**Preliminary Analysis**

**Date: October 18, 2013**

**Project**: **Acquisition of Control of Ambulatory Surgical Centers in Lewiston and Portland**

**Proposal by: Spectrum Medical Group**

**Prepared by: Phyllis Powell, Assistant Director, Medical Facilities**

**Larry Carbonneau, Manager, Health Care Oversight**

**Richard S. Lawrence, Senior Health Care Financial Analyst**

**Directly Affected Party: None**

**Certificate of Need Unit Recommendation: Approved**

|  |  |  |
| --- | --- | --- |
|  | **Proposed** **Per Applicant** | **Approved** **CON** |

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| --- | --- | --- |
| Estimated Capital Expenditure | $ 8,100,618 | $ 8,100,618 |
| Maximum Contingency | $ | $ |
| Total Capital Expenditure with Contingency | $ 8,100,618 | $ 8,100,618 |
| Pro-Forma Marginal Operating Costs | $ 693,400 | $ 693,400 |

# I. Abstract

**A. From Applicant**

“This Certificate of Need (“CON”) application is being submitted for review of a transaction involving the merger of three specialty care physician practices; more specifically, the mergers of the OA – Centers for Orthopaedics and Central Maine Orthopaedics into Spectrum Medical Group. The CON review relates only to the transfer of ownership of two ambulatory surgical facilities imbedded within the OA – Centers for Orthopaedics and Central Maine Orthopaedics. None of the other triggers for CON review are implicated and are therefore beyond the scope of this application. In essence, the integration of OA – Centers for Orthopaedics and Central Maine Orthopaedics into Spectrum Medical Group results in the new management of existing providers.”

“Spectrum Medical Group, P.A. (“Spectrum”), is a physician-owned and directed multi-specialty medical group, with more than 170 physicians practicing in the areas of anesthesiology, physical medicine, neurology, pain management, pathology, radiology, radiation oncology, and general surgery. Spectrum’s administrative offices are located in South Portland, Maine. More information about Spectrum can be found on its website at <http://www.spectrummedicalgroup.com/index.html>.”

“Central Maine Orthopaedics, P.A. (“CMO”), is an orthopaedic practice located in Auburn, Maine, with approximately 12 physicians and surgeons. CMO is dedicated to treatment of musculoskeletal injuries and illnesses through its Ambulatory Surgery Center (“ASC”), clinic, offices and spine care center of excellence, all located at its Auburn location. A floor plan of CMO’s office building is included as **Exhibit 1**. More information about CMO can be found on its website at <http://www.cmogroup.org/>. OA – Centers for Orthopaedics, P.A. (“OA”), is an orthopaedic practice located in southern Maine, with approximately 15 physicians and surgeons. OA has locations in Portland, Saco, Windham, and Brunswick. OA’s orthopaedic specialty centers include an on-site MRI center and an ASC, both located in Portland. A floor plan of OA’s Portland office building is included as **Exhibit 2**. More information about OA can be found on its website at <http://www.orthoassociates.com/home/>.”

“Spectrum, OA, and CMO desire to combine their medical practices to improve patient care and respond to changes in the market for professional health care services. The groups recently executed a non-binding letter of intent. Under the proposed terms, OA and CMO would become divisions of Spectrum; thereby joining Spectrum’s other practice groups, such as radiology and anesthesiology, under the Spectrum umbrella. **Exhibit 3** depicts Spectrum’s current structure. **Exhibit 4** depicts Spectrum’s structure post-merger. The transaction is structured as a merger of entities. The current physician-shareholders of OA and CMO would become physician-shareholders and employees of Spectrum. OA and CMO would otherwise continue with the same operations, services, and quality standards of health care. As a result of the merger, Spectrum will become the owner of the ASCs currently owned and operated by OA and CMO, and of the equipment and other assets.”

“This transaction will not involve a transfer of ownership of land or realty or buildings, and no capital expenditures or construction costs are associated with this project. The land and buildings where CMO and OA provide services are not owned by CMO and OA. Rather, CMO and OA lease the space and Spectrum will assume those leases as part of the merger. A copy of the leases can be provided upon request. The proposed transaction will not result in any change in the physical location or operations of the ASCs, nor will the transaction alter the current physician-patient relationships or affect how patients interact on a day-to-day basis with the practices. Further, Spectrum intends to assume the ASC provider numbers from CMO and OA respectively.”

