

BRIEFING MEMO

Emergency Certificate of Need Application to allow Eastern Maine Healthcare Systems to acquire control of Down East Community Hospital

DATE: July 1, 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 D. Carbonneau, Health Care Financial Analyst
Richard F. April, Health Care Financial Analyst

SUBJECT: Emergency Certificate of Need Application to allow Eastern Maine Healthcare Systems to acquire control of Down East Community Hospital as Emergency Receiver.

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:

- On June 25, 2009, the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) terminated Down East Community Hospital (DECH) as a Medicare provider, effective July 10, 2009. This termination, once effective, means that DECH's provider number will be void and DECH cannot receive reimbursement as a participating provider in the Medicare or Medicaid/MaineCare program.
- The June 25, 2009 Statement of Deficiencies (SOD) found that DECH failed to meet various federal conditions of participation for critical access hospitals, including Emergency Services, Organizational Structure, Governing Body or Responsible Individual, and Periodic Evaluation and Quality Assurance.
- The termination of DECH as a Medicare/Medicaid/MaineCare provider by CMS constitutes an emergency that threatens the health, security or welfare of DECH's patients. Without its provider number and reimbursement as a participating critical access hospital in the Medicare and Medicaid/MaineCare programs, DECH will not be able to provide critical access hospital services.

- CMS may extend the date of termination of DECH's provider number and Medicare/Medicaid/MaineCare provider status if a suitable Emergency Receiver is appointed for DECH and that Emergency Receiver shows substantial progress toward implementing the Plan of Correction (POC) for DECH by July 10, 2009. A delay of termination by CMS will allow DECH to continue to provide critical access hospital services.
- The current emergency at DECH may be alleviated by the appointment of an Emergency Receiver and substantial progress of the Emergency Receiver toward implementation of the most recent POC by July 10, 2009.
- Hospital administrative services are currently provided to DECH by Quorum Health Resources, LLC pursuant to a management agreement.
- The Department has petitioned for appointment of an Emergency Receiver. Michelle Hood, Chief Executive Officer of Eastern Maine Healthcare Systems (EMHS) has agreed for EMHS to serve as Emergency Receiver.
- EMHS was appointed Emergency Receiver on July 1, 2009.
- EMHS proposes to appoint Doug Jones as Interim Chief Executive Officer of DECH.
- CONU determined that an emergency exists and recommends that the Commissioner approve the transfer of control to EMHS subject to the following conditions:
 - 1) This acquisition of control is limited to the scope of activities as specified in the Court Order dated July 1, 2009.
 - 2) This CON shall expire when the court-ordered Receivership expires.

II. PROJECT DESCRIPTION:

The State of Maine Kennebec County Superior Court ordered on July 1, 2009 that Eastern Maine Healthcare Systems is appointed as Emergency Receiver for DECH. The Emergency Receivership shall continue until the earliest of the date CMS renders a decision upon another application for a critical access hospital provider number by or on behalf of DECH, that CMS determines that the termination date will not be extended or further order of the Superior Court.

III. DOCUMENTS RECEIVED:

1. Affidavit of Catherine Cobb in Support of Petition for Appointment of Emergency Receiver dated June 30, 2009.
2. Petition for Appointment of Emergency Receiver dated June 30, 2009.
3. Order Appointing Emergency Receiver dated July 1, 2009.

IV. TIMELINE:

Statement of Deficiencies, Notice of Immediate Jeopardy and Conditional License issued:	January 15, 2009
Recent Plan of Correction from DECH:	May 20, 2009
Most Recent Survey by the Department:	June 17, 2009
Final Statement of Deficiencies from CMS and notification of termination as a Medicare/Medicaid/MaineCare provider:	June 25, 2009
Proposed effective date DECH terminated as Medicare/Medicaid/MaineCare provider:	July 10, 2009

V. DETERMINATION THAT AN EMERGENCY EXISTS:

The commissioner shall find an emergency situation exists whenever the commissioner finds that an applicant has demonstrated:

(1) The necessity for immediate or temporary relief due to a natural disaster, a fire, an unforeseen safety consideration, a major accident, equipment failure, foreclosure, receivership or an action of the department or other circumstances determined appropriate by the department.

The department petitioned for receivership of DECH on June 30, 2009. That petition was granted on July 1, 2009. Immediate relief is necessary for the Emergency Receiver to perform the duties specified in the Court's Order.

(2) The serious adverse effect of delay on the applicant and the community that would be occasioned by compliance with the regular requirements of this chapter and the rules adopted by the department.

Without this Emergency CON, DECH will not be able to perform its function as a critical access hospital.

(3) The lack of substantial change in the facility or services that existed before the emergency situation.

DECH will continue to provide services as a critical access hospital under the Receivership.

VI. CONCLUSION:

The conditions exist for an Emergency Certificate of Need for all the reasons set forth above, and contained in the record. CONU recommends the approval of an Emergency CON with conditions.

VII. RECOMMENDATION:

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

- 1) This acquisition of control is limited to the scope of activities as specified in the Court Order dated July 1, 2009.
- 2) This Certificate of Need shall expire when the court-ordered Receivership expires.