**DATE:** August 1, 2014

**TO:** Mary C. Mayhew, Commissioner, DHHS

**THROUGH:** Kenneth Albert, R.N., Esq., Director, DLRS

**FROM:** Larry D. Carbonneau, Manager, Health Care Oversight, DLRS

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

**SUBJECT:** Acquisition of Control of Franklin Community Health Network

**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 § 326 et seq., as amended.

**REGISTERED AFFECTED PARTIES:** Central Maine Medical Center and Central Maine Health Care

**I. BACKGROUND:**

Franklin Community Health Network (FCHN) is organized and operated as a nonprofit health care corporation under §501(c)(3) of the Internal Revenue Code. It is the sole corporate member of Franklin Memorial Hospital (FMH). FMH is a non-profit, §501(c)(3) tax-exempt Maine corporation. Its primary purpose is to promote the provision of needed health care services in the communities in and around Franklin County, Maine, and outlying areas.

MaineHealth is a nonprofit integrated healthcare delivery system that is the parent of eight regional health delivery systems and their hospitals; employed physician practices and subsidiary healthcare organizations; a regional home health care organization; and other health care related entities located throughout southern, western, and central Maine and eastern New Hampshire. MaineHealth also has strategic affiliation agreements with other local health systems within the same area. MaineHealth’s administrative offices are located in Portland, Maine. MaineHealth is organized and operated as a non-profit, tax-exempt healthcare corporation under §501(c)(3) of the Internal Revenue Code.

**II. PROJECT DESCRIPTION:**

The FCHN Board of Trustees proposes to amend the FCHN Articles of Incorporation and Bylaws so that MaineHealth shall become its sole corporate member, thereby making FCHN a subsidiary member of MaineHealth. The scheduled effective membership date is October 1, 2014, subject to obtaining all required consents and regulatory approvals.

FCHN and its subsidiaries will be maintained as healthcare organizations in their current form. FMH will retain its non-profit, §501(c)(3) tax-exempt, charitable status, hospital license, Medicare/Medicaid provider numbers and contractual relationships. Responsibility for the day-to-day operational control of FCHN and its subsidiaries, including FMH, will remain the auspices of FCHN, subject to ultimate oversight by MaineHealth.

**III. HIGHLIGHTS:**

Letter of Intent dated: January 15, 2014

Technical Assistance meeting held: February 10, 2014

CON application filed: February 28, 2014

CON certified as complete: February 28, 2014

Public Hearing held: April 3, 2014

Comment Period Ended: May 5, 2014

Preliminary Analysis released: May 16, 2014

Record Closed: June 6, 2014

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

Following release of the Preliminary Analysis, one public comment was received from a representative of Central Maine Healthcare (CMHC). CMHC expressed concerns about the accuracy and completeness of the data contained in the financial module Franklin Community Health Network (FCHN) submitted with their Certificate of Need (CON) application. MaineHealth provided a response to these concerns. CMHC questioned projections showing reductions in operating expenses, salaries and benefits, and depreciation and interest. In addition, CMHC noted that supply expenses are projected to remain at current levels even though FMH expects an increase in patient service revenue and patients. MaineHealth responded to these questions by noting that full time staff has been reduced from 655 to 602 and the use of more expensive contract labor and purchased services has declined. MaineHealth has also stated that supply expenses should remain flat due to economies of scale achieved through MaineHealth supply chain management. CMHC also expressed concern about the projected growth in revenue without an explanation about the specific source of growth, whether from providing outpatient or inpatient services or increasing market share, for example. MaineHealth states that this increased revenue projection is the result of a detailed analysis by FCHN of its hospital and physician practice operation, and a commitment to stronger clinical partnerships which will provide more comprehensive services at FCHN. MaineHealth has sufficient financial resources to utilize in the event that the expected results of operations contained in the Financial Module do not materialize.

