

# **BRIEFING MEMO**

## **Eastern Maine Healthcare Systems** **Acquisition of Control of Mercy Hospital**

**DATE:** September 16, 2013

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

**THROUGH:** Ken Albert III, Director, Division of Licensing and Regulatory Services

**FROM:** Phyllis Powell, Assistant Director, Medical Facilities  
Larry Carbonneau, Manager, Health Care Oversight  
Richard S. Lawrence, Senior Health Care Financial Analyst

**SUBJECT:** Eastern Maine Healthcare Systems acquisition of control of Mercy Hospital.

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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 § 326 et seq., as amended.

**REGISTERED AFFECTED PARTIES:** MaineHealth and Maine State Nurses Association/National Nurses United

### I. BACKGROUND:

EMHS, based in Brewer, Maine, is a nonprofit, tax-exempt corporation. EMHS is a vertically integrated healthcare system serving central, eastern, and northern Maine. EMHS includes more than 30 organizations, including seven hospitals: Acadia Hospital (Acadia), The Aroostook Medical Center (TAMC), Blue Hill Memorial Hospital (BHMH), Charles A. Dean Memorial Hospital, (C.A. Dean), Eastern Maine Medical Center (EMMC), Inland Hospital (Inland), and Sebecook Valley Health (SVH). Acadia is a free-standing tertiary psychiatric hospital and the only psychiatric hospital in the United States to receive magnet status for excellence in nursing care. EMMC is the EMHS flagship hospital, providing a full complement of sub-specialty care, trauma services, and the latest in advanced technologies and imaging capabilities. Hospitals in the EMHS service area refer patients to EMMC for major operations and consultations with sub-specialists, and when sophisticated intensive care facilities are required. Other non-hospital EMHS members include Affiliated Healthcare Systems, Rosscare, Eastern Maine HomeCare, and EMHS Foundation. Through its subsidiaries, EMHS also provides medical laboratory services throughout New England, operates a multi-state distributor of medical and surgical supplies to various healthcare organizations, operates four retail pharmacies, develops cooperative retirement housing units, and holds significant ownership interests in several non-subsidiary companies providing services, such as skilled nursing care.

MHSM (Mercy), the co-applicant, is a Maine nonprofit, tax-exempt corporation and is the sole corporate member of Mercy and VNA. The sole corporate member of MHSM is CHE. CHE is a multi-institutional, Catholic health system co-sponsored by 13 religious congregations, including the Sisters of Mercy, Northeast Community, based in Rhode Island. CHE's corporate offices are located in Newtown Square, Pennsylvania. Mercy provides a broad array of both inpatient and outpatient diagnostic and therapeutic services including: medical, surgical, oncological, obstetrical, physical rehabilitation, imaging, laboratory, eating disorders, drug and alcohol

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detoxification and treatment services, and home care/hospice services. Mercy is comprised of the following entities: Mercy Hospital, which includes three hospital campuses (State St, Fore River, and Westbrook) licensed for 230 beds, additional off-site out-patient locations (e.g. physical rehabilitation, endoscopy, etc.), and Mercy Medical Associates. Mercy Medical Associates represents Mercy's multi-specialty physician practices. The network of Primary Care and Specialty Practices provides both inpatient and outpatient care in several communities in greater Portland. Each practice has a team of outstanding physicians, nurse practitioners, physician assistants, nurse mid-wives, and staff.

VNA Home Health & Hospice is the premier Medicare certified provider of home care and hospice services in southern Maine and is accredited by The Joint Commission. Out of 8,000 companies nationwide, VNA has achieved recognition as one of the HomeCare Elite for five of the last six years. LifeStages, a division of VNA created in 2011, provides companion care; meal preparation, light housekeeping, errands, personal care and many more services to assist elders maintain their independence in their own homes.

The Mercy Recovery Center is located at the Westbrook campus; this is the focal point for Mercy's substance abuse (alcohol and opioid addiction primarily) services. Inpatient and outpatient services offered at the Westbrook campus are unique to the Portland area and act as a statewide consultation service and receive referrals from state wide providers. The Recovery Center is the largest substance abuse provider in the state. This program will be continued and strengthened with the EMHS affiliation.

