

BRIEFING MEMO

Cancer Care Center of York County **Subsequent Review**

DATE: June 2, 2009

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: Subsequent review of a Certificate of Need Issued February 4, 2003 to Cancer Care Center of York County (CCCYC)

ISSUE ACTIVATED BY: The referenced proposal requires Certificate of Need (CON) approval as defined in "The Maine Certificate of Need Act of 1978," 22 MRSA Section 302 et seq., as amended.

REGISTERED AFFECTED PARTIES: York County Radiation Therapy Collaborative

I. BACKGROUND:

- On February 4, 2003, then Maine Department of Human Services Commissioner, Kevin W. Concannon, issued a decision approving the CON application of CCCYC, a joint venture between Maine Medical Center (Portland) and Southern Maine Medical Center (Biddeford); and denying the CON application of York County Radiation Therapy Collaborative, a joint venture between Goodall Hospital (Sanford), York Hospital (York) and Wentworth-Douglas Hospital (Dover, NH) for radiation therapy cancer care for residents of York County.
- Six conditions were attached to the CON approval of CCCYC. They were as follows:
 - i. That the York County Cancer Care Center (SMMC/MMC) must allow all licensed physicians to refer patients to the program, regardless of the hospital or system affiliation of that physician.
 - ii. That the York County Cancer Care Center (SMMC/MMC) must allow all qualified medical oncologists, regardless of current hospital affiliation, to lease space and practice at the Cancer Care Center.
 - iii. That the York County Cancer Care Center (SMMS/MMC) must allow all qualified radiation oncologists choosing to practice at the Center to seek credentialing criteria regardless of their affiliation with other hospitals and facilities.
 - iv. That the York County Cancer Care Center (SMMC/MMC) must secure the services of independent, outside evaluators, approved by the Maine Department of Human Services and fully knowledgeable regarding the best practices in modern cancer care, who shall evaluate the York County Center semi-annually,

with particular focus on fullest access for York County residents and adherence to quality cancer care for residents of the area.

- v. That the York County Cancer Care Center (SMMC/MMC) demonstrate ongoing promotion and public communication to residents of York County, assuring residents and patients welcome access to the Center, regardless of which physician or hospital they rely upon for medical services.
 - vi. That the York County Cancer Center (SMMC/MMC) receive approval by Wells Planning Board. Also, all working drawings and construction specifications must be approved by the appropriate Licensing and Certification entity and State Fire Marshall officials prior to construction.
- On March 5, 2003, York County Radiation Therapy Collaborative (HDGH/YH/WDH) filed a Petition For Reconsideration of Commissioner Connannon's February 4, 2003 decision. On April 3, 2003, the Petition for Reconsideration was denied by than Department of Human Services acting Commissioner Peter E. Walsh on grounds that the Collaborative did not show good cause for a hearing to reconsider the Departments original decision.
 - On May 5, 2003, York Hospital, on behalf York County Radiation Therapy Collaborative, filed a petition for Review of Final Agency Action in Kennebec County Superior Court.
 - On March 17, 2004, Kennebec Superior Court denied appeal by the Collaborative and upheld approval of the CCCYC project.
 - On April 6, 2004, the Collaborative filed appeal of Department's decision with the Maine Law Court.
 - On July 16, 2004, CCCYC asked for and received from the Department on July 28, 2004 a determination that their project had been deemed commenced.
 - On August 13, 2004, with additional supplemental information received on August 16, 2004 and August 18, 2004, CCCYC submitted information for a subsequent review of the February 4, 2003 CON approval on the following grounds:
 1. An increase in capital costs to \$5,900,000 from the approved \$5,406,300 were needed to complete the project.
 2. A change in the site location from Wells to Sanford was proposed.
 3. Goodall Hospital had accepted CCCYC invitation to become a member of CCCYC.
 - On September 13, 2004, the Commissioner of Maine Department of Health and Human Services, John R. Nicholas, approved the subsequent review.
 - On November 25, 2008, the Maine Supreme Judicial Court held that the Department did not have jurisdiction to approve CCCYC's subsequent review on September 13, 2004. The subsequent review decision was vacated and the matter was remanded back to the Department.