In the review of the standard relating to outcomes and community impact, the Certificate of Need Unit (CONU) concluded that with a condition related to reporting on referral patterns, MaineHealth had met its burden to provide sufficient evidence that the acquisition of FCHN ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers. CMHC asserts that the CONU condition requiring the applicant to provide data on referral patterns should be strengthened to include a prohibition on changing referral patterns. MaineHealth states that this is unnecessary because referrals are based on patient/physician preference, accessibility of services and changing insurance benefits. CONU has determined that within the context of the original condition the applicant can demonstrate compliance with the standard. Changing referral patterns may occur for reasons beyond the scope and control of the applicants. A full text of CHMC comments and the applicant’s response is included in the record.

**V. CONU ANALYSIS:**

1. **Fit, Willing and Able:**

In order to determine if the applicant is fit, willing and able CONU evaluated three measures of quality for Maine Medical Center (MMC),the largest hospital in the MaineHealth healthcare system, and for FMH. These three measures of quality were:

* Survey of patients’ experiences: How recently discharged patients responded to a national survey about their hospital experience. For example, how well a hospital’s doctors and nurses communicate with patients, and how well they manage their patients’ pain. Patient survey results indicate that FMH scores below National averages in 7 out of 10 categories and below State averages in 10 out of 10 categories. MMC scores above national averages in 7 out of 10 categories and below State averages in 9 out of 10 categories.
* Timely and effective care: How often and how quickly each hospital gives recommended treatments for certain conditions like heart attack, heart failure, pneumonia, children’s asthma, and for surgical patients.
* Readmissions, complications and deaths:
* How each hospital’s rates of readmission and 30-day mortality (death) rates for certain conditions compare with the national rate.
* How likely it is that patients will suffer from complications while in the hospital.
* How often patients in the hospital get certain serious conditions, that might have been prevented if the hospital followed procedures based on best practices and scientific evidence.

In most instances both FMH and MMC meet and or exceed State and National averages in effective heart attack and heart failure care, pneumonia care and timely and effective surgical care. An area of weakness for MMC is timely emergency department care. This may be in part because MMC is located in an urban area with a significant population density. It was also noted that MMC scored lower than State and national averages in preventive care.

FMH performed no better or worse than the national rate for readmissions, complications or death.

Both MMC and FMH are in compliance with the State of Maine Rules for the Licensing of Hospitals.

1. **Economic Feasibility**:

In order to assess the financial stability of MMC and FMH, the CONU used financial ratios to measure profitability, liquidity, capital structure and asset efficiency. Financial ratios were obtained from the Maine Health Data Organization (MHDO)Hospital Financial Information Part II and MHDO Hospital Financial Data Definitions available on MHDO’s website <http://mhdo.maine.gov/imhdo/>. National trend and forecast information through 2010 was obtained from the 2012 Almanac of Hospital.

FMH meets or exceeds Maine median measurements of profitability an average of 80% of the time, and National medians (where available) 100% of the time. FMH meets or exceeds Maine median measurements of liquidity an average of 100% of the time, and National medians 93.3% of the time. FMH meets or exceeds Maine and National median measurements of capital structure an average of 60% of the time.

MMC meets or exceeds Maine median measurements of profitability an average of 100% of the time, and National medians (where available) 100% of the time. MMC meets or exceeds Maine and National median measurements of liquidity an average of 66% of the time. MMC meets or exceeds Maine and National median measurements of capital structure an average of 100% of the time.

Neither of the two hospitals scored well when comparing the hospitals asset efficiency to State and National averages. MMC has made significant investments in the past 8 years to its facilities. While FMH has not had any CON projects since before 2007, they do provide many services to an extended geographical area.

FCHN’s audited June 30, 2013 financial statements indicate an operating loss of $7,583,498 for the fiscal year ended June 30, 2013. MaineCare and Medicare account for approximately 63% of FCHN’s gross patient service revenues. In order to capture economies of scale, avoid duplication of services and gain access to capital at favorable rates, the FCHN Board believes that affiliating with a larger organization such as MaineHealth is of vital importance in improving the financial position of FMH.

By becoming a member of MaineHealth, FCHN projects to save enough money in order to improve their financial position.