### **II. PROJECT DESCRIPTION:**

In accordance with the terms of an Affiliation Agreement (Affiliation Agreement), by and among CHE, Mercy, VNA Home Health & Hospice (VNA), and EMHS, the Board of Trustees of MHSM, with the approval of the Sisters of Mercy and CHE, proposes to amend the Bylaws and Articles of Incorporation of MHSM to substitute EMHS for CHE as the sole corporate member of MHSM (the "Affiliation"). As sole corporate member of MHSM, EMHS will acquire direct or indirect control over substantially all of the assets and operations of MHSM, including Mercy and VNA. The VNA affiliation is not subject to CON review.

MHSM, Mercy, and VNA will continue to operate in their current form as 501(c) (3) tax-exempt Maine nonprofit corporations. The day-to-day operation of Mercy will continue, subject to oversight by EMHS, including EMHS approval of certain Mercy financial and service initiatives, as set forth more specifically in the Affiliation Agreement. The Affiliation Agreement provides that Mercy will retain its Catholic identity, traditions and mission. The Sisters of Mercy are seeking approval from the Roman Catholic Church for the transfer of Mercy's real property to EMHS. A letter from Bishop Malone of the Portland Diocese is included with other support letters in Attachment B.

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### **III. HIGHLIGHTS:**

Letter of Intent dated: January 25, 2013  
Technical Assistance meeting held: February 6, 2013  
CON application filed: April 17, 2013  
CON application certified complete: April 17, 2013  
Public Informational Meeting held: N/A  
Public Hearing: May 7, 2013  
Preliminary analysis released: August 23, 2013  
Record Closed: September 16, 2013

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

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

### **V. CONU ANALYSIS/APPLICANTS COMMENTS:**

#### **i. Fit, Willing and Able:**

Eastern Maine Health Systems has provided hospital and related services throughout the State of Maine for many years. The services provided by the applicant are consistent with applicable licensing and certification standards.

#### **ii. Economic Feasibility:**

The applicant's financial projections demonstrate the financial feasibility of this project. In the event that forecasted patient volume, increased revenues and cost reductions attributable to Mercy's operations do not materialize, EMHS has the financial capacity to support Mercy Hospital. CONU is unable to predict the impact of implementation of the Affordable Care Act on reimbursement.

#### **iii. Public Need:**

The project will have a positive impact on the health status indicators of the population to be served. Both mercy and EMHS have recognized the importance of easily accessible primary care located in local communities to address specific health problems. Mercy's will collaborate with EMHS to achieve continued improvement, care integration and benchmarked results. The applicant will offer the services affected by the project to all residents of the area proposed to be served and therefore will ensure accessibility of the service.

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### **iv. Orderly and Economic Development:**

Total health care expenditures are not expected to increase as a result of this transaction. Current utilization levels of these services make the continuation and availability of these services a necessary component of health care. State funds should not be materially impacted by this transaction. It is unlikely that more effective, more accessible or less costly alternative technologies or methods of service delivery will become available.

### **v. Outcomes and Community Impact:**

Mercy's clinical outcomes will be enhanced from participation in EMHS's population health status improvement initiatives, clinical integration and quality improvements initiative and programs. Mercy's affiliation with EMHS will result in no new health services being added in the area. As a result the project will not negatively affect the quality of care delivered by existing service providers.

### **vi. Service Utilization:**

The joint Mercy/EMHS focus on community centered primary care will decrease inappropriate and unnecessary hospitalizations and Emergency Department utilization. No new health services or expansion of existing services will occur.

## **VI. CONCLUSION:**

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

## **VII. RECOMMENDATION:**

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

- The applicant is to report cost savings attributable to the merger for three years
- For the three years following commencement of the CON, Mercy Hospital will need to notify the Division of Licensing and Regulatory Services of any proposed change to the Free Care policy or Charity Care policy of the Hospital no less than 90 days before the proposed change is to go into effect.