inpatient, outpatient, and home care services, on a daily basis.

III. HIGHLIGHTS:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tr>
<td>Letter of Intent dated</td>
<td>September 26, 2017</td>
</tr>
<tr>
<td>Technical Assistance meeting held</td>
<td>November 8, 2017</td>
</tr>
<tr>
<td>CON application filed</td>
<td>April 24, 2018</td>
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<tr>
<td>CON certified as complete</td>
<td>April 24, 2018</td>
</tr>
<tr>
<td>Public Information Meeting Held</td>
<td>Waived</td>
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<tr>
<td>Public Hearing held</td>
<td>June 7, 2018</td>
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<tr>
<td>Preliminary Analysis released</td>
<td>October 3, 2018</td>
</tr>
<tr>
<td>Close of Public Record</td>
<td>October 25, 2018</td>
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IV. PUBLIC COMMENTS RECEIVED IN RESPONSE TO THE PRELIMINARY ANALYSIS

The preliminary analysis was released on October 3, 2018 and included comments previously received from New England Rehabilitation Hospital of Portland (NERHP) who filed as an interested party. These comments generally suggested that the project should not be approved. These comments were analyzed and reviewed as part of the preliminary analysis.

Following the release of the preliminary analysis the Certificate of Need Unit (CONU) received further comments from New England Rehabilitation Hospital of Portland (NERHP). These
comments generally suggested that this project should still not be approved. These latest comments are described and included below:

**Nationwide vs. Regional Forecasts:**
NRHN utilizes national trends and estimations to determine public need. National trends do not directly align with regional forecasts as there is variability within the healthcare environment. This national data should not be used to forecast the need for a 20 bed IRF in York, Maine.

**Referrals:**
The number of referrals in a market is not pertinent to an assessment of public need.

**Defining Market Share:**
A healthcare provider’s market share is commonly defined as the area from which 80% of their patient population originates. NRHN does not use this methodology, which is an industry best practice. Properly defining market share will prevent duplication of services and avoid increasing the overall cost of healthcare.

**Network Adequacy:**
Network adequacy is a tool to determine whether a commercial insurance carrier’s contracted provider network is sufficient to serve its insured members. Network adequacy is an important measure when determining public need.

**Medicaid and Free Care Participation:**
NRHN has, for years, denied attempted placements of MaineCare and uninsured patients by healthcare organizations such as Southern Maine Health Care and Maine Medical Center.

**Likelihood and Negative Financial Consequences of Failure to Obtain Satellite Designation**
The failure of the applicant to qualify as a provider-based satellite facility will have significant negative financial consequences that will seriously threaten its economic viability.

**Compliance with CMS 60% Rule**
Referrals do not equate to admissions and there are not an adequate number of patients in the area to make a 20-bed IRF in Southern Maine viable. A new 20 bed IRF in York would draw patients away from Portland thus negatively impacting the quality of care delivered by existing service providers. Non-compliance with the CMS 60% rule could lead to a reduction in the number of staffed beds and a reduction in clinical and support staff.

**NRHN Response to NERHP Comments:**

**Nationwide vs. Regional Forecasts:**
The NERHP assertions are erroneous. Data from numerous sources forecast an increase in the need for IRF services in York County due to an aging population.
Referrals
If referrals are being made by NERHP affiliates to out-of-state IRF’s, it clearly demonstrates that there is a need that is not being met in Maine. Hundreds of Maine patients have been admitted to NRHN’s facilities in Portsmouth and Salem, New Hampshire

Defining Market Share
None of the arguments made by NERHP undermine the methods or the data used by NRHN to show public need. There is no requirement in the CON Act or rules that a specific method be utilized to establish public need. NRHN utilized a conservative and sound method to demonstrate need.

Network Adequacy
Public need and network adequacy are not similar and serve entirely different purposes. Public need addresses serving the need of all residents in a given area. Network adequacy is a tool used to determine whether an insurance carrier’s contract provider network is sufficient to serve its insured members. It is not an appropriate measuring stick because commercial carriers do not serve all residents. NERHP’s analysis ignores the needs of regular Medicare, MaineCare, and uninsured patients.

