

# 2011 Report Certificate of Need Act



Maine Department of Health and Human Services  
Division of Licensing and Regulatory Services

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Appendix A

## **Introduction**

The department is responsible to report annually on activities conducted pursuant to Maine's Certificate of Need Act (hereinafter CON Act). The requirements for this report may be found in 22 M.R.S.A. §343. The report must include information on any Certificate of Need (hereinafter CON) granted or denied, with additional information on any conditions attached, and any subsequent reviews conducted and/or approved. This report contains the required information for calendar year 2011.

The CON Act provides the framework for review of proposals by or on behalf of certain health care facilities and nursing homes involving expansion of plant and equipment, the provision of new services, transfers of ownership and control and other initiatives requiring a CON. Responsibility for activities under the CON Act rests within the Division of Licensing and Regulatory Services (hereinafter DLRS). Personnel in the Certificate of Need Unit (hereinafter CONU) consist of a Manager, three (3) Health Care Financial Analysts, and one (1) administrative support staff.

Prior to 2011, the CON process was integrated with the priorities established in the State Health Plan and projects were reviewed under constraints established by the Capital Investment Fund (hereinafter the CIF). Both the State Health Plan priorities and the CIF were determined independently by the Governor's Office of Health Policy and Finance. The 125<sup>th</sup> Legislature removed these from the CON review process in 2011.

## I. Thresholds for Reviewability

The CON Act establishes a number of thresholds that trigger review. The thresholds in effect during 2011 were:

Table 1

<b>Category</b>	<b>Amount</b>
Major Medical Equipment	\$1,600,000
Replacement of Major Medical Equipment	\$2,000,000
Capital Expenditures	\$3,100,000
New Technology	\$1,600,000
Nursing Facility Capital Expenditures	\$1,000,000
New Health Service	
Capital Expenditure	\$140,098
3rd Year Incremental Operating Costs	\$509,449

To ensure that providers bring forth applicable projects for review, they may request a determination from the CONU whether a project requires a CON. A "not subject to review" determination is issued if the total projected costs fall below the applicable thresholds or does not otherwise require review. A "not subject to review" determination is only made once CONU is satisfied that it has determined all applicable terms and costs of the project. This requires that the provider submit a Letter of Intent with all the applicable information.

Another reason that CONU may issue a "not subject to review" determination is if the nature of the project itself does not require a CON. As in the case of the thresholds, the provider may obtain such a determination by filing a Letter of Intent, completely describing the nature of the project.

In 2011, CONU issued Nine (9) "not subject to review" determinations.

## II. Limits on Investment

### Capital Investment Fund

The CIF was created by the Dirigo Health Act in 2004 and implemented in 2005 as a cost containment tool to limit approval of additional third year operating costs to the Maine health care system. In 2011, the CIF was removed from the CON review process, which removes the requirement to consider the limits set by the CIF during a CON review.

The original purpose of the CIF was to ensure that increased costs remain balanced with Maine's ability to financially support the approved investments. The CIF was determined by the Governor's Office with review and comment by the Advisory Council for Health Systems Development and after public comment following a process set out in regulation and approved by the Legislature.

The CIF included several categories of projects to enable hospital and non-hospital projects, both small and large, to be competitive in their own categories. Nursing facility projects were excluded from the CIF. Table 2 illustrates the limits on third year incremental operating costs during the three year CIF for 2010-2012.

Table 2

<b>Capital Investment Fund 2010-2012</b>			
	<b>Small</b>	<b>Large</b>	<b>Total</b>
<b>Non-Hospital</b>	<b>\$943,392</b>	<b>\$5,345,886</b>	<b>\$6,289,278</b>
<b>Hospital</b>	<b>\$6,603,741</b>	<b>\$37,421,200</b>	<b>\$44,024,941</b>
			<b>\$50,314,219</b>

The CONU has tracked the cumulative status of debits against the CIF for all years through calendar year end 2011. The history of the CIF and the debits are found in Appendix A.

The 2010-2012 Maine State Health Plan established the Health Initiatives for System Savings Program (HISS) that can provide credits towards an applicant's future CIF charges for an approved CON application. The HISS program was established to further the goals of the State Health Plan while benefiting hospital providers who voluntarily engage in priority initiatives when no CON is required.