“The parties intend to finalize the proposed merger on or before December 31, 2013, and will work with CMS and DHHS licensing to effectuate transfer of the ASC provider numbers to Spectrum.”

**B. CONU Comments**

This transaction is subject to certificate of need review because of 22 M.R.S.A §329 that states that a certificate of need from the department is required for any transfer of ownership or acquisition under lease or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition had been by purchase, except in emergencies when that acquisition of control is at the direction of the department. Physician office space is specifically excluded from CON review. However, as stated by the applicant, OA and CMO have Ambulatory Surgical Centers which are subject to review. Ambulatory surgical facility is defined in the CON statute as a facility, not part of a hospital, which provided surgical treatment to patients not requiring hospitalization. Ambulatory surgical facility does not include the offices of private physicians or dentists, whether in individual or group practice.

# II. Fit, Willing and Able

## A. From Applicant

“Spectrum Medical Group, P.A., is the applicant. Spectrum is a Professional Association organized under the Maine Professional Service Corporation Act. Spectrum’s administrative offices are located at 324 Gannett Drive, Suite 200, South Portland, Maine and 6 State Street, Suite 611, Bangor Maine. Spectrum includes three subsidiary organizations; SMG Beacon, FIDES, and Spectrum Medical Insurance Company. SMG Beacon is currently an inactive company. FIDES is a subsidiary devoted to marketing and licensing Spectrum’s internally developed quality improvement tool, and Spectrum Medical Insurance Company is a captive insurance company. Spectrum provides professional physician services to many hospitals and other health care providers in the State. More information about the health care facilities and services in which Spectrum is involved can be found on Spectrum’s website at <http://www.spectrummedicalgroup.com/our-partners-affiliations.html>.”

“Spectrum is fit, willing and able to successfully undertake this venture and provide the orthopaedic health care services contemplated. The following factors establish that Spectrum can provide the services at the proper standard of care.”

“First, Spectrum is a financially sound health care entity, providing a progressive model for the ownership of the orthopaedic ambulatory surgery centers involved in this transaction. Attached as **Exhibit 5** we have included aggregate financial information demonstrating Spectrum, OA, and CMO’s ability to support the continued operation of the ASCs.”

“Second, Spectrum has already proven itself as a sound owner and manager of other thriving health care practices. The Spectrum governance model, as depicted on **Exhibit 6** with associated divisions and clinical specialties, requires a deep understanding of health care delivery to successfully manage a wide range of health care providers. From the quality assurance perspective, Spectrum is an industry leader. This is exemplified through its internal policies and procedures, as well as by its activities within the health care marketplace. Spectrum’s Quality Committee (QC) reports directly to its Board of Directors. The QC provides leadership for all Spectrum quality improvement activities. To monitor quality and effectiveness, Spectrum carefully assesses patient and physician satisfaction and conducts outcome measurements as well as utilization review. Spectrum’s strategic initiatives include:

• Providing the highest quality sub-specialty services to our customers (patients, hospitals, physicians, citizens)

• Serving as a partner in solving regional healthcare issues (quality, access, cost).

To support these initiatives, each of the specialties and divisions at Spectrum has a comprehensive quality program, demonstrating enhanced patient safety, and improved outcomes.”

“Further, Spectrum has developed its own quality improvement program for anesthesia providers, including a software program, FIDES, that it currently markets and licenses to anesthesia practices through its wholly-owned entity, FIDES, LLC. FIDES, LLC has recently become certified by the U.S. Department of Health and Human Services as a Patient Safety Organization, and is involved in pioneering quality assurance efforts with anesthesia providers.More information about FIDES can be found here: <http://www.fidesqa.com/>.The groundbreaking work Spectrum has successfully undertaken with FIDES would be used in connection with the orthopaedic divisions.”