MaineHealth has sufficient resources to utilize in the event that the expected results of operations do not fully materialize.

1. **Public Need:**

The stated goal of FCHN Board of Directors is to “develop a long-term strategy for success that would assure access to health for the next generation in the greater Franklin County region.”

The applicant identified their service area as greater Franklin County, Maine and the adjoining towns of Livermore and Livermore Falls. Franklin County is a rural county with a population of 30,495 (2013 census estimate). According to the applicant, FMH provides approximately 60% of the region’s need for inpatient hospital care and approximately 80% of the region’s need for the community hospital level of service for usual and customary services. In 2011, FMH had 1,216, or 78.7% of the discharges for usual and customary services out of a total of 1,546 discharges for the Farmington service area

CONU expanded the analysis of inpatient utilization by utilizing MHDO hospital inpatient data from 2009 through 2011 for all services. CONU used data from the 29 towns the applicant identified as having the majority of the population in the service area, in order to provide a clear picture of where patients in this area receive services.

This analysis reveals that an average of 40% of service area residents receive services at FMH while 30% receive services at Central Maine Medical Center (CMMC) and related facilities (Rumford). 9% receive services at MMC in Portland. A possible effect of a change in ownership on current referral patterns will be discussed in the Outcomes and Community Impact section of this analysis.

There appears to be a shift in services from rural to urban areas. This is consistent with national trends.

This project will substantially address specific health problems as measured by health needs in the area to be served by the project. The applicant provided a copy of FCHN’s Community Health Needs Assessment which identifies three priority concerns in their service area:

1. Chronic Disease Management

2. Obesity

3. Colorectal Cancer

Other community health needs include dental care, domestic violence, fatal motor vehicle deaths, suicide and substance abuse. A review of MaineHealth’s 2013 Health Index report shows that MaineHealth has identified many of the same needs. By coordinating resources and collaborating on healthcare delivery, FCHN will be able to utilize resources more efficiently, and better serve its community on an ongoing basis. FCHN will be better positioned to continue its broad array of services, which includes a sole community hospital, a multi-specialty group practice providing physician services, an ambulance service, public health services and behavioral health services.

The health status indicators of the population living in FCHN’s service area will be positively impacted by participating in MaineHealth’s health status improvement, clinical integration, population health management and quality improvement initiatives. The services affected by the project will be accessible to all residents of the area proposed to be served. No changes to the services currently provided by FCHN are expected.

FCHN identified specific concerns regarding chronic disease management, obesity, colorectal cancer, dental care, domestic violence, fatal motor vehicle deaths, suicide and substance abuse in its service area. These health issues require ongoing monitoring. The following condition is necessary to ensure that the impact of community programs instituted to reduce these health issues will be as effective as forecasted by the applicant.

**Condition**: The applicant is to report improvements in quality and outcome measures related to the community services instituted to reduce chronic disease, obesity, colorectal cancer, dental care, domestic violence, fatal motor vehicle deaths, suicide and substance abuse. This report will be required on an annual basis within 90 days of its fiscal year end beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of the project commencement.

1. **Orderly and Economic Development:**

Based on the financial module submitted by the applicant, 3rd year incremental operating costs are projected to show a savings, therefore no projected increase in MaineCare funds will be needed to fund this project through the 3rd year of operation (2017). Further, this project does not result in the development of any new health services, involve the acquisition of any major medical equipment, involve a change in the licensed bed complement of FMH or require any major capital expenditures.

FCHN will benefit from participation in MaineHealth’s employee health plan, workers’ compensation trust, purchasing programs, vendor contracts, Maine Medical Partners physician practice management, laundry services and an array of financial services. MaineHealth's economies of scale enable its members to purchase goods and services at reduced prices. Based on the financial module submitted by the applicant, operating costs are projected to decline by $522,941 between year 1 and year 3 of the project. FCHN’s membership fee of $375,000 will be offset by immediate savings of $200,000 in lab-contracted services, $100,000 in insurance premiums and $75,000 in legal fees.

