

# **BRIEFING MEMO**

## **MaineHealth**

### **Waldo County Healthcare Inc. Membership in MaineHealth**

**DATE:** December 30, 2008

**TO:** Brenda M. Harvey, Commissioner, DHHS

**THROUGH:** Catherine Cobb, Director, Division of Licensing and Regulatory Services

**FROM:** Phyllis Powell, Manager, Certificate of Need Unit  
Steven R. Keaten, Health Care Financial Analyst  
Larry Carbonneau, Health Care Financial Analyst

**SUBJECT:** Waldo County Healthcare Inc. becoming a subsidiary of MaineHealth.

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**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 Section 325 et seq., as amended.

**REGISTERED AFFECTED PARTIES:** None

#### **I. BACKGROUND:**

- MaineHealth, located in Portland, Maine is a non-profit healthcare corporation that is the parent corporation for the following five hospitals: Maine Medical Center; Miles HealthCare, Inc.; Western Maine HealthCare Corp; Spring Harbor Hospital; and St. Andrews Hospital. MaineHealth is also the parent corporation for HomeHealth Visiting Nurses of Southern Maine, NorDx Laboratory, Spring Harbor Counseling, Maine PHO and Syneret. These entities had assets in excess of \$1.3B on September 30, 2007. MaineHealth also has numerous strategic affiliation agreements with other Maine hospitals. By virtue of its size, MaineHealth is the largest healthcare organization in the state.
- Waldo County Healthcare, Inc. (WCHI), located in Belfast, Maine is a non-profit healthcare corporation that is the parent of Waldo County General Hospital, a 25-bed critical access hospital, and several other healthcare related entities located in Waldo County, Maine.
- MaineHealth's members are State Licensed and CMS certified. Several are Joint Commission Accredited.
- Waldo County General Hospital's (WCGH) current license is valid until February 28, 2009. WCGH is Medicare and MaineCare certified. WCGH does not participate in the Joint Commission accreditation process. It is not known if Waldo County General Hospital will participate in the Joint Commission accreditation process after becoming a member of MaineHealth. Currently not all member hospitals of MaineHealth are Joint

Commission accredited. WCGH is presently not considered a Tier 1 hospital for the State Employees Health Plan.

- In the preliminary analysis, CONU determined that the applicant satisfied review criteria and recommended that the Commissioner approve the application subject to the following conditions:
  - 1) Provide a copy of the letter from the Department of Justice/Federal Trade Commission that waived the 30-day waiting period requirement from the Hart-Scott-Rodino Antitrust Improvement Act.
  - 2) Provide the necessary documentation ensuring compliance with antitrust issues from the Office of the Maine Attorney General regarding this proposed merger.
  - 3) Report cost savings as attributable to this merger for a period of three years from merger date.
  - 4) Report improvements in quality outcomes as outlined in its application and as a result of this merger for a period of three years from merger date.
  - 5) Submit an implementation plan within 90 days of the commissioner's decision to meet the requirements for a Tier 1 hospital.
  - 6) The applicant is required to submit the remaining balance of the CON application fee amounting to \$70,000.

Preliminary Analysis Condition 1 has been deleted because the applicant provided CONU a copy of the referenced letter. Preliminary Analysis Condition 6 has also been deleted. The CON fee has been recalculated based upon net property, plant and equipment (Consolidated Balance Sheet, Assets, June 30, 2007) and paid by the applicant. The applicant has agreed to the four remaining conditions.

## **II. PROJECT DESCRIPTION:**

MaineHealth and WCHI entered into a "Definitive Agreement" that would make WCHI a subsidiary corporation of MaineHealth (Membership).

According to the applicant, "as a member of MaineHealth, WCHI will participate in the development and implementation of MaineHealth-initiated and sponsored health status improvement, clinical integration, and quality improvement initiatives. WCHI will also have access to shared administrative resources of the MaineHealth system, including purchasing, legal services, financial services, strategic planning, program development and human resource management. WCHI will also participate in MaineHealth's health benefit and workers' compensation plans, and its professional liability insurance trust."

## **III. HIGHLIGHTS:**

Letter of Intent filed:	August 6, 2008
Technical assistance meeting held:	September 5, 2008
CON application filed:	September 18, 2008
CON certified as complete:	September 18, 2008

CON application withdrawn:	October 2, 2008
Revised CON application received:	October 21, 2008
Revised CON application certified as complete:	October 21, 2008
Public Information Meeting Held:	November 13, 2008
Public Hearing held:	November 13, 2008
Public comment period ended:	December 13, 2008
Preliminary Analysis Released:	December 15, 2008
Public comment period ended:	December 30, 2008

#### **IV. PUBLIC COMMENTS RECEIVED IN RESPONSE TO THE PRELIMINARY ANALYSIS:**

Following release of the Preliminary Analysis no public comments were received.

#### **V. APPLICANT'S RESPONSE TO PRELIMINARY ANALYSIS WITH CONU COMMENTS:**

The applicant submitted additional information on December 22, 2008, addressing the conditions recommended by CONU in the Preliminary Analysis.

**Preliminary Analysis Condition 1: The applicants will be required to produce the letter from the Department of Justice/ Federal Trade Commission that waived the 30-day waiting period requirement from the Hart-Scott-Rodino Antitrust Improvement Act.**

Applicant's Response:

The applicant provided the necessary documentation satisfying this recommended condition.