“Third and perhaps most important, the two ambulatory surgical centers involved in the planned merger already meet, if not exceed, industry standards of competence and quality with respect to the provision of orthopedic surgical services. Both entities are already licensed ambulatory surgical facilities. By statute, the ‘fit, willing and able’ criteria are deemed to have been met 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, and the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards.” 22 M.R.S.A. §335 (7)(A). To the extent the orthopedic services are a new addition to Spectrum’s well-established current structure, the following points are noteworthy:

* OA and CMO are both financially sound entities, operating successfully in their respective geographic regions for years. See **Exhibit 5**.
* OA and CMO already have quality assurance plans and procedures which have passed state licensure and audited review standards. A copy of such plans, and/or performance measures can be provided, upon request.
* OA and CMO already have quality assurance data systems that generate timely, meaningful, informative quality, performance and financial data, and that illustrate the standard of care to which both facilities adhere. Such information is available on request. OA convenes quarterly meetings of the Board’s Quality Assessment and Performance Improvement (QAPI) committee.  The QAPI meetings address a range of issues, including ASU complications and infection reviews, charging and documentation accuracy, outcomes measurement efforts, and re-credentialing of physicians and other licensed professionals.  OA also performs ongoing peer-reviewed monitoring of care on a systematic basis for all physicians and mid-level providers. All of these programs will remain in place.
* Like Spectrum, CMO and OA are members of associations that demand and evidence the commitment to providing high quality services. The ASCs at CMO and OA are accredited by the Accreditation Association for Ambulatory Health Care (AAAHC) for meeting nationally recognized standards for the provision of quality healthcare. Spectrum anticipates continued AAAHC accreditation, post-merger.
* Spectrum will be assuming the current provider numbers. Spectrum has already reached out to both DHHS and CMS regarding the transfer of ownership of the ASCs. Because the operations of the ASCs will not materially differ pre and post-merger, we do not anticipate any issues with respect to licensure and certification.
* No material changes are planned for the ASCs relative to current operations**.”**

“All of the above illustrates that the current ASCs meet industry standards, and that Spectrum is, and will continue to be, fit, willing and able to own and successfully operate the ASC entities involved in this transaction.”

## B. CONU Discussion

**CON Standard**

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

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.

**CON Analysis**

The most recent survey of Central Maine Orthopaedics (CMO) was completed on June 6, 2013. As part of the survey some violations were cited. There were three violations of personnel standards. Two employees were working as operation room technicians without the required certifications. One of the prior employees was employed as a medical assistant but does not have the proper certification for that position either. Expired endotracheal tubes were located in two different operating rooms. Fifteen of nineteen expired the month previously and the remaining four expired in November 2012. The facility was also surveyed for life safety issues and was found to be in substantial compliance. A plan of correction was received from the facility by Licensing staff on July 3, 2013. CMO’s administrator is Dr. Matthew Bush. He has been administrator since 10/26/2011. The facility ownership is listed as Central Maine Orthopaedics, PA.

The most recent survey of Orthopaedic Surgery Center (OA) was completed on November 16, 2009. As part of the survey many violations were cited. There were twenty-one violations of governing standards. The facility did not have a contract review process in order to ascertain the safety of contracted services. The facility did not have a disaster preparedness plan. The facility was cited for immediate jeopardy to the health and safety of patients. These serious issues were corrected by December 15, 2009. The quality and performance improvement (QAPI) programs were found to be out of compliance because of six issues. All of the corrections were made by January 15, 2010. The facility was also surveyed for life safety issues and was found to be in substantial compliance. Since the federal inspection, there have been three state re-licensure surveys and all three have found that the ASC is in substantial compliance with the regulations governing Ambulatory Surgical Centers. OA’s administrator is Linda Ruterbories.

CONU obtained detailed descriptions of OA and CMO’s quality assurance programs. These programs will remain in place post-merger.

**Deeming of Standard**

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.

### Conclusion

CONU recommends that the Commissioner find that the applicant has met their burden to show that the applicant is fit, willing and able.

# III. Economic Feasibility

**A. From Applicant**

“The proposed project meets, if not far exceeds, the economic feasibility criteria applicable to CON applications.”