Medicaid and Free Care Participation
NRHN cares for a substantial number of Medicaid patients and intends to comply with Maine’s Free Care guidelines.

Likelihood and Negative Financial Consequences of Failure to Obtain Satellite Designation
NRHN does not intent to seek provider-based status because it is unnecessary. Provider-based status applies to facilities if the status of the facility as provider-based or freestanding affects the amount of payment under Medicare or the cost sharing of a beneficiary in or at the facility. None of these factors are affected whether NRH @ York is a satellite or a freestanding IRF, making provider-based status irrelevant. Payment to NRH @ York, as a satellite of NRHN’s Salem facility, will be governed by the IRF prospective payment system set forth in 42 CFR § 412.29, and not under the provider-based rules.

Compliance with CMS 60% Rule
NRHN is fully aware of what is needed to comply with the 60% Rule. At each of its four facilities, NRHN has maintained compliance without issue. NRHN has never proposed pulling volume from NERHP to justify the need for the project. There is substantial evidence of need based on the current volume of Maine patients being cared for at Pease and as expressed by the New Hampshire hospital CEOs at the public hearing.

The Certificate of Need Unit has addressed these and similar public comments in the October 3rd preliminary analysis. The Certificate of Need Unit believes that this applicant has met its burden to comply with the Certificate of Need standards

V. CERTIFICATE OF NEED UNIT ANALYSIS
a) Fit, Willing and Able

NRHN operates four IRFs in Salem, Nashua, Portsmouth and Manchester, New Hampshire, with 135 beds. The Salem and Portsmouth facility are freestanding IRF’s while the Nashua and Portsmouth facilities are satellite IRF’s in collaboration with Southern New Hampshire Medical Center and Elliot Hospital respectively. NRHN operates twenty outpatient clinics in both New Hampshire and Massachusetts and a CMS certified home care agency.

As stated previously by the applicant, the State of New Hampshire surveys each inpatient location prior to granting a State facility license. This license must be renewed annually with NRHN submitting attestations for each facility as requested by the State of New Hampshire. The applicant submitted licenses for each IRF. Details follow:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Location</th>
<th>Beds</th>
<th>Administrator</th>
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</thead>
<tbody>
<tr>
<td>Northeast Rehabilitation Hospital</td>
<td>70 Butler Street, Salem NH</td>
<td>67</td>
<td>John F Prochilo</td>
</tr>
<tr>
<td>Northeast Rehabilitation Hospital</td>
<td>29 NW Blvd, Nashua NH</td>
<td>20</td>
<td>John F Prochilo</td>
</tr>
<tr>
<td>Northeast Rehabilitation Hospital</td>
<td>105 Corporate Drive, Portsmouth NH</td>
<td>33</td>
<td>John F Prochilo</td>
</tr>
<tr>
<td>Northeast Rehabilitation Hospital</td>
<td>1 Elliot Way, Manchester, NH</td>
<td>15</td>
<td>John F Prochilo</td>
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CONU utilized the Inpatient Rehabilitation Facility Compare data available from the Medicare.gov website as well the most recent CASPER Report to review quality of patient care information. As noted by the applicant NRHN performed better than or equal to national benchmarks on most quality of patient care measures. The applicant identified these measures and included a plan of correction as follows:

- Potentially preventable 30-day post discharge re-admission:
  NRHN has increased focus on navigating the care continuum for identified high-risk populations and has implemented processes to ensure timely physician follow up post discharge and high-risk telephone screening.

- Community Discharge:
  NRHN has convened a multidisciplinary improvement team, established high-risk clinical pathways, and implemented a nurse navigator program, which has resulted in a significant improvement in NRHN’s discharge rate to the community.

NRHN is accredited by The Joint Commission for both Hospitals and Home Care agencies and is certified by the Centers for Medicare and Medicaid Services.