The amount of the credit was based upon documented savings, generated by an applicant, through new or expanded activities identified as priorities in the State Health Plan. Additionally, HISS applicants could receive priority review

by the CONU off-cycle. HISS eligible projects are those which create measurable, quantifiable savings that do not otherwise require a CON.

This voluntary process is no longer applicable because both the CIF and review cycles were eliminated during 2011.

## MaineCare Funding Pool

By statute, Maine law has required nursing facility projects to be approved only within available funds. In other words, a project increasing MaineCare costs must have an equal decrease in MaineCare costs elsewhere. This process maintains MaineCare budget neutrality.

2007 amendments to the CON Act created a MaineCare funding pool for nursing facility projects. The pool consists of credits representing savings produced by de-licensing nursing facility beds on or after July 1, 2005. The CONU calculated the value of de-licensing transactions in this timeframe, and identified \$1,019,569 as available to the pool. This funding pool represents the MaineCare share of third year incremental operating costs for approved projects. In addition to pool funds, the same 2007 amendments established reserved beds whose assets are in the hands of the facility owners. As of December 2011, the owners' value equalled \$2.34 million.

As part of the budget process, the legislature enacted deappropriations of \$300,000 in each of the fiscal years 2009-2011, inclusive. At the end of FY 2011, the MaineCare funding pool for nursing facilities had a funded balance of \$131,062.

The 2007 amendments creating the funding pool required that the funds be utilized for development of additional nursing facility beds in areas of the state where additional beds are necessary to meet community need. The Office of Elder Services engaged The Lewin Group to develop a model to predict needs throughout the state, as required by 22 M.R.S.A. §333-A. The Lewin methodology for estimating need for nursing home beds was completed in 2008. This model serves as the proxy for determining need when CONU makes a recommendation to the Commissioner. No Requests for proposals were issued by the Office of Elder Services in 2011.

### III. Review Process

To distribute the work throughout the year, CONU established review cycles that allowed large and small projects to be reviewed on a predetermined timeline. Emergency CON applications, nursing facility projects and projects that did not debit against the CIF were accepted off-cycle.

Public Law Chapter 424, passed in 2011, eliminated these established cycles by permitting applications to be filed at any time, rather than on a cycle. Starting in February 2012, applicants may submit projects throughout the year.

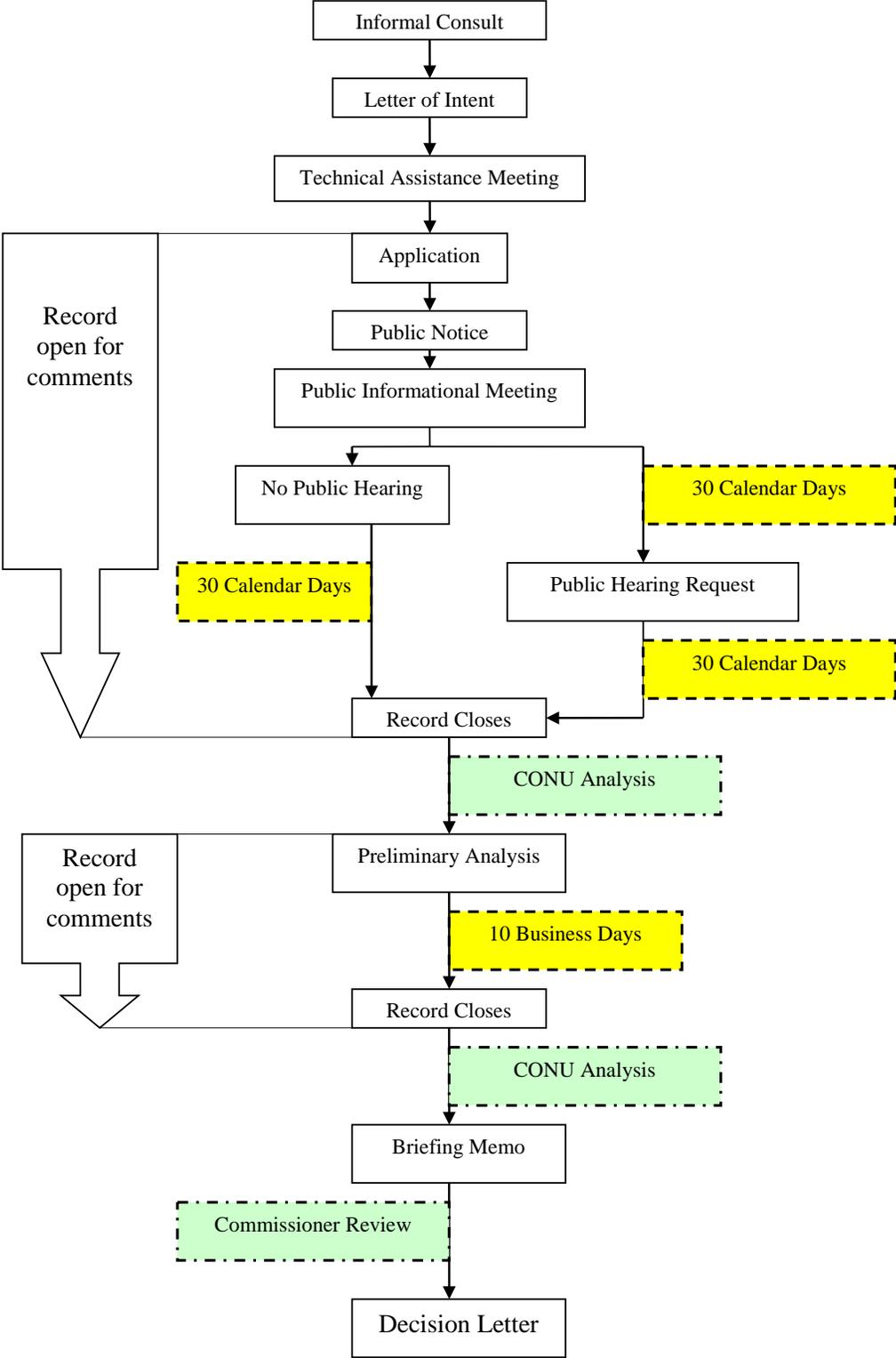
Table 3 illustrates the timelines followed for CON reviews. Effective February 2012, all proposals will follow the "Off-Cycle Projects" timeline.