“Spectrum and the two ASCs each have the ability to support the continued operations of the ASCs over their useful life, due in part to the rates the applicant expects to be able to charge for orthopedic and other surgery services provided in the ASCs. In light of the uncertainties of the health care market, there can be no assurances regarding rates. However, there is no reason to expect that rates will decrease. To the extent that the orthopedic services are covered by private, commercial insurance coverage, and Spectrum has contracts with those insurers, the Spectrum contracts and rates would potentially apply, based upon the terms and conditions negotiated by Spectrum with those carriers.”

“The proven track record of the ASCs combined with the financial resources of Spectrum, provides assurance regarding stability into the future, and the financial feasibility of the project. It is noteworthy that:

* No capital expenditures are anticipated;
* There will be no construction associated with the project.
* Changes to payroll or payroll costs are not anticipated in connection with the project, although over time, efficiencies will be sought with respect to management and administration of the orthopedic services.”

“Spectrum is well-positioned financially to operate the ASCs in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other rules. As the two entities to be merged into Spectrum are already licensed ambulatory surgery centers in this state, these requirements should be deemed to have been met. 22 M.R.S.A. §335 (7)(B). Spectrum, CMO and OA do not anticipate any interruption in services during and after the merger. Again, CMO and OA will maintain operations substantially in their current form and, other than signage and changes to websites related to re-branding, no significant changes in the day-to-day operations of the ASCs from a patient or financial perspective are anticipated. Therefore, we do not anticipate any increase in incremental operating expense in the first three (3) years. In the event further supporting information is necessary, attached as **Exhibit 7** is Spectrum’s three (3) year financial projections for each ASC. Please note that **Exhibit** **7** is subject to further due diligence and, if the projections change or are refined as a result, Spectrum will update accordingly.”

“Effective September 1, 2012, ambulatory surgery centers are no longer eligible for reimbursement under MaineCare. While this recent legislative change has implications for the revenue of the ambulatory surgery centers, such impact exists regardless of the merger. Further, no changes have been necessitated or undertaken, and none are planned by either ASC in response to the regulatory change. Neither this regulatory change, nor any other federal, state or local licensure or other laws, rules or regulations, present obstacles to or undermine Spectrum’s ability to own or operate the ASCs.”

**B. CONU Discussion**

### CON Standard

The 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.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. This is allowable 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.

### CON Analysis

The first standard relevant to the determination of economic feasibility is the analysis 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. As stand- alone facilities OA and CMO were profitable entities. There are no capital expenditures associated with this merger, no significant changes in the day-to-day operations of the ASCs are proposed, and no additional health services are being added to the health care system. A review of Year 1 through Year 3 financial projections shows modest growth in volume, revenue and operational profitability (Earnings before interest, taxes, depreciation and amortization). The applicant submitted a combined balance sheet for Spectrum, OA and CMO. This balance sheet was prepared using the income tax basis of accounting. This method involves preparing financial statements based on the methods and principles that are used by the client to file its income tax return. This method of reporting excludes certain accruals (this case 12-15 million dollars in accounts receivables) which skew the true financial position of the combined entities. CONU chose not to use this information for our analysis. This transaction will not have an effect on the rates charged for services provided. CONU is unaware of any impending changes to

reimbursement rates which would effect this transaction. As mentioned previously in the application, MaineCare reimbursement for Ambulatory Surgical Centers ended on September 1, 2012. The impact of this change in reimbursement has been factored in to the applicants’ financial projections and occurred regardless of the planned merger.

**Changing Laws and Regulations**

Certificate of Need Unit staff is not aware of any imminent or proposed changes in laws and regulations that would affect 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.

### Conclusion

CONU recommends that the Commissioner determine that the applicant has demonstrated that the project is economically feasible.

# IV. Public Need

**A. From Applicant**

“This proposed project involves the merger of CMO and OA into Spectrum, which includes the change in ownership of two existing and fully operational ASCs. Thus, this is not a new project or new service, but the continuation of ASC services currently provided and needed in the respective communities. The continuation of these services will address the need for orthopaedic and other surgery services in central and southern Maine. With respect to CMO, it offers the only licensed independent surgical center in the Lewiston/Auburn area. With respect to OA, it has offered orthopaedic surgery services to patients in Portland and surrounding southern Maine communities since 1989.”