The Board of FCHN considered several strategic alternatives to becoming a member of MaineHealth. These alternatives included affiliating with a number of other integrated healthcare delivery systems, and remaining independent. The benefits of becoming a member of MaineHealth made it the best alternative.

The Hart-Scott-Rodino (HSR) Act established the federal premerger notification program, which provides the Federal Trade Commission (FTC) and the Department of Justice (DOJ) with information about large mergers and acquisitions before they occur. The parties to certain proposed transactions must submit premerger notification to the FTC and DOJ. Premerger notification involves completing an HSR Form, also called a “Notification and Report Form for Certain Mergers and Acquisitions,” with information about each company’s business. The parties may not close their deal until the waiting period outlined in the HSR Act has passed, or the government has granted early termination of the waiting period.

This notification is required for certain transactions, where one party has annual net service revenues in excess of the $151.7 million size-of-parties threshold, and the other party has annual net service revenues in excess of the $15.2 million size-of-parties threshold. This transaction exceeds the size of parties’ thresholds.

Within 60 days of closing MaineHealth will need to determine if FCHN’s book value exceeds the size-of-transaction threshold of $75.9 million.

The CONU will need to monitor the status of the HSR process and will require the following condition:

**Condition**: MaineHealth will notify DHHS whether it intends to make a Notice and Report filing with the Federal Trade Commission under the HSR Act.

If MaineHealth makes a Notice and Report HSR filing, MaineHealth will:

- Provide to DHHS any letter from the FTC acknowledging the filing of the Notice and report.

- Notify DHHS if the FTC or DOJ has granted a request for early termination of 30-day waiting period requirement; or if the FTC or DOJ has made a formal request for additional information that would extend the 30-day waiting period.

- Notify DHHS if the FTC or DOJ has allowed the waiting period and any subsequent extension to lapse without taking further action, thereby allowing the transaction to occur.

1. **Outcomes and Community Impact:**

Both FCHN and MaineHealth have received numerous awards for delivering quality care. FMH will continue its Quality Management Process which relies on quality assurance and performance improvement initiatives focused on safety, effectiveness, patient-centered care, timeliness, efficiency and equity. FMHC membership in MaineHealth will allow for system-wide standardization, increased collaboration, communication, and reduction in waste. MaineHealth and has developed a series of 19 clinical quality metrics that capture the three areas of emphasis including better care, better health, and better patient expenditures. Education, transparency and accountability across the entire system will enhance high quality outcomes.

As noted in the public need section of this analysis a significant number of patients in the FCHN patient service area receive services elsewhere. Of particular note is that 30% of the patients receive services at CMMC and related facilities while only 9% receive services at MMC. The applicant states that “all referrals will continue to be based on an assessment of the patient’s needs, the resources available and reasonably accessible by the patient and the patient’s preference,” therefore historical referral patterns will likely remain unchanged. It is important that CONU monitor the referral patterns. As a result, CONU is including the following condition.

**Condition**: The applicant is to report referral patterns in the FCHN service area. The report will include the patients’ diagnosis, permanent residence, and hospital where the patients receive services. This report will be required on an annual basis within 90 days of its fiscal year end, beginning with the time when the CON was approved until a full three years have elapsed since the date of the project commencement.

1. **Service Utilization:**

This project will not result in an inappropriate increase in service utilization in the Franklin County area. No new services or facilities have been developed due to this project, and FCHN’s service area remains unchanged. One of the goals of membership in MaineHealth is to adopt MaineHealth’s evidence-based, best practices for health status improvement and clinical integration initiatives in order to improve utilization.

**VI. CONCLUSION:**

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

**VII. RECOMMENDATION:**

CONU recommends that this application be **Approved with the following conditions.**

**Condition**: The applicant is to report improvements in quality and outcome measures related to the community services instituted to reduce chronic disease, obesity, colorectal cancer, dental care, domestic violence, fatal motor vehicle deaths, suicide and substance abuse. This report will be required on an annual basis within 90 days of its fiscal year end beginning with the time period when the CON was approved until a full 3 years have elapsed since the date of the project commencement.

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