Table 3

	<b>Large Project Cycle</b>	<b>Small Project Cycle</b>	<b>Off-Cycle Projects</b>
Letter of Intent	October 1 <sup>st</sup>	January 1 <sup>st</sup>	Any time
Technical Assistance Meeting	Prior to Application	Prior to Application	Prior to Application
Application Due	December 21 <sup>st</sup>	March 21 <sup>st</sup>	After TA Meeting
Public Notice - Beginning of Review	Receipt of Application	Receipt of Application	Receipt of Application
Record Opens	Publication of Notice	Publication of Notice	Publication of Notice
Beginning of Review	January 1 <sup>st</sup>	April 1 <sup>st</sup>	Receipt of Application
Public Notice - Informational Meeting	5 Days After Application Received	5 Days After Application Received	5 Days After Application Received
Public Hearing	Must be requested within 30 days of Informational Meeting	Must be requested within 30 days of Informational Meeting	Must be requested within 30 days of Informational Meeting
Record Closes	30 Days after Informational or Public Hearing	30 Days after Informational or Public Hearing	30 Days after Informational or Public Hearing
Public Notice - Preliminary Analysis	Completion of Review	Completion of Review	Completion of Review
Record Reopens	Public Notice - Preliminary Analysis	Public Notice - Preliminary Analysis	Public Notice - Preliminary Analysis
Record Closes	10 Business Days from Public Notice - Preliminary Analysis	10 Business Days from Public Notice - Preliminary Analysis	10 Business Days from Public Notice - Preliminary Analysis
Final Decision	Made by Commissioner	Made by Commissioner	Made by Commissioner

CON applications are also reviewed by other agencies. Input from the Maine Center for Disease Control (MaineCDC) and the Maine Quality Forum provides a perspective on how effectively each application addresses the priorities in the State Health Plan and will contribute to the improved health status of the population. The Bureau of Insurance calculates the impact of each project on statewide and regional health insurance premiums in order to advise the Commissioner on the impact to payers. Once a CON is approved, a subsequent review of the decision may be necessary if there is a significant change in financing for the project, the approved bed capacity, the approved services, the site or location or the design or type of construction.