“Regarding utilization and public need, CMO performed approximately 2400 to 2500 surgical procedures in its ASC in each of the years 2010, 2011, and 2012, respectively. Based on utilization through June 2013, CMO expects to perform approximately the same number of procedures in 2013, with the potential for modest increases in 2014 and 2015. The utilization of OA’s ASC decreased somewhat over the years 2010 through 2012 because in and around 2010 and 2011 certain physicians left OA to become employees of MaineHealth. As a result, in 2010 OA performed approximately 5,000 surgical procedures and in 2012 they performed approximately 4,200 surgical procedures. Based on utilization through June 2013, OA expects to perform approximately 4,400 procedures in 2013, with the potential for modest increases in 2014 and 2015. Thus, Spectrum expects that the ASCs will continue to meet the need and demand for orthopaedic and other surgery services in central and southern Maine. Spectrum does not project the need to expand ASC capacity for orthopaedic services in the immediate future. In the event physical capacity becomes an issue in the future, Spectrum would work through the CON process, as necessary and appropriate, to address the capacity issue.”

“With respect to access, Spectrum is committed to caring for all patients in need of care, and the accessibility CMO and OA afford in their respective geographic markets would not change. CMO treats Maine residents primarily from the Androscoggin County area, as well as from surrounding regions, as far north as Aroostook County. OA treats patients primarily from Portland and surrounding regions. Both facilities treat patients covered by private, commercial insurers, worker compensation plans, self-funded employer plans, and by government payors. If MaineCare regulations are revised in the future to include coverage for ASC services, the facilities will resume providing services to those patients. Moreover, both facilities have financial assistance policies and procedures in place, to allow patients without insurance coverage (or with only partial insurance coverage) to obtain medically necessary services. The policies establish guidelines for the treatment of patients applying for financial assistance, based on income tiers relative to the federal poverty guidelines. These guidelines, available upon request, would continue to apply post-merger.”

“Regarding quality and health status indicators, as explained above in Section II, OA and CMO have quality assurance plans and procedures already in place that have passed state licensure and audited review standards. A copy of such plans, and/or performance measures can be provided, upon request. Further, both OA and CMO have quality assurance data systems that generate timely, meaningful, informative quality, performance and financial data, and that illustrate the standard of care to which both facilities adhere. Such systems will remain in place. Because the day-to-day operations of the ASCs will not change as a result of this proposed change in ownership, Spectrum expects to see similar quality outcomes and patient satisfaction in its operation of the ASCs.”

**B. CONU Discussion**

### CON Standard

The relevant standard 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.

### CON Analysis

This review is limited to the Ambulatory Surgical Centers of CMO and OA. CMO treats residents from primarily Androscoggin County and surrounding regions while OA treats patients primarily from Portland and surrounding regions. Both entities are existing facilities and have provided services for many years. CONU prepared a summary of the applicants actual and projected surgical procedures:

Number of Ambulatory Surgical Center Surgical Procedures

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Ambulatory Surgical Center** | **Actual 2012** | **Proj. 2013** | **Proj. Year 1** | **Proj. Year 2** | **Proj. Year 3**  | **2012 to Yr. 3 Year Increase** | **Average Annual Inc.** |
| OA Surgical Procedures | 4200 | 4400 | 4400 | 5025 | 5680 | 35.23% | 7.05% |
| CMO Surgical Procedures | 2400 | 2400 | 2487 | 3088 | 3148 | 31.16% | 6.23% |

### This summary shows that there is a demand for surgical services to meet specific health problems in the area. The applicants believe that their current facility has sufficient capacity to meet demand in the foreseeable future.

### Providing needed orthopedic and other surgery services in central and southern Maine will have a positive impact on the health status indicators of the population to be served.

The proposed merger will have no impact on the accessibility of services as no changes in location or services are part of this transaction. The services affected by the project will be accessible to all residents of the area proposed to be served.

The applicant has discussed its quality and outcome measures extensively in the Fit, Willing and Able section of this analysis. In addition CONU has requested a copy of OA and CMO’s quality assurance plans and procedures currently utilized in each facility. . Both OA and CMO have quality assurance data systems which allow management to track performance measures on and ongoing basis to ensure quality outcomes for its patients. These systems will remain in place post-merger

### Conclusion

CONU recommends that the Commissioner find that the applicant has met their burden to show that there is a public need for the proposed project.