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.

NRHN is not currently licensed to provide IRF services in the state of Maine. The Deeming Standard does not apply.

b) Economic Feasibility

The applicant provided a memorandum of understanding between NRHN and York which gives a detailed description of this transaction and the responsibilities of each party. This project includes the construction of a single story, 20,030 square foot facility by York for a projected cost of $7,173,150. York will maintain ownership of the facility and will be responsible for site work and construction of the shell of the building and the main entry canopy. NRHN will be responsible for construction and improvements inside the shell, constructing an outdoor activity area, and performing designated renovations for a budgeted cost of $6,406,734. NRHN plans to finance approximate $5,630,000 of this expenditure and has submitted a financing proposal from Enterprise Bank offering interest rates between 4.98% and 5.63% with a fixed rate locked in for either 5 or 10 years. York will lease the building to NRHN at fair market value for an initial term of twenty years. The rent to be paid by NRHN to York will be $22 per square foot per year plus an additional $7 per square foot per year for common-area maintenance (approximately $580,870). NRHN will pay an estimated $805,000 to York for ancillary services (pharmacy, laboratory, pastoral care, radiology, respiratory therapy, diagnostic testing and emergency medical response) and support services (clinical engineering, dietary, housekeeping, laundry/linen, maintenance, patient transport and security). NRHN will own and operate the beds in the facility as a licensed inpatient rehabilitation hospital. All of the clinical staff and administrative staff will be NRHN employees. NRHN will be responsible for all licenses and regulatory compliance relating to the operation of the inpatient rehabilitation hospital, including Medicare certification.

The applicant submitted a complete financial module and compiled a table of financial indicators to demonstrate its capacity to financially support the project over its useful life. As stated by the applicant, the 2017 ratios were derived from actual operating results of the NRHN network during this time period. In addition, CONU requested and received a copy of Neuro Rehab Associates Inc. d/b/a Northeast Rehabilitation Health Network audited financial statements for the years ended May 31, 2017 and 2016. Ratios for 2021 through 2023 were derived from financial projections contained in the CON financial module.

Based on a review of the applicants’ financial projections and financial performance indicators CONU believes that the underlying assumptions regarding future performance are reasonable. In addition, NRHN has sufficient resources to support this proposed project in the event that financial projections are not realized.
Changing Laws and Regulations

CONU staff is not aware of any imminent or proposed changes in laws and regulations that would impact the project.

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 the applicable licensing and certification standards.

The applicant has not operated an IRF in Maine therefore the deeming standard does not apply.

Bureau of Insurance Analysis:

Pursuant to 22 M.R.S §335 (5-A) (I) the Superintendent of Insurance provided the following statement regarding the impact of this application on the cost of health insurance in the State:

“Due to the size of the project and the statement in the application that 70% of the services will be provided to Medicare eligible individuals that are not included in this analysis, the premium impact of this CON project on statewide and regionally private health insurance for the Northeast Rehab project is non-material or less than 0.1%.”

c) Public Need

The applicant is proposing to add 20 IRF beds in York, Maine. To determine public need, CONU analyzed demographic and service use trends in NRHNs’ proposed service area (York County, Maine). CONU utilized the Older Adults with Physical Disabilities: Population and Service Use Trends in Maine, 2012 Edition, prepared by the Muskie School of Public Service and the U.S. Census Bureau’s website located at http://quickfacts.census.gov.