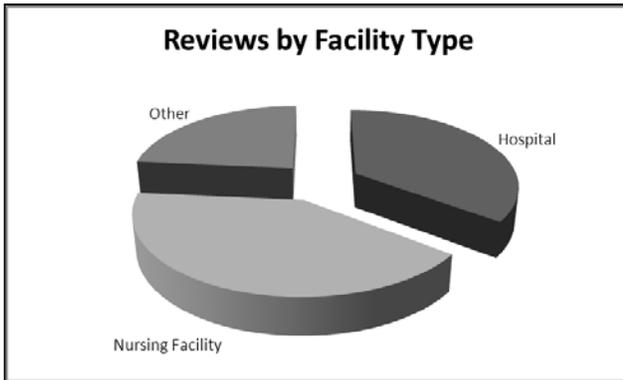
During the review process, in addition to considering information submitted from the applicant(s), CONU considers information and comments from the public. In order to provide adequate time for public comments and additional information to be included as part of the official record, the record is considered "Open" during specific times. The flow chart below illustrates when the record is "Open".



Applicants for a CON are required to pay a nonrefundable fee for the review of each project. CONU also collects fees for copies of documents requested under the Freedom of Information Act (FOIA). In 2011, revenue from CON Review fees totaled \$20,000.00 and revenue from FOIA requests totaled \$2.50. CON revenue is used to offset CONU expenditures.

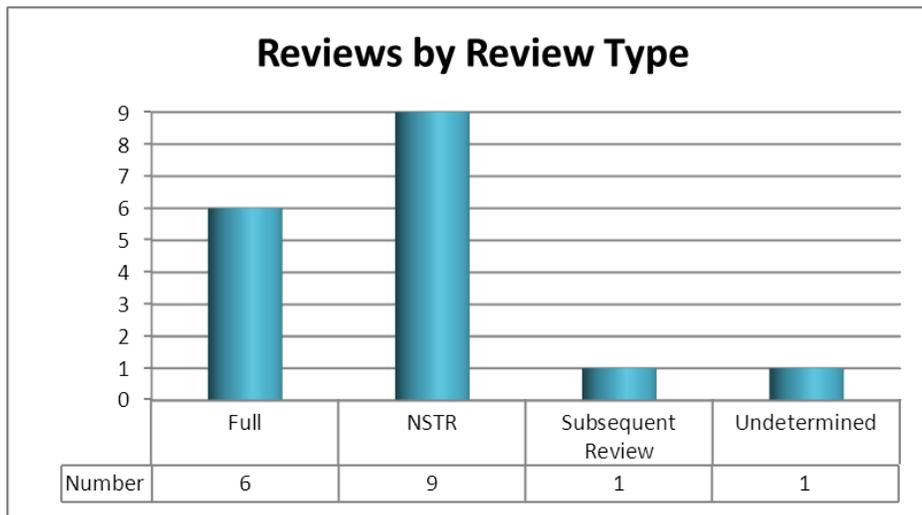
## IV. 2011 Project Review Record

CONU is responsible for reviewing Hospitals, Nursing Facilities and other health care facilities. The following chart and table illustrates the reviews by facility type that were active in 2011:



Facility Type	Number	Capital Cost
Hospital	6	\$ 33,815,545.00
Nursing Facility	7	\$ 20,233,075.00
Other	4	\$ 22,600,000.00
		<b>\$ 76,648,620.00</b>

The CON process includes several types of reviews. The following chart and table illustrates the number of reviews by review type that were active in 2011:



Review Type	Number	Capital Cost
Full	6	\$ 12,913,434.00
NSTR	9	\$ 41,881,641.00
Subsequent Review	1	\$ 10,853,545.00
Undetermined*	1	\$ -
		<b>\$ 65,648,620.00</b>

\* Undetermined means that the type of review necessary for the proposal was not determined as of December 31. Typically, additional information is pending from the applicant in order to make a determination.

Historically, “Not Subject to Reviews” have comprised the majority of reviews, followed by proposals subject to a full, or in depth, review. The chart below demonstrates the types of reviews conducted for the last four full calendar years. Note: Projects that are in active status over multiple calendar years will be accounted for in multiple years.