# V. Orderly and Economic Development

**A. From Applicant**

“As noted above, this proposed transaction does not involve a new health service or facility, and does not involve a payment by Spectrum for the ASC assets of CMO or OA. Rather, certain current shareholders of CMO and OA will become shareholders in Spectrum, and Spectrum will assume the provider agreements, provider numbers, and leases associated with the building and real property. Spectrum may make some minimal capital improvements in the form of signage, painting, IT upgrades and minor renovations in the first year of operation. Spectrum does not project, however, any material increase in third year operating costs.

“In addition, Spectrum does not anticipate any increase in volume or increase in service as a result of the proposed transaction, above and beyond the annual increases currently experienced by CMO and OA in the normal course due to population and demographic changes. As such, we do not project that revenues and expenses will materially change as it relates to the change in ownership of the ASCs, and we do not expect that this merger will have any impact on total health care expenditures or costs to the State.”

“While research and technological advances in equipment have improved the surgical capabilities of ASCs, Spectrum is not aware of any replacement technology or service delivery mechanism that would offer a less costly alternative to medically necessary orthopaedic surgical services.”

**B. CONU Discussion**

###  CON Standard

The relevant standard 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.

### CON Analysis

Total health care expenditures are not expected to increase as a result of this transaction. The need for these services is definite and measurable. Current and projected utilization levels of these services make the continuation and availability of these services a necessary component of health care.

State funds should not be impacted by this transaction. There should not be any increased utilization of these services because of this proposed transaction.

OA and CMO have provided ASC services for many years. No planned expansion of infrastructure or services is planned therefore it is highly unlikely that a more effective, more accessible or less costly alternatives will become available in the future.

### 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.

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# VI. Outcomes and Community Impact

## A. From Applicant

“As a physician-directed practice, Spectrum is dedicated to excellence in the diagnosis, prevention and treatment of illness, to life-long learning, to commitment to our communities, and to the primary importance of the care and treatment of our patients. Spectrum will ensure that the ASCs at CMO and OA continue with AAAHC accreditation, continue with quality programs already in place, and will utilize Spectrum’s innovative quality improvement tool, FIDES, to improve patient safety and the quality of healthcare delivery in anesthesia services in all phases of the patient anesthetic experience. More information about quality can be found in Sections II and IV above.”

“Regarding the impact on existing service providers, because this proposed transaction involves a change in ownership of operational ASCs that will not materially impact day-to-day operations, Spectrum does not anticipate any impact on the volume or quality of care delivered by existing service providers.”

## B. CONU Discussion

### CON Standard

The relevant standard 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.

### CON Analysis

Spectrum’s quality assurance program has been extensively discussed in previous sections. These practices will continue after the merger. This project involves a merger between existing providers and does not expand services. This will not negatively affect the quality of care delivered by existing service providers.

### Conclusion

CONU recommends that the Commissioner find that the applicant has met their burden to demonstrate that this project will ensure high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

**VII. Service Utilization**

## A. From Applicant

“As noted above, this merger involves the transfer of ownership of existing ambulatory surgical centers in their current form. Both ASCs have been in operation for a number of years. Therefore, Spectrum does not expect any material increase in utilization or inappropriate utilization.”

## B. CONU Discussion

### CON Standard

The relevant standard 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.

### CON Analysis

This application involves the merger of OA and CMO with Spectrum and does not result in the addition of new health services or the expansion of existing services. This affiliation will improve quality outcomes, address identified community needs, encourage operating efficiencies and improve the health status of the population in OA and CMO’s service area. This will have a positive impact on patient care.

### Conclusion

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

# VIII. Timeline

Letter of Intent Received 4/19/2013

Technical Assistance Meeting Held 5/22/2013

CON Application Filed 8/6/2013

CON Application Certified as Complete 8/6/2013

Public Information Meeting Held Waived

Public Hearing Held N/A

Close of Public Record 9/6/2013

# IX. CON Findings and Recommendations

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

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;

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

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

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.