York County is the second most populous county in Maine with an estimated population of 204,191 as of July 1, 2017, with approximately 19.7% of the population age 65 or older. This population is the primary consumer of IRF services. Maine’s 65 and above age group continues to grow at a rate faster than New England and the United States. The Muskie School projects growth in York County’s older population (65+) between 2012 and 2022 as an increase of 20,870 people (from 33,078 to 53,948 people) or a growth rate of approximately 63%.
NRHN engaged Stroudwater Associates of Portland, Maine to conduct a demand analysis for IRF services. Based on 2016 Maine Health Data Organization (MHDO) data regarding discharges from Maine hospitals to an IRF or skilled nursing facility (SNF) and an assumed market share of 60% NRH @ York is projecting a volume of 193 cases. This number only includes patients falling under the 13 acute rehabilitation diagnostic codes. Using Truven Analytics population growth estimates of .88%, the first year of operation in 2021 is projected to have a case load of 200 patients plus an additional 135 cases that don’t fall under the 13 diagnostic codes. This would lead to a 336, 3,970 patient days and an average daily census of 10.9 days. An additional 4.5 days are added to account for Maine patients who are not discharged from a Maine hospital. This brings the total projected average daily census to 15.4 days or a 77% occupancy rate for 2021. NRHN further documented need by summarizing its experience at its 33 bed Pease facility; approximately 25% of its patient census consists of residents of southern York County, Maine.

Adding additional IRF beds would substantially address specific health problems associated with an aging population which is increasingly requiring more intensive rehabilitation care.

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 require IRF services. The applicant will utilize its existing quality structure and processes to ensure that high-quality care is delivered to patients at NRH @ York.

d) Orderly and Economic Development

The decision to build a new 20-bed IRF in partnership with York Hospital addresses a demonstrated need for additional IRF services in York County. The increase in IRF beds will improve patients’ access to needed services in the area. In addition, benefits are derived from patients who are admitted to an IRF. These benefits include a significant decline in hospital readmissions and a smoother transition to less costly outpatient and/or home care services.

There will be minimal, if any, increased costs associated with the construction of the 20 bed IRF. The applicant provided a detailed analysis of its service areas and included utilization data for IRF services. This data shows that the increase in proposed services are a necessary component of health care in Maine. Increased use of MaineCare funds will be mostly due to inflation or changes in volume unrelated to this transaction.

State funds should not be materially impacted by this transaction. Based on historical and projected data, increased utilization due to this project should be minimal. Approximately 90% of services are Medicare, private insurance or other sources of funding. NRHN currently has provider agreements with MaineCare and anticipates that these agreements will be extended to cover services provided by NRH @ York.

The applicant considered and rejected three alternatives to this project:
A) Do nothing – resident needs will not be met
B) Construct free standing IRF – this would be more costly.
C) Have York Hospital establish IRF – not cost effective and York does not have experience level of NRHN.

It is unlikely that a more effective, more accessible or less costly alternative for providing needed IRF services is available.

e) Outcomes and Community Impact

NRHN is committed to providing high quality care and is engaged in continuous quality improvement throughout its organization. The addition of 20 IRF beds focusing on inpatient rehabilitation services, in the York County area will have a positive effect on the quality of care delivered and will not have a negative effect on the quality of care delivered by existing service providers. Seniors needing IRF care will have a greater likelihood of finding the services offered in the area in which they reside. Increased access to IRF services increase the likelihood that patients completing appropriate treatment will end up returning home and/or to community-based services rather than being placed or remaining in a costly long-term care setting. NRHN education programs prepare patients and families for a successful rehabilitation discharge, including use of equipment, home modifications and community resources for eventual recovery and independence. NRHN provides a continuum of care for its patients with home care services and outpatient clinics. 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.

f) Service Utilization

NRHN is undertaking this project to meet an increased health care need for improved access to IRF services in York County. This will be accomplished by adding 20 IRF beds in the York County service area. As stated in their application NRHN collaborates with local providers to ensure continuity of care, and participates in provider efforts to improve the experience, health outcomes and reduce health care costs through a focus on unnecessary utilization. NRHN intends to further strengthen relationships with providers in Maine, many of whom already work with NRHN through NRH @ Pease.

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.

No funding is utilized from the MaineCare funding pool.
VI. CONCLUSION

For all the reasons set forth in the Preliminary Analysis and in the record, the CONU concluded that the review standards have been satisfied. The CONU recommends the approval of the CON.

VII. RECOMMENDATION

The CONU recommends that this application be Approved.