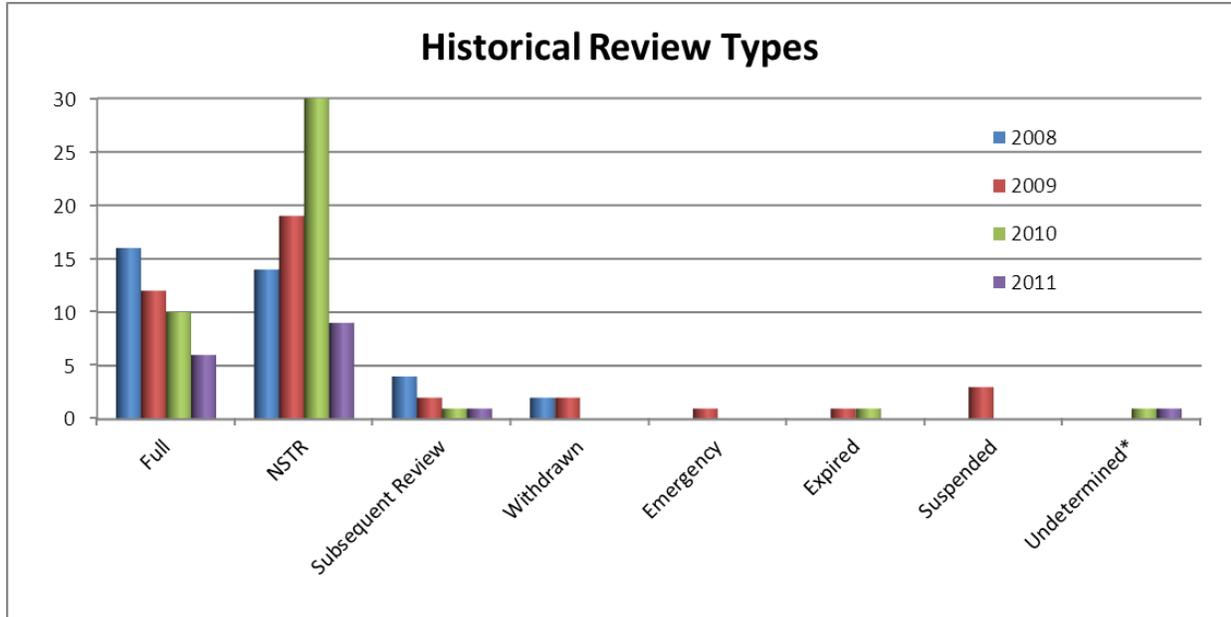


Table 4 is a brief description of the projects that were active during 2011, including the decision status and a summary of any conditions applied to any approved projects. Appendix A reflects the status of all projects approved through CON since the inception of the CIF.

Table 4

Applicant(s)	Status	Total Capital Expenditure	Conditions
Barron Center - Energy Efficiency Improvements	Not Subject to Review	\$ 2,319,641	n/a
Central Maine Medical Center - New Linear Accelerator	Approved	\$ 6,000,000	None
Central Maine Orthopaedics, PA - Provide Physical Therapy Services	Not Subject to Review	\$ 0	n/a
Cummings Health Care Facility - Transfer of Shares	Not Subject to Review	\$ 0	n/a
Down East Community Hospital - Corporate Restructuring	Not Subject to Review	\$ 0	n/a
Eastern Maine Healthcare Systems - Purchase of the Cianchette Building	Not Subject to Review	\$ 22,600,000	n/a
First Atlantic Health Care - Transfer 20 Beds from CA Dean to Ross Manor	Approved	\$ 0	None

<b>Applicant(s)</b>	<b>Status</b>	<b>Total Capital Expenditure</b>	<b>Conditions</b>
First Atlantic Health Care - Collier's Replacement Facility	In review process	\$ 8,542,149	TBD
First Atlantic Health Care - Bucksport Replacement Facility	In review process	\$ 8,542,149	TBD
Freeport Nursing and Rehab Center - Change in Ownership	Approved	\$ 0	None
Genesis Health Care - Addition of beds at Springbrook	Approved	\$ 829,136	None
Genesis Health Care - Corporate Reorganization	Not Subject to Review	\$ 0	n/a
Maine Coast Memorial Hospital - ED Improvements	Subsequent Review - Approved	\$ 10,853,545	n/a
Maine Medical Center - Data Center Replacement	Not Subject to Review	\$ 10,062,000	n/a
Northern Maine Medical Center - Replace Boiler Plant	Not Subject to Review	\$ 3,000,000	n/a
Pan Bay Medical Center - Birthing Center Replacement	Not Subject to Review	\$ 3,900,000	n/a

## V. Implementation Reports

Holders of a CON are required to submit written reports to the department according to 22 M.R.S.A. §350-C. These reports summarize the progress on projects and the applicant's compliance with any conditions related to the granted CON. Conditions may be attached to a project at the discretion of the Commissioner. CONU makes recommendations to the Commissioner if it concludes that conditions would further the purpose of the CON Act. Quite often these conditions require ongoing reporting by the CON holder to determine whether the goals of the project are met once it is implemented.