CONU Comment:

CONU recommends this proposed condition not be included since it has been satisfied. This condition has been deleted.

**Preliminary Analysis Condition 2: Provide the necessary documentation ensuring compliance with antitrust issues from Office of the Maine Attorney General regarding this proposed merger.**

Applicant's Response:

"MaineHealth's counsel has informed the Attorney General's office that there is an agreement by which WCHI would become a member of the MaineHealth system."

CONU Comment:

Upon review of like actions in the State of Maine, it was determined that the Attorney General's Office has previously provided notification to a prior applicant that they have "no present intention to file an enforcement action relative to the proposed restructuring... on antitrust grounds." CONU recommends that the condition reads as follows: Receipt of

notification from The Office of the Attorney General stating that the Attorney General has no present intention to file an enforcement action relative to the proposed restructuring... on antitrust grounds. This condition will remain.

**Preliminary Analysis Condition 3: Report cost savings attributable to this merger for a period of three years from the merger date.**

Applicant's Response:

"WCHI and MaineHealth agree to report cost savings attributable to the merger for a period of three years from the merger date.

CONU Comments:

This condition will remain.

**Preliminary Analysis Condition 4: Report improvements in quality outcomes as a result this merger for a period of three years from the merger date.**

Applicant's Response:

"WCHI and MaineHealth agree to report on selected quality outcomes for a period of three years from the merger date. We anticipate the report will include, at a minimum, pneumonia, heart failure, heart attacks, surgical site infections, hand hygiene and blood transfusions."

CONU Comments:

This condition will remain.

**Preliminary Analysis Condition 5: Submit an implementation plan within 90 days of the commissioner's decision to meet the requirements for a Tier 1 hospital.**

Applicant's Response:

"WCHI and MaineHealth agree to report on selected quality outcomes for a period of three years from the merger date. We anticipate the report will include, at a minimum, pneumonia, heart failure, heart attacks, surgical site infection, hand hygiene and blood transfusions."

CONU Comments:

This condition will remain.

**Preliminary Analysis Condition 6: The applicant is required to submit the remaining balance of the CON application fee amounting to \$70,000.**

Applicant's Response

The applicant has addressed a concern regarding the filing fee associated with this proposed project. The applicant states that "Table 24 Calculation of CON Filing Fee treats the existing assets of WCHI of \$75,176,211 as a capital expenditure and, as a result, a CON filing of \$75,000. Since there is no capital expenditure, we respectfully disagree with this

calculation. Based on the absence of a capital expenditure, the filing fee should be the \$5,000 minimum.”

The applicant also expressed a concern regarding assets and liabilities, stating that “Table 1C-Depreciation Expense treats the existing assets of WCHI from Table 1A as if they were a new annual capital expenditure and calculates new depreciation expense of \$2,899,905 on those assets. These are existing assets of WCHI and depreciation of those assets is already included in subsequent schedules. Since this is not a new capital expenditure, there is, in fact, no additional annual depreciation as calculated by Table 1C.”

CONU Comment:

The module makes no inferences to the oldness or newness of assets but contends that they are assets newly under the control of MaineHealth.

Past acquisitions of hospitals by other hospital entities and/or holding companies have also resulted in fees in excess of the minimum fee. The salient discussion of the use of “capital expenditure” is limited to the context of the rules and statute regarding the determination of the fee. Other “merger/acquisition control” applications have, in the past, paid a fee based upon net property, plant and equipment. CONU will, in this case, follow this determination for payment. Based on this method, the total net property, plant and equipment for WCHI exceeded \$23,000,000 at the time of their last audit. This yields a revised CON fee of \$24,000. This fee has been received. Therefore, CONU recommends this proposed condition not be included since it has been satisfied.

It also should be noted that the fee should be reconsidered at the time of the closing of the transaction and may be adjusted then to reflect additional net property and equipment of WCHI since the application was proffered.

Condition 6 has also been deleted. The CON fee has been recalculated based upon net property, plant and equipment (Consolidated Balance Sheet, Assets, June 30, 2007) and paid by the applicant.

## **VI. CONCLUSION:**

The Preliminary Analysis by CONU staff dated December 15, 2008 concluded that this application, with conditions, satisfied CONU review criteria. For all the reasons set forth in the Preliminary Analysis, in the record, and considering the clarifying information provided by the applicant, CONU concludes that the review criteria have been satisfied and recommends the approval of a CON with conditions. The applicant has agreed to the four remaining conditions.

**VII. RECOMMENDATION:**

The CONU recommends this proposal be **Approved with the following conditions:**

- 1) Provide a letter from the Maine Attorney General's Office that it has no present intention to file an enforcement action relative to the proposed restructuring on antitrust grounds.
- 2) Report cost savings as attributable to this merger for a period of three years from the merger date.
- 3) Report improvements in quality outcomes as outlined in its application and as a result of this merger for a period of three years from the merger date.
- 4) Submit an implementation plan within 90 days of the commissioner's decision to meet the requirements for a Tier 1 hospital.

<u>Capital Costs</u>	
\$ 75,176,211	Capital costs as Approved
<u>                    \$ 0</u>	Contingency
\$ 75,176,211	Total Approved Capital Costs
<u>Incremental 3<sup>rd</sup> Year Costs</u>	
(\$ 743,267)	Approved Incremental Costs (Savings)
<u>Capital Investment Fund</u>	
\$ 0	Approved CIF
<u>                    \$ 0</u>	Total CIF Debits