- On December 10, 2008, the remaining members of the Collaborative (York Hospital and Wentworth-Douglas Hospital) wrote to advise the Department of their intention not to file any written comments relative to CCCYC's.
- On February 20, 2009, CCCYC submitted a request for a subsequent review for the following reasons:
 1. There is a change in the participants as Goodall Hospital accepted SMMC and MMC's invitation to become a member of the CCCYC effective August 4, 2004.
 2. There is a change in the site or the location of the proposed facility from Wells to South Sanford effective August 10, 2004.
 3. There is a significant change in capital financing as the actual capital expenditure of \$5,500,000 exceeded the CON maximum allowable amount of \$5,406,300.
- The CCCYC has been in operation and seeing patients since February 26, 2006. The CCCYC is into its third full year of operation. The actual capital expenditure has been determined to be \$5,500,000, \$93,700 above the original approved amount. Goodall Hospital has been participating as a member of CCCYC since operations began and is included as a member of CCCYC by the Articles of Amendment to the Articles of Incorporation filed with the Secretary of State Office on September 14, 2004.

II. Analysis:

- CONU has a unique opportunity to compare originally forecasted data with actual data since this project has been online and operating for over two years.
- A comparison of the actual second year of patients to be seen and procedures to be performed (2008) to originally forecasted are as follows:

	Budgeted	Actual (2008)	Difference
Patients Seen	260	134	(126)
Procedures Performed	6,689	4,197	(2,492)

Forecasted patients to be seen and procedures to be performed for the third year (2009) and beyond do not appear to be materializing from the original approved CON. In an e-mail submitted to Rich Linehan, Director of Planning, Maine Medical Center dated February 26, 2009, CONU asked CCCYC to comment on the lower than expected utilization yet higher revenues and expenditures than originally forecast by the applicant in their original application. Paul Gray responded, as will be summarized below.

- A comparison of the actual second year of operating revenue, operating expenses and income (loss) from operations (2008) to originally budgeted amounts are as follows:

	Budgeted	Actual (2008)
Total Operating Revenue	\$1,981,041	\$2,297,666
Total Operating Expenses	<u>\$1,942,838</u>	<u>\$2,809,683</u>

Income (Loss) from Operations	\$ 38,203	\$ (512,017)
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Forecasted operating revenue, operating expenses and income (loss) from operations (2009) and beyond do not appear to be materializing from the original approved CON. Actual operating revenues are significantly higher even though patients being seen and procedures being performed are significantly lower. As a percentage of total procedures to be performed, actual procedures were 37% less than projected for 2008.

- Additional information received on April 16, 2009 from Paul D. Gray, Vice President of Planning, Maine Medical Center provided CONU with data explaining the difference between the forecast and actual utilization. The number of patients being seen is less due to fewer referrals from towns in Southern York County mostly as a result of prolonged litigation, new treatment options for patients with prostate cancer and delay in upgrading IGRT because of bandwidth support on WAN lines that wasn't available in the area. Higher revenues and expenditures are related to delay in implementation of the project and variances attributable to rate increases and actual mix of services provided.
- This subsequent review was reviewed under the "Maine Certificate of Need Act of 1978", prior to the establishment of the Capital Investment Fund (CIF) and assessments required from Maine CDC, Maine Quality Forum or Bureau of Insurance. This subsequent review was required as stated in statute MSRA 22 §304-B:
 - There is a significant change in financing; and
 - There is a change in the site or the location of the proposed facility.

III. RECOMMENDATION:

The Certificate of Need Unit recommends **Approval with conditions** of Cancer Care Center of York County request for a subsequent review. In addition, CONU recommends a report on these conditions within 30 days of the Commissioner's subsequent review decision.

1. That the York County Cancer Care Center (SMMC/MMC) must allow all licensed physicians to refer patients to the program, regardless of the hospital or system affiliation of that physician.
2. That the York County Cancer Care Center (SMMC/MMC) must allow all qualified medical oncologists, regardless of current hospital affiliation, to lease space and practice at the Cancer Care Center.
3. That the York County Cancer Care Center (SMMS/MMC) must allow all qualified radiation oncologists choosing to practice at the Center to seek credentialing criteria regardless of their affiliation with other hospitals and facilities.
4. That the York County Cancer Care Center (SMMC/MMC) must secure the services of independent, outside evaluators, approved by the Maine Department of Human Services and fully knowledgeable regarding the best practices in modern cancer care, who shall evaluate the York County Center semi-annually, with particular focus on fullest access for York County residents and adherence to quality cancer care for residents of the area.

5. That the York County Cancer Care Center (SMMC/MMC) demonstrate ongoing promotion and public communication to residents of York County, assuring residents and patients welcome access to the Center, regardless of which physician or hospital they rely upon for medical services.

<u>Capital Costs</u>	
\$ 5,406,300	Prior Approved Capital Costs
\$ 93,700	Subsequent Review Additional Capital Costs
<u>\$ 5,500,000</u>	Total Approved Capital Costs