Table 5 lists all of the conditions issued to a CON that the department was reviewing for compliance during 2011. Certain conditions are considered ongoing conditions, where the applicant is required to report on compliance over a period of up to three years after the implementation of the project, these conditions are not reportable until after the project is completed or implemented. Other conditions require certain action(s) from the applicant(s) and are generally considered met in compliance once documentation is provided as described in the condition.

Table 5

### Hospitals:

Applicant	Project Description	Number of Conditions	Conditions Ongoing	Conditions Met
Central Maine Medical Center	Expand Emergency Department and Laboratory at campus in Lewiston, ME	3	3	
Covenant Health Systems	Transfer of sponsorship of St. Joseph Healthcare Foundation and St. Joseph Hospital in Bangor, ME	3	2	1
Eastern Maine Medical Center	Develop Comprehensive Outpatient Imaging Center	2	1	1
Eastern Maine Medical Center	Construct 8 story inpatient tower at campus on State Street in Bangor, ME	5	1	4
Eastern Maine Medical Center	Relocate and expand CancerCare of Maine to Brewer	6	1	5
Houlton Regional Hospital	Renovate existing Emergency Department, Nuclear Medicine, Radiology, and Cardio/Pulmonary rehabilitation space	4	2	2
Maine Medical Center	Renovations to P6 Geriatric Psychiatry Inpatient Unit	3	3	
Maine Medical Center	Develop a Simulation Center	2	2	
MaineGeneral Medical Center	New Regional Hospital	12	11	1
Mid Coast Hospital	Expansion/renovation of Emergency Department and Medical Surgical Beds	4	3	1
Pen Bay Medical Center	Cooperative Agreement with MaineHealth	2	2	

<b>Applicant</b>	<b>Project Description</b>	<b>Number of Conditions</b>	<b>Conditions Ongoing</b>	<b>Conditions Met</b>
Rumford Hospital	Consolidated Inpatient Wing	3	1	2
Southern Maine Medical Center	Southern Maine Medical Center becoming a subsidiary of MaineHealth	3	2	1
St. Marys Regional Medical Center	Expansion/renovation of Operating Rooms, Central Sterile, Lab, and Pharmacy departments	3	3	
Waldo County Healthcare	Waldo County Healthcare becoming a subsidiary of MaineHealth	4	2	2
York Hospital	Expand Surgical Services Department	2	2	

### **Nursing Homes:**

<b>Applicant</b>	<b>Project Description</b>	<b>Number of Conditions</b>	<b>Conditions Ongoing</b>	<b>Conditions Met</b>
Amenity Manor	Replacement facility for Amenity Manor	4	3	1
First Atlantic Healthcare	Purchase nursing facility assets of Marshall's Nursing Services and United Limited Partnership	3	1	2
First Atlantic Healthcare	Purchase assets of Katahdin Nursing Home in Millinocket, ME	1		1
Genesis Healthcare	Addition of 16 Nursing Facility Beds at Marshwood Center in Lewiston, ME	4	4	
Maine Veterans Homes	Therapeutic Services Addition in Bangor, ME	1	1	

### **Other:**

<b>Applicant</b>	<b>Project Description</b>	<b>Number of Conditions</b>	<b>Conditions Ongoing</b>	<b>Conditions Met</b>
Coastal Eye Care, PA	Build Ophthalmologic Ambulatory Surgery Center	2	1	1
Insight Premier Health, LLC	16 Slice CT Scanner at Marshwood Imaging Center	4	4	

## VI. Legislative Changes

The 125<sup>th</sup> Legislature implemented the following changes affecting the CON Act, 22 M.R.S.A. Chapter 103-A:

### *Public Law, Chapter 90*

- Removes the requirement that applicants applying for a Certificate of Need must demonstrate consistency with the priorities set forth in the State Health Plan.

### *Public Law, Chapter 213*

- Repeals the laws governing the Capital Investment Fund. Projects are no longer limited by Capital Investment Fund restraints.

### *Public Law, Chapter 424*

- Thresholds are increased as illustrated in Table 6.

Table 6: Thresholds

<b>Category</b>	<b>Prior to 9/28/11 Amount</b>	<b>Effective 9/28/11 Amount</b>
Major Medical Equipment	\$1,600,000 →	\$3,200,000
Replacement of Major Medical Equipment	\$2,000,000 →	n/a*
Capital Expenditures	\$3,100,000 →	\$10,000,000
New Technology	\$1,600,000 →	\$3,200,000
Nursing Facility Capital Expenditures	\$1,000,000 →	\$5,000,000
New Health Service		
Capital Expenditure	\$140,098 →	\$3,000,000
3rd Year Incremental Operating Costs	\$509,449 →	\$1,000,000

\*The replacement of major medical equipment no longer requires CON review.

- Thresholds will be tied to the Consumer Price Index medical care services index for future threshold increases beginning January 1, 2013 and annually thereafter.
- Exempts certain capital expenditures by health care facilities that have been certified by the Efficiency Maine Trust as cost-effective from CON review and requires that trust to develop and implement a process for certification.
- Limits MaineCare budget neutrality requirements and the MaineCare nursing facility funding pool to apply solely to projects that propose to add additional nursing facility beds to the total inventory of beds within the State.

- Clarifies that nursing facility projects need to comply with the principles of the Maine Quality Forum only when such standards are directly applicable to nursing facility projects.
- Permits CON applications to be filed at any time, rather than on a cycle, effective December 1, 2011. This requires the department to amend CON rules by January 1, 2012 to reflect the elimination of cycles.
- Allows applicants to waive having a technical assistance meeting.
- Requires that the department convene a stakeholder group to review certificate of need laws and rules no later than October 1, 2011.
- Shortens the time periods for the application and review process in half. Table 7 illustrates the specific changes.

Table 7

<b>Action</b>	<b>Prior to 2/15/2012</b>	<b>Effective 2/15/2012</b>
Days to hold a Technical Assistance Meeting after a LOI is received	30 calendar days	→ 15 calendar days
Days to publish public notice that a complete application has been received	10 business days	→ 5 business days
Days after the Public Informational Meeting to: 1) request a public hearing, or 2) the record closes	30 calendar days	→ 15 calendar days
Days from when application is complete to Commissioner's decision	90 calendar days	→ 45 calendar days
*Extension period allowance	60 calendar days	→ 30 calendar days
*Public Necessity delay allowance	180 calendar days	→ 90 calendar days

## VII. CON Stakeholder Workgroup

As part of the 125<sup>th</sup> Legislative changes, Public Law Chapter 424 required that the department convene a stakeholder group to review certificate of need laws and rules no later than October 1, 2011.

A workgroup was created and has held four group meetings:

- September 19, 2011
- October 24, 2011
- November 7, 2011
- December 5, 2011

The workgroup consists of the following members:

- o Jeff Austin, Maine Hospital Association
- o Rep. Bethany Allen, Legislative Aide
- o William Boeschstein, Commissioner's Office
- o Glen Cyr, North Country Associates
- o John Doyle, Preti Flaherty
- o Rick Erb, Maine Health Care Association
- o Rep. Les Fossel, District 53
- o Katie Fullam Harris, MaineHealth
- o Chuck Gill, Central Maine Health Care
- o David Landry, Spectrum
- o Rep. John Martins, District 1
- o Rep. Jon McKane, District 51
- o Richard Linehan, Maine Medical Center
- o Andrew McLean, Maine Medical Association
- o Lisa McPherson, Eastern Maine Healthcare Systems
- o Jean Mellett, Eastern Maine Healthcare Systems
- o Craig Nelson, Nelson & Doyle
- o Wanda Pelkey, First Atlantic Healthcare
- o Scott Perkins, Commissioner's Office
- o Phyllis Powell, Department Representative
- o Ann Robinson, Preti & Flaherty
- o Gordon Smith, Maine Medical Association
- o Rep. Meredith Strang Burgess, District 108
- o Katrin Teel, Governor's Office
- o Catherine Valcourt, Department Representative
- o John Watson, The Cedars
- o Kevin Wells, Department Representative
- o David Winslow, Maine Hospital Association

A report of the workgroup's findings and recommendations will be sent to the Legislature by January 15, 2012 